

File No. 26923.

WILLIAM P. FAIRMAN, et al.)

to)

DONALD J. WICHER.)

AGREEMENT AND LEASE.*See Book F. Page 4 for
Assignment*

THIS AGREEMENT AND LEASE, made and executed in quadruplicate copies in the City of Philadelphia, Pennsylvania, as of the 23rd day of July A.D. , 1947, by and between WILLIAM P. FAIRMAN, as the individual Executor and Trustee under the Will of H. Kay Messick, Deceased, KATHERINE E. BOYD, as Executrix under the Will of William Y. Boyd, Deceased, and WILLIAM P. FAIRMAN of 225 South 15th Street, Philadelphia, Pennsylvania, hereinafter referred to as "LESSORS", parties of the first part, and DONALD J. WICHER of 117 South 17th Street, Philadelphia, Pennsylvania, or his nominee, hereinafter referred to as "LESSEE", party of the second part, WITNESSETH:

WHEREAS, H. Kay Messick and William Y. Boyd did acquire title to and possession of the mining properties hereinafter described, by deed dated December 3, 1923, and duly recorded in the County of Eureka, State of Nevada, and under Patent No. 1071640 issued by the General Land Office of the United States, as received and filed in the United States Land Office at Carson City, Nevada, on August 30, 1934, the title to which and right of possession thereof is now owned and possessed by the Lessors, each having an equal one-third interest therein; and

WHEREAS, the said H. Kay Messick died at Philadelphia, Pennsylvania, on October 24, 1934, leaving a last Will and Testament duly recorded in the Office of the Register of Wills of Philadelphia County, Pennsylvania, under which the said William P. Fairman and The Pennsylvania Company for Insurances on Lives and Granting Annuities are Executors and Trustees, with power and authority "to sell, lease, mortgage or otherwise convert, in such manner, at public or private sale, for such price, and upon such terms and conditions as shall be deemed advisable, any real or personal property ***** and to make good deeds and transfers thereof to the purchaser or purchasers, without any obligation on the latter to see to or be responsible for the application of the purchase price"; and

WHEREAS, under the laws of the State of Nevada The Pennsylvania Company for Insurances on Lives and Granting Annuities, the corporate Executor and Trustee under the said Will, is not authorized or permitted to act as such Executor or Trustee within the said State, so that said William P. Fairman is the sole Executor and Trustee under said Will with respect to property in the State of Nevada; and

WHEREAS, since December 3, 1923, William P. Fairman has managed and administered the said property and has paid the taxes thereon for the owners to the date hereof, and the Lessors are advised and believe that they have a good and marketable title to and possession of the premises and property hereinafter described free and clear of liens and encumbrances, and that they are authorized to execute and deliver this lease and agreement upon the terms and conditions herein set forth without court approval, under the Nevada law, and now desire hereby to grant to the Lessee this lease and option to purchase said property and all right, title and interest of the Lessors therein upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises and of the covenants and agreements each to the other made and agreed to be kept by the respective parties hereto, it is covenanted and agreed by and between the parties hereto as follows:

1. That the Lessors do hereby lease, let and demise unto the Lessee for the term of five years from and after the date hereof, for an annual rental of Two thousand Dollars (\$2000.00), payable Five hundred Dollars (\$500.00) quarterly in advance, to William P. Fairman, as Agents for the Lessors herein, ALL THOSE CERTAIN patented lode mining claims and premises and mining

property of the Lessors, situate in Eureka County, Nevada, mentioned and described in the deed and patent aforesaid, and more particularly described as follows:

<u>Name of Claim</u>	<u>U. S. Mineral Survey No.</u>
Dextor Lode	4705
Sunnyside Lode	4705
Bell Extension Lode	4705
Bell Lindsey Lode	Amended 1882
Snowflake Lode	4705
Rye Grass Lode	4705
Lily Fraction Lode	4705
Lily Lode	4705
Lily No. 2 Lode	4705

together with all right, title and interest of the Lessors in and to unpatented lode mining claims and placer claims contiguous to or forming a part of any of the foregoing; also all water and water rights, ditches and ditch rights, flumes, easements, rights of way, licenses, permits, buildings, machinery, equipment, improvements and facilities upon or used or for use in connection with the said leased premises and owned by the Lessors; together with all appurtenances and hereditaments thereunto belonging or in any wise appertaining.

