

## LEASE OF MINING RIGHTS

Lease No. SPL-4848This Lease, made this 15th day of October, 1978 by and between SOUTHERN  
PACIFIC LAND COMPANY,a corporation, hereinafter called "Lessor" and LEE BRITTON,

, hereinafter called "Lessee":

## WITNESSETH:

1. Lessor, for and in consideration of the observance and faithful performance by Lessee of all the provisions contained in this lease, does hereby lease to Lessee for the term and purposes hereinafter mentioned, all that certain property sometimes hereinafter referred to as "premises" in the County of Eureka,  
State of Nevada, more particularly described as follows:

NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 21, Township 33 North, Range 51 East, MDM.,  
containing 40.00 acres, more or less.

Reserving unto Lessor, its successors and assigns, the right to construct, reconstruct, maintain and use pipelines, wire lines, conduits, ditches, flumes, roads, trails, tracks and appurtenances thereto in, over, upon, along and across said property and the right to use said property for any and all other purposes consistent with Lessee's use of said property for the purposes herein leased.

Lessee shall have the exclusive right to examine, search and test for, open and operate mines, and extract, reduce, treat, sell and ship any and all barite only, hereinafter referred to as "leased mineral", contained in said premises. There is excepted from this lease and reserved unto Lessor, its successors and assigns, all other minerals in said premises, including, but not limited to, oil and natural gas, and the exclusive rights thereto. In the event Lessee shall recover other minerals as a by-product of said leased mineral as a necessary or unavoidable result in the mining of said leased mineral, Lessee shall obtain the approval of Lessor prior to sale thereof as to the conditions of sale and the royalty to be paid to Lessor therefor.

This lease is made subject to any and all rights of way and easements and to existing leases and licenses and renewals thereof.

2. The term of this lease shall be from the 15th day of October, 1978 to the 14th day of October, 1979. Lessee agrees to pay annually in advance to Lessor a minimum royalty of \$400.00 per annum during the term of this lease and each renewal term thereof, to be credited as payment on account of actual royalties to be paid by Lessee to Lessor hereunder. Lessee agrees to pay to Lessor an agreed actual royalty of seventy-five cents (75¢) per ton (2,000 lbs.)

extracted and removed from said property.

After all of the minimum royalty credit for each annual period hereunder has been credited to said actual royalties accruing during such period, Lessee shall thereafter, within twenty days after the expiration of each and every calendar month of the term hereof, pay the additional actual royalties at the rates provided for herein, and furnish Lessor full and complete copies of all documents, including settlement sheets, certificates of analyses, and assays, pertaining to or governing settlement for any ore, mineral or metal disposed of and also full and complete reports of any reduction works or mill where the ore may be reduced or treated, and setting forth for the preceding calendar month:

- (a) The number of tons of ore or mineral mined and the gross value thereof.
- (b) The number of tons of ore remaining in stockpiles on said premises.
- (c) The kind, quantity and value of all minerals extracted and sold or otherwise disposed of.
- (d) The disposition made of all ore or minerals mined, together with the dates of shipments, names and addresses of consignees, car numbers, initials and weights.
- (e) That the said premises are being worked independently of and not in connection with any other mine or mineral land.

Such statement and reports to be accompanied by draft payable to the Lessor for the proper amount of the royalty due Lessor as aforesaid. If no work is done, a statement in writing to that effect must be furnished. In the event the true value of any shipment of said ore or mineral cannot be determined by Lessee, prior to rendering monthly statement to Lessor, as hereinafter provided, Lessee shall pay to Lessor at the time of rendering such statement, eighty-five per cent of the estimated royalty, based on careful sampling of said ore or mineral at point of shipment, and the true value of such shipment shall, as soon as possible thereafter, be determined and thereupon the balance of royalty thereon shall be paid to Lessor, but such true value shall be determined and the balance of royalty shall be paid to Lessor not later than ninety days from the date of any such shipment. The royalties hereinbefore provided for shall be a lien upon any and all ores or minerals mined upon the said property and upon any improvements erected upon the said property. The advance minimum royalty for each annual period hereunder may be credited only against the actual royalties accruing during such period.

