

131270

NONDEVELOPMENT AND NONPAYMENT
OF RENTALS AFFIDAVIT

George R. Wagner, of lawful age, being first duly sworn, upon his oath deposes and says:

That he is Manager of Lease Records of SFP Minerals Corporation, an affiliate of Southern Pacific Company and Southern Pacific Land Company, and is personally acquainted with the history of Section 25, Township 36 North, Range 49 East, MBM, Eureka County, Nevada. That by notice dated April 25, 1968, Southern Pacific Company filed of record an instrument revealing an unrecorded lease dated September 1, 1966 between Southern Pacific Company and Engelhard Hanovia, Inc. That the notice was recorded on April 29, 1968 in Book 23, Page 382 of the Eureka County records. That the lease dated September 1, 1966 (a copy of which is attached hereto as Exhibit A) was for a term from August 15, 1966 to August 14, 1967, subject to annual renewal upon lessee's written notice being received by the lessor not more than six months nor less than thirty days prior to the expiration of the term or annual period. That the lease also required advance payment of an annual minimum royalty. That the lease was extended to August 14, 1969. That in his position as Manager of Lease Records he is the recipient of all rental and royalty payments and that he has received no payments on the lease since 1968. That he has personally examined the corporate records, that notice to extend the lease beyond August 14, 1969 was never received from the lessee, and that by letter dated September 3, 1969, written notice was given to the then Lessee, H. G. Metos of Salt Lake City, Utah, that due to failure to pay annual minimum royalty the lease dated September 1, 1966 was considered terminated.

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Further affiant sayeth not.

George R. Wagner
George R. Wagner

State of New Mexico)
County of Bernalillo) ss.

Subscribed and sworn to before me this 23rd day of January, 1990.

Laurie L. Carpenter
Notary Public

my commission expires:

June 21, 1993



OFFICIAL SEAL
LAURIE L. CARPENTER
NOTARY PUBLIC - STATE OF NEW MEXICO
Notary Bond Filed With Secretary of State
My Commission Expires 6-21-93

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State of New Mexico)
) ss.
County of Bernalillo)

On January 23, 1990, personally appeared before me, a notary public, George R. Wagner, personally known to be the person whose name is subscribed to the above instrument, who acknowledged that he executed the instrument.

Witness my hand and official seal.

Laurie L. Carpenter
Notary Public



My commission expires:

June 21, 1993

OFFICIAL SEAL
LAURIE L. CARPENTER
NOTARY PUBLIC - STATE OF NEW MEXICO
Notary Bond Filed With Secretary of State
My Commission Expires 6-21-93

Approved as to form by General Counsel,
February 13, 1966

LEASE OF MINING RIGHTS

R-25-36-49

Lease No. 435233

This Lease, made in duplicate September 1, 1966 by and between
SOUTHERN PACIFIC COMPANY

corporation, hereinafter called "Lessor," and **ARTHUR BLAKE THOMAS**

*assigned 7/21/67 to H.H. Dwyer, Suite 404, Boston Bldg,
West End, Boston, Mass. - April 8/27/67 - assigned 3-1-68 to E. J. Hill
26-68 reassigned to A. B. Miller*

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 land sometimes hereinafter referred to as "leased premises" in the County of Eureka State of Nevada more particularly described as follows:

NE 1/4 of Sec. 25, Twp. 36N., Rge. 49E., IDN., containing 160.00 acres, more or less.

Trail Section - Lessee shall permit any and all persons to drive their livestock over and across this section in connection with use of the cross country livestock driveway of which it is a part, and that no charge shall be made by Lessee therefor.

Excepting therefrom all that portion lying within 200 feet on each side of the center line of each and every railroad track now constructed upon or adjacent thereto.

Reserving unto Lessor, its successors and assigns, the right to use said land for any and all other purposes which do not interfere unreasonably with Lessee's use of said land for the purposes herein leased.

This lease is made for the sole purpose of examining, searching, and testing for, opening and operating mines of, and extracting, reducing, treating, selling and shipping any and all nonferrous metallic minerals contained therein, subject to the exceptions, reservations, covenants and conditions in this lease. Lessee shall have the right hereunder only to mine for the mineral hereinabove specified and none other. There is excepted from this lease and reserved unto Lessor, its successors and assigns, all other minerals, including but not limited to oil, petroleum, natural gas and other hydrocarbons, and all rights thereto; provided, however, that in the event Lessee shall recover in paying quantities any other valuable minerals as a by-product of the mining operations herein authorized or as a necessary or unavoidable result thereof, then Lessee shall report all such other minerals in the monthly statements hereinafter provided for and pay royalty on such other minerals at the rates hereinafter specified.

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 August 1966 to the 14th day of August 1967.

Lessee agrees to pay to Lessor a minimum royalty of \$5.00 per acre per annum, but not less than \$250.00 for any one year, in advance during the term of this lease, to be credited as payment on account of actual royalties to be paid by Lessee to Lessor hereunder. Lessee agrees to pay to Lessor as agreed actual royalty of seven per cent of the gross value of gold or silver bullion produced in Lessee's mills or by a custom mill in which gold or silver is produced for Lessee's account and/or seven and one-half per cent of the net smelter return on ores and concentrates sold to a smelter and produced from ores

extracted and removed from said land during the term hereof, except that a reduced actual royalty of five per cent of the gross value of such gold or silver bullion and/or five per cent of the net smelter return on such ores or concentrates

shall be effective from the date of first production to the end of the first following full calendar quarter in which there is production in commercial quantities. Lessee may submit to Lessor, at least 30 days but not more than 45 days, prior to the end of the first full calendar quarter in which there is production in commercial quantities and prior to the end of each successive calendar quarter thereafter, a written request for extension of said reduced actual royalty for the next succeeding calendar quarter, together with such economic data justifying such request as Lessor may require. Lessee shall be the sole judge as to whether each such requested extension of the reduced royalty rate shall be granted.

H.V.M. 8

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if an extension of the reduced royalty rate is not so requested by Lessee or if such request is not granted by Lessor, the agreed actual royalty shall be effective during the succeeding calendar quarters of the term of this lease until a subsequent requested extension of said reduced actual royalty is granted by Lessor. After all of the minimum royalty

paid for each annual period of the term hereof has been credited to said actual royalties accruing during the period, Lessee shall thereafter, within twenty (20) 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. 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, hereinafter provided, Lessee shall pay to Lessor at the time of rendering such statement, eighty-five (85) 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 (90) days from the date of any such shipment. The royalties hereinbefore provided shall be a lien upon any and all ores or minerals mined upon the said land and upon any improvements erected on the said land.

3. Lessee agrees to work said land in the manner necessary to good and economical mining, so as to take 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 manner, development and mining work upon said leased premises directed toward the discovery and production of ores or ore bodies, excepting, however, the minerals herein excepted and reserved. The obligations of Lessee in this respect shall be suspended only while Lessee's compliance is prevented by the elements, accidents, strikes, 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.

4. Lessee, not later than the twentieth (20th) day of each calendar month during the term hereof, and including the calendar month next following the termination hereof, shall furnish to Lessor at the office of its Land Department, in San Francisco, California, a statement in writing detailing such work accompanied by full and complete copies of all documents, including settlement sheets, certificates of analyses, and assays, pertaining to or governing settlement of any ore, mineral or metal disposed of and also full and complete reports of any reduction works or mill where such 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 land is 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 the Lessor as aforesaid. If no work is done, a statement in writing to that effect must be furnished.

5. Lessee shall keep a full set of accounts and records and shall allow Lessor, or its agents or employees, to examine them from time to time. Lessee shall allow Lessor to enter upon said land, and into