To have and to hold said demised premises for and during the said term of five (5) years from the date hereof.

2. Lessors, hereby give and grant unto Lessee the exclusive right to explore, prospect, develop, work operate and mine said leased premises and property and to extract and remove therefrom any and all ores and minerals and to ship or concentrate, treat or other wise process said ores and minerals, to sell or other wise dispose of such ores and minerals and/or the concentrates recovered therefrom, and to use, construct, operate and maintain plants, buildings, machinery, equipment, improvements, facilities, appliances, or other structures, and to make and maintain excavations, openings, stockpiles, dumps, ditches, drains, roads and other improvements upon said premises, including the use of water in said operations, and to place, operate and maintain machinery, equipment and personal property in and on said premises.

3. That Lessee shall have the free right to cut and use timber and other raw materials found upon or in said leased premises for any purpose in connection with the operations to be carried on under this lease or the construction and operation of any facilities used or to be used in connection with the operation of the leased premises. All ores and minerals mined and produced from the leased premises by Lessee during the term of this lease and the products and proceeds thereof shall be and become the property of Lessee.

4. That Lessee shall have the right to immediate possession of the leased premises and during the term of this lease shall cause to be performed at its sole risk and expense, prior to October, 1948, and during each twelve months period thereafter, not less than 1,200 shifts of labor on said leased premises. A shift of labor shall be regarded as a normal eight hour day's work for one man. It is understood and agreed that if more than 1,200 shifts of labor are performed during any of said twelve months periods the excess over 1,200 shifts shall be considered to have been performed in satisfaction of the shift requirement for any subsequent twelve months period or periods. In the event of strikes, lockouts, or an act of God or an act of war, or the enactment of laws or promulgation of State or Federal rules, regulations or priorities, or of any other cause whatsoever which may make exploration or development or operation of said property impossible or unlawful, then in any such event Lessee shall be relieved from the obligation of performance under this paragraph for the duration of any such event or emergency mentioned above, and for sixty (60) days thereafter.

5.a. During the terms of this lease, Lessee agrees to pay said Lessors as Royalty ten per cent (10%) of the net proceeds of all ores shipped, milled and extracted from said premises by delivery with all convenient speed in lots as mined to some smelter or regular ore buyer, with instructions to said smelter or regular ore buyer, as the case may be, to forthwith transmit by U. S. Mail to William P. Fairman, 225 South 15th Street, Philadelphia 2, Pa., the said percentage of smelter returns aforesaid for delivery to the Lessors, together with a copy of the statement of the Smelter settlement (it being understood that the term, "net proceeds" means the amount returned by the Smelter.)

b. Lessee agrees to work and operate said properties in good and minerlike fashion and to keep the same clear from liens, claims and demands for labor performed thereon and for the cost of material and supplies placed or used upon said premises, and agrees to post and maintain on the said premises notice of non-liability of the Lessors for labor performed thereon or materials furnished in connection therewith, and that the Lessors, or any of them, shall have the right to post and maintain such notices.

6. In consideration of the premises and of the performance by Lessee of the covenants and agreements herein contained, Lessors hereby give and grant unto Lessee the exclusive right, privilege and option, to be exercised by the Lessee within five years from the date hereof by at least thirty days written notice to the Lessors and the payment of the purchase price, to purchase the leased premises, and Lessors agree to sell and convey unto Lessee the said leased premises upon the payment in cash of the sum of Fifty Thousand Dollars (\$50,000) within the said five year period. It is mutually understood and agreed that all royalties accruing and paid under this lease prior to such purchase and payment shall be credited to and applied on account of the said purchase price, and Lessors covenant and agree upon receipt as aforesaid of the said purchase price of Fifty thousand Dollars (\$50,000) to make, execute and deliver a good and sufficient deed of conveyance granting and conveying to the Lessee the hereinbefore described mining claims and all right, title and interest of the Lessors therein and of all property located thereon, the covenant of warranty in any such deed to be a special or trustee's warranty against all claims of persons claiming by, from or under the Lessors, or any of them; and the said purchase price, less the amount of royalties credited thereon, shall be paid hereunder one-third thereof directly to each of the Lessors.