3. Lessee agrees to work said premises in a manner consistent with good, prudent economical mining, so as to take out the greatest amount of ore possible, with due regard to the development and preservation of said premises as a workable mine. Lessee agrees to perform continuously and diligently in good faith, in an active and substantial way, exploration and mining work upon said leased premises directed toward the discovery and production of said leased mineral. Lessee, not later than the twentieth day of each calendar month during the term hereof, and including the calendar month next following the termination hereof, shall furnish to Lessor a statement in writing detailing such exploration and mining work. Lessee shall, upon being requested to do so, make available to Lessor, its agents and employees, copies of assay reports, drill hole logs and any and all other data assembled as an aid in determining the location, quantity and quality of any mineral deposits on said property.

4. The obligations of Lessee under this lease shall be suspended only while Lessee's compliance is prevented by the elements, accidents, strikes, lockouts, riots, delays in transportation, inability to secure materials in the open market, or interference by governmental action, or by any other causes beyond the reasonable control of the Lessee whether similar or dissimilar to the causes specifically mentioned.

5. Lessee shall keep a full set of accounts, records, and maps showing location of working places and shall allow Lessor, or its agents or employees, to examine them from time to time. Lessee shall allow Lessor to enter upon said premises, and into any workings, mills or reduction works thereon, or wherever mineral bearing materials from the leased premises may be worked or reduced, for the purpose of inspection to ascertain whether the terms and conditions of this lease are being properly carried out, and to take samples and to make tests and measurements and to affix notices.

6. Lessee shall do any and all work necessary to safeguard against accidents and to properly conserve said property and minerals, in a first-class manner, compatible with safe and economical mining, and Lessee shall keep all workings in which ore is exposed clear of all loose rock, earth and rubbish and shall keep all surface openings securely covered or fenced against livestock.

7. This lease is made upon condition that all applicable laws, ordinances and governmental orders and regulations with respect to Lessee's occupancy and use of the premises shall be fulfilled and complied with and Lessee shall furnish forthwith such evidence as Lessor may require showing that Lessee has complied with the requirements and conditions imposed thereunder. Lessee agrees to indemnify and hold harmless Lessor from and against any and all damages, claims, costs, expenses and liability arising under applicable laws, ordinances and governmental orders and regulations relating to Lessee's occupancy and use of the premises hereunder.

8. Lessee shall not sell any of the minerals excepted from this lease unless and until the conditions of sale are agreed upon by Lessor, and shall not destroy, cut or remove, nor permit to be destroyed, cut or removed, on or from said land, any timber, trees or firewood, without written permission from Lessor so to do. Lessee shall not divert or obstruct any stream of water on said land, nor divert any water from said property, except that Lessee may, subject to existing rights and statutes and regulations, use any unappropriated water reasonably required for such mining operations. Lessee shall not interfere with, destroy or remove any fences on or enclosing said property nor leave gates open, nor interfere with livestock grazing within such enclosures. Lessee shall not do or suffer to be done in or upon said property any act or thing which is or may be a nuisance and Lessee shall not use or permit others to use said property, or any part thereof, for any unlawful or immoral purposes.

9. Lessee may construct, maintain and use such roads, ditches, buildings, fixtures and machinery on, through and upon said property as may be necessary or convenient in carrying on mining operations.

10. Lessee shall not construct, alter or repair structures or improvements of any character upon said land, except emergency repairs, until after written notice is given to Lessor. Lessor may post and maintain upon the leased premises notices of nonresponsibility as provided by law. Lessee agrees to pay in full all persons who perform labor or services on, furnish materials joined or affixed to, or provide equipment for, said property, or the construction, reconstruction, repair or placement of any structure or improvement on said property, at Lessee's instance or request. Lessee shall not permit or suffer liens of any kind or nature to be enforced against said property for such labor, services, materials or equipment. Lessor may pay such amount as may be required to release any such lien or liens, to defend any action brought thereon, or to satisfy a judgment entered therein. Lessee agrees to reimburse Lessor for all costs, damages, reasonable attorney fees and amounts paid by Lessor in defending such actions, releasing said liens or satisfying judgments therein.

