

# STATE OF COLORADO

## DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

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### FINANCIAL WARRANTY

### LETTER OF CREDIT

### (THIRD PARTY)

Operator: \_\_\_\_\_

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

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

Bank: \_\_\_\_\_

Warrantor: \_\_\_\_\_

*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 the permit application, as amended and supplemented, 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 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 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 Operator and the Warrantor, in accordance with the Act, have promised and hereby promises 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, the Warrantor has proceeded pursuant to Section 34-32-117(3)(2)(II) of the Act and has caused the \_\_\_\_\_ Bank of \_\_\_\_\_, State of \_\_\_\_\_ (the "Bank") to issue its Irrevocable Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_, payable to the Board in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the period from \_\_\_\_\_, \_\_\_\_\_, through \_\_\_\_\_, \_\_\_\_\_ and has delivered it to the Board to be held by the Board as proof of the Operator's financial responsibility under this financial warranty. The Bank is not a party to this agreement; its obligations are set forth in its Letter of Credit. Nothing in this Financial Warranty diminishes or qualifies the Bank's obligation under its Letter of Credit.

NOW THEREFORE, the Operator and the Warrantor 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 Operator shall have sixty (60) days after the date of notice of any such adjustment to fulfill all new requirements.

The Operator and 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.

No misrepresentation by the Warrantor which may have induced the Bank to deliver its Letter of Credit shall be any defense to any draft by the State under such Letter of Credit.

The Board may present drafts upon the Bank for payment under the Letter of Credit if the Board determines that reclamation which ought to have been performed by the Operator, or its successors or assigns, remains unperformed. No other condition precedent need be fulfilled to entitle the Board to receive the amounts of such drafts. However, if, upon completion of such reclamation by the Board, the amounts expended for reclamation shall be less than the amount received from the Bank, the excess shall be promptly refunded to the Warrantor.

If or to the extent that the Bank shall cancel its Letter of Credit and such assurance shall not concurrently be reduced to a cash deposit as substitute assurance, the Operator agrees that it will forthwith provide substitute assurance, in form and substance approved by the Board, equal to the amount of the Letter of Credit which has been so cancelled and not reduced to a cash deposit.

With the prior consent of the Board, which consent shall not be unreasonably withheld, the Operator and/or Warrantor may from time to time change the Bank whose Letter of Credit is held by the State as assurance or alter the form of assurance of financial responsibility held by the State for the faithful performance by the Operator of its obligations hereunder; provided that at all times there shall be in existence and delivered to the Board such assurance or other evidence of financial responsibility as shall be required by applicable laws and regulations of the State of Colorado and as shall be, in form and substance, approved by the Board or the Division.

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 Operator's and/or Warrantor's obligation under this Financial Warranty.

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 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 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, 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 and Warrantor, 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 agree 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 Warranty is executed, have been satisfied and, until its release, has been approved by the Board.

("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 and Warrantor, 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 of Reclamation, Mining and Safety and by the Land Board, hereby agree 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 warranty is executed, have been satisfied and, until its release, is approved by the Board.



Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Warrantor

By \_\_\_\_\_

**NOTARIZATION OF WARRANTOR'S ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_

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

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

APPROVED:

STATE OF COLORADO  
DIVISION OF RECLAMATION, MINING AND SAFETY  
MINED LAND RECLAMATION BOARD

By \_\_\_\_\_ Date: \_\_\_\_\_  
Division Director