7. Lessors represent and warrant that all taxes on the leased premises, now at the rate of \$150.00 per annum, have been paid up to and including the date hereof.

Lessee covenants and agrees to pay, before delinquent, all taxes on the leased premises which shall accrue and become due and payable during the term of this lease.

8. So long as the parties, or any of them, are Lessors hereunder, the duly authorized representatives or agents of the Lessors, at their own expense and risk, shall have access at all reasonable hours to the workings and to the records and maps of Lessee, with the right to make copies thereof and to verify from the books and records of Lessee the shifts of labor, the royalties payable and the payment of taxes, and that the Lessee has kept and performed all its obligations hereunder. And it is further understood that the Lessee shall provide the Lessors with copies of all Reports, including Geophysical Surveys and drilling results.

9. Anything in this lease to the contrary notwithstanding, it is understood and agreed that Lessee shall have the right to terminate this lease at any time upon giving ninety days prior notice in writing to Lessors of its intention so to terminate. In the event of any breach or default by the Lessee in compliance with any of the terms or conditions of this Lease, the

Lessors, or any one or more of them, or their agent, shall be entitled to give written notice within ninety days from the time when the Lessors shall have notice or knowledge of such alleged breach or default, and Lessee shall thereupon have ninety days after the receipt of such notice to cure or abate such breach or default. In the event that Lessors, on or before September 30 in any year or years, shall allege default by Lessee in the performance of the minimum number of shifts of labor during the aforesaid twelve months period of each year, then Lessee may cure such default by making payment to the Lessors, on or before December 30 of said year, of \$1.00 for each shift in performance of which Lessee is in default, and the maximum payment for such default in the shifts of labor in any single year shall be the sum of \$1200. being the minimum shifts of labor required to be provided by Lessee in each such twelve months period. In the event Lessee does not cure or abate such breach of default within the time above specified the Lessors, at their option, by written notice, may thereupon cancel and terminate this lease, and in the event of such termination Lessee shall be and remain liable for all sums payable by the Lessee to the Lessors under the foregoing provisions hereof prior to the date of such termination.

10. In the event of termination of this lease by either the Lessee or the Lessors, Lessee shall be under no further liability to the Lessors hereunder except to make payment of all rents, royalties and any other sums which may be due and payable by way of taxes, penalties or otherwise by the Lessee to the Lessors on the date of such termination, and upon the termination of this lease by cancellation as herein provided or otherwise, Lessee shall have the right to remove and shall remove at any time within 120 days after the effective date of such termination any and all buildings, machinery equipment, tools, supplies, materials, products and personal property which it may have placed upon the said premises and shall desire to remove therefrom, provided Lessee shall first have paid to Lessors all sums due and payable by Lessee to the Lessors and then unpaid, and any property not so removed within the said 120 day period and all royalties and other payments, if any, theretofore received by the Lessors from the Lessee and all improvements to the said premises not removed as aforesaid may be retained by the Lessors as their property and as liquidated damages, but the Lessee shall not thereby be released or discharged from any obligations or liabilities to the Lessors which shall or may have accrued prior to such termination or cancellation.

11. Any notice to be given by Lessee to Lessors shall be in writing and shall be sent by registered mail addressed to William P. Fairman at 225 South 15th Street, Philadelphia, Pennsylvania, or to such other person or address as the Lessors, or any of them, by writing lodged with the Lessee, may designate, and any notice to be given by Lessors to Lessee shall be in writing and shall be sent by registered mail addressed to Lessee at 117 South 17th Street, Philadelphia 3, Pennsylvania, or at such other address as Lessee may designate.

12. Lessee hereby agrees to indemnify and save harmless the Lessors, and each of them, and the demised premises from all liability, cost, charge and expense by reason of any act, matter or thing done or omitted by the Lessee, its agents and employees, in or upon the demised premises and the use, occupation, maintenance and operation thereof. Lessee further agrees to carry adequate and satisfactory compensation and fire insurances.