11. Lessee shall pay, prior to delinquency, all taxes and assessments levied and assessed on the mineral and mining rights hereby leased, and on all of Lessee's personal property and improvements on said property which become a lien on said property during the term of this lease, and any and all production or severance taxes computed or based upon production of

minerals, excepting, however, the taxes on the minerals which are excepted and reserved from this lease, and if not so paid by Lessee, Lessor may, at its option, pay such taxes and assessments which are a lien on the real property, or on the mineral and mining rights, and any penalties and interest thereon, and Lessee agrees to reimburse Lessor on demand in the full amount of such payments. Lessee agrees to pay, as and when the same become due and payable, and to save and indemnify Lessor from and against all taxes and assessments which are assessed and levied on said leased premises or portion thereof, on all minerals and ores produced therefrom pursuant to the provisions hereof or on all property or improvements that may be placed or installed thereon by or under Lessee, during the period this lease shall remain in effect with respect thereto. In the event that this lease is terminated in whole or in part prior to the date when taxes and assessments on the leased premises become due and payable, Lessee agrees, on such termination, to pay to Lessor a sum equivalent to the taxes levied upon that part of the leased premises so terminated for the fiscal tax year immediately preceding the current fiscal tax year, prorated to the date of such termination. Lessee shall not permit or suffer said leased premises or any part thereof, or any minerals and ores mined therefrom, or any improvements or personal property thereon, to be sold at any time for such taxes. Notwithstanding the above provisions, Lessee shall not be liable for any taxes and assessments levied upon the rights reserved hereunder by Lessor, its successors and assigns.

12. Lessor shall not be liable, from any cause whatsoever, for any injury to or death of any officer, agent or employee of Lessee, or any other person whomsoever, while upon or in proximity to said premises in connection with the business of Lessee, or for loss or destruction of or damage to any property owned by, or in the custody or control of Lessee or any other person or persons whomsoever, brought, stored or placed upon or in proximity to said premises in connection with the business of Lessee. Lessee hereby releases and discharges and agrees to indemnify and save harmless Lessor from and against any and all claims, liability, demands, causes of action, costs and expenses for injuries to or deaths of any and all persons and loss or destruction of or damage to any and all property, caused by or arising out of the exercise of the rights leased hereunder, irrespective of any negligence on the part of Lessor, or the officers, agents or employees thereof.

13. In case Lessee shall, except by Lessor, be lawfully deprived of the possession of the rights hereby leased, or any part thereof, Lessee shall notify Lessor in writing setting forth in full the circumstances in relation thereto, whereupon Lessor may, at its option, either reinstall Lessee in possession of said rights or terminate this lease and refund to Lessee the pro rata amount of any rental theretofore paid in advance for the unexpired term of this lease from and after the receipt of such notice, whereupon no claims for damages of whatsoever kind or character incurred by Lessee by reason of such dispossession shall be chargeable against Lessor.

14. Upon breach by Lessee of any of the terms, covenants or conditions of this lease and Lessee's failure to remedy the default within thirty days after written notice from Lessor so to do, then at the option of Lessor, notice of the exercise of which shall be given to Lessee in writing, this lease shall forthwith cease and determine and all rights of Lessee in and to said property shall be at an end, whereupon Lessee shall vacate said premises and surrender possession thereof to Lessor. The waiver by Lessor of any breach of any covenant or condition thereof shall not be deemed a waiver of any other or subsequent breach hereof nor of any other covenant or condition hereof. The acceptance of payments hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any covenant or condition hereof, other than the failure of Lessee to pay such particular payment so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such payment.

15. If Lessee is adjudicated a bankrupt, or shall make an assignment for the benefit of creditors, or file a voluntary petition under any law having for its purpose the adjudication of Lessee a bankrupt, or the extension of time of payment, composition, adjustment, modification, settlement or satisfaction of the liabilities of Lessee, or a receiver be appointed for the property of Lessee by reason of the insolvency of Lessee, notwithstanding anything to the contrary elsewhere in the lease, Lessor shall have the immediate right to terminate this lease and to take exclusive possession of the leased premises. The acceptance of royalty or other payments hereunder shall not constitute a waiver of Lessor's right to terminate this lease as above set forth.

16. In case Lessor shall bring suit to compel performance of, or to recover for breach of any covenant or condition herein written, or for declaratory relief, and prevails therein, Lessee agrees to pay to Lessor reasonable attorney fees in addition to the amount of judgment and costs.

17. Lessee agrees to pay to Lessor interest at the rate of 10% per annum upon any and all amounts whatsoever due under this lease to Lessor from the date payment of each such amount is due and owing to Lessor or from the date of each breach by Lessee of an obligation hereunder, as the case may be, to the date of receipt by Lessor of each payment of said amounts, unless such payment is tendered or paid to Lessor within 30 days after the date a payment is due and owing hereunder to Lessor or the date of such breach, as the case may be.

18. Any demand, notice or statement herein requested or required to be given by one party to the other shall be in writing. Delivery of such written demand, notice or statement to Lessor shall be conclusively taken as sufficient if and when deposited in the United States Mail, with postage thereon fully prepaid, certified and addressed to Lessor at One Market Plaza, San Francisco, California 94105, and the payments by Lessee to Lessor hereunder shall be made at the above address. Delivery of such demand, notice or statement to Lessee shall be conclusively taken as sufficient if and when deposited in the United States Mail, with postage thereon fully prepaid, certified and addressed to Lessee at Box 868, Elko,  
Nevada 89801

Any party hereto may change by written notice as above provided, the address to which such demands, notices or statements to such party may be sent and Lessor may change the address at which payments shall be made by written notice to Lessee.

19. Lessee may at any time surrender and terminate this lease, in whole or as to any one or more 40-acre subdivisions of said property, upon giving notice in writing to Lessor to that effect and paying all minimum rentals and royalties and any other sums due on the property so surrendered.

20. Upon termination of this lease in any manner, Lessee shall surrender and deliver unto Lessor the quiet and peaceful possession of said leased premises in neat, clean and safe condition and shall quitclaim to Lessor all of the right, title and interest of Lessee in said property. Lessee shall provide with each quitclaim, upon demand by Lessor, a title report issued by a responsible title company covering the property so quitclaimed as of the date of recordation of the quitclaim. If such title report discloses any encumbrances or liens affecting title to said property done, made or suffered by Lessee, or anyone claiming under Lessee, Lessee shall take such steps as may be necessary to extinguish such encumbrances or liens, failing in which Lessor may do so at Lessee's cost and expense, including reasonable attorney fees, which cost and expense Lessee agrees to pay to Lessor upon demand. At the termination hereof Lessee may remove all machinery, tools, appliances, and buildings and all personal property placed or constructed upon said premises by Lessee, provided no default shall at such time exist in respect of any payments or rentals, or in respect of any covenants, agreements or conditions to be kept and performed by Lessee; and provided further that all timbering and supports within the mine shall be left in good condition whensoever the Lessee may vacate the premises, or this lease be terminated; also provided that all machinery, tools, appliances, and buildings

and all personal property remaining on said premises sixty days after the termination (by notice or otherwise) of this lease, shall be held to have become the property of Lessor and shall not be removed therefrom by Lessee.

21. ~~Lessee shall have the option of renewing this lease annually for a period not exceeding \_\_\_\_\_ years from the date of expiration of the term hereof and annually from year to year so long thereafter as said land is being operated as provided herein and production royalty is paid during each successive annual period, not to exceed, however, a total term of \_\_\_\_\_ years, upon the same reservations, terms, covenants and conditions as herein set forth; provided, this lease shall not have been terminated prior thereto and Lessee is not then in default with respect to any of Lessee's obligations hereunder, and provided further, that written notice from Lessee of the exercise of such option shall be received by Lessor not more than six months, nor less than thirty days, prior to the expiration of said term or each annual period, as the case may be.~~

22. Commencing with the lease year immediately following the first lease year in which saleable mineral products are produced from the leased premises for three calendar months or more, and for each succeeding year this lease remains in effect, said advance minimum royalty payments shall be increased or decreased each year in proportion to the amount of the increase or decrease in the "escalation percentage" for the lease year immediately preceding the lease year for which said advance minimum royalty payments is to be made.