13. It is specifically agreed that the interest of each of the Lessors in the demised premises is a one-third undivided interest, that the obligations and liabilities of each of the lessors hereunder shall be limited and restricted to one-third of all the obligations and liabilities of the Lessors hereunder, that all such obligations and liabilities shall be satisfied and discharged out of the demised premises and the rents, royalties, purchase price and

other sums payable by the Lessee hereunder, and that the Lessors, and each of them, shall not have any obligation or liability hereunder except such as may be satisfied and discharged as aforesaid.

14. Lessors agree that if there shall be any lien or encumbrance against the property aforesaid, or any defect of title, then Lessee shall be entitled to satisfy and discharge such lien or encumbrance or to cure such defect of title and to charge all of its proper cost, charge and expense with respect thereto against any payments payable by Lessee to Lessors hereunder; that if any court proceedings in the State of Nevada shall be required to make this lease and agreement and the option for sale hereunder legal and binding in the State of Nevada against the leased property then the Lessors, and each of them, shall execute and deliver all such written instruments, documents and pleadings as may be necessary therein, and all proper cost, charge and expense thereof, including proper attorneys' fees, shall be charged by Lessee and deducted from any payments payable by Lessee to Lessors hereunder; and that if any such lien or encumbrance can not be so cured then the Lessee shall be entitled at its option to cancel and terminate this agreement and all of its obligations hereunder so that the same shall become void and of no further effect, and no party hereunder shall then or thereafter have any further obligation or liability hereunder or under any deed executed hereunder.

15. That this lease and agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the respective parties hereto; provided, however, that the Lessee shall not be entitled to pledge or encumber this lease, or any right or property hereunder, except with the written consent of Lessors.

IN WITNESS HEREOF, the parties hereto have caused this instrument to be executed and delivered as of the day and year first above written.

ESTATE OF H. KAY MESSICK, DECEASED
By

William P. Fairman
Trustee and Executor

ESTATE OF WILLIAM Y. BOYD, DECEASED
By

Katharine E. Boyd
Executrix

William P. Fairman
Lessors

Donald J. Wicher
Lessee

STATE OF PENNSYLVANIA) ss.
COUNTY OF PHILADELPHIA)

On this the 23rd day of July A.D. 1947, before me the subscriber, a Notary Public in and for the State and County aforesaid, personally came William P. Fairman to me personally known to be the individual described in and who executed the within instrument, and I having first made known to him the contents thereof, the said William P. Fairman acknowledged to me that he executed the same individually and as Executor and Trustee under the Will of H. Kay Messick, Deceased, as his free act and deed for the purposes therein mentioned, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Clara Miller
Notary Public

(Notarial Seal)
My Commission Expires January 7, 1951.

STATE OF
COUNTY OF

) ss.

On this the 21 day of July A.D. 1947, before me the subscriber, a Notary Public in and for the State and County aforesaid, personally came Katharine E. Boyd to me personally known to be the individual described in and who executed the within instrument, and I having first made known to her the contents thereof, the said Katharine E. Boyd acknowledged to me that she executed the same as Executrix of the Estate of William Y. Boyd, Deceased, as her free act and deed for the purposes therein mentioned, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

(Notarial Seal)
Commission expires March 30, 1949.

Winifrid D. Huty

Winifrid D. Huty No. 4740
Notary Public in New York State
Resident in and for Ulster County

STATE OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) ss.

On this the 23rd day of July A.D. 1947, before me the subscriber, a Notary Public in and for the State and County aforesaid personally came Donald J. Wicher, to me personally known to be the individual described in and who executed the within instrument, and I having first made known to him the contents thereof, the said Donald J. Wicher acknowledged to me that he executed the same as his free act and deed for the purposes therein mentioned, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

(Notarial Seal)
My Commission Expires January 7, 1951.

Clara Miller
Notary Public

Recorded at the request of Donald J. Wicher July 28 A.D. 1947 At 45 minutes past 3 P. M.

Peter Merialdo----Recorder.