The term "escalation percentage" as used herein shall, for any particular lease year, mean the percentage variation, if any, of the "weighted average sales price" received or receivable by Lessee for mineral products produced and sold by Lessee from the leased premises, from the "weighted average sales price" received or receivable by Lessee for similar products during the first calendar or base year in which Lessee produces and sells such products.

For purposes of calculating the "escalation percentage" (or de-escalation percentage) to be applied to the minimum advance royalties, the sum of the "weighted average sales prices" received for mineral products produced and sold shall be divided by the number of such commodities produced and sold during the lease year, and the resulting quotient shall be the "weighted average sales price" used to calculate the percentage variation from the first calendar or base year. This percentage variation shall be the "escalation percentage" or "de-escalation percentage" as the case may be.

~~The term "lease year" as referred to in this section 22 shall include, in addition to the original term, each and every year this lease is renewed pursuant to the provision of section 21.~~

23. If there be more than one person named as Lessee the Lessee's obligations shall be joint and several and the term Lessee wherever used in this lease shall, unless otherwise specified, include the plural as well as the singular.

24. This instrument is intended as, and is, a lease. Lessor shall not be called upon or be required to make any repairs, or incur any expenses of any kind or nature upon or in connection with said property, for and during the term of this lease, but all such expenses shall be borne by Lessee.

25. Time and specific performance are of the essence of this lease.

26. Lessee shall not assign this lease, or any interest therein, without the written consent of Lessor first had and obtained. The consent to one assignment by Lessor shall not be deemed to be a consent to a subsequent assignment. This lease shall not, nor shall any interest therein, be assignable, as the interest of the Lessee, by operation of law, without the written consent of Lessor. Subject to the above, the provisions contained in this lease shall inure to the benefit of and be binding upon the respective heirs, administrators, executors, personal representatives, successors and assigns of the parties hereto.

Provisions Nos. 27 & 28 attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this lease as of the day and year first herein written.

SOUTHERN PACIFIC LAND COMPANY

By Lee Britton  
ASSISTANT General Manager, Natural Resources

LEE BRITTON

Lessee

Witnessed by \_\_\_\_\_

Form Approved:

\_\_\_\_\_  
General Counsel

By \_\_\_\_\_  
Asst. General Attorney



R I D E R

Rider attached to and made a part of Lease No. SPL-4848 dated 15th day of October, 1978, from Southern Pacific Land Company to Lee Britton.

27. Lessee shall have the option of renewing this lease annually for a period not exceeding four years from the date of expiration of the term hereof and annually from year to year so long thereafter as said land is being operated as provided herein and production royalty is paid, not to exceed, however, a total term of twenty-five years, upon the same reservations, terms, covenants and conditions as herein set forth; provided, this lease shall not have been terminated prior thereto and Lessee is not then in default with respect to any of Lessee's obligations hereunder, and provided further, that written notice from Lessee of the exercise of such option shall be received by Lessor not more than six months, nor less than thirty days, prior to the expiration of said term or each annual period, as the case may be.

28. The actual royalty rate set forth in section 2 hereof shall be adjusted annually at the commencement of each annual period this lease remains in effect in the same percentage amount as the percentage increase or decrease in the Wholesale Price Index for All Commodities, as published by the U.S. Department of Labor, Bureau of Labor Statistics. The amount of change shall be based upon the index during the month preceding the month in which each succeeding annual period commences in comparison with the index as of the month of September, 1978, provided that the actual royalty rate shall never be less than 75¢/ton.

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RECORDED AT THE REQUEST OF Lee Britton  
on February 8, 1979, at 05 mins. past 9 A. M. in  
Book 68 of OFFICIAL RECORDS, page 546-550, RECORDS OF  
EUREKA COUNTY, NEVADA. WILLIS A. DePAOLI Recorder  
File No. 67666 Fee \$ 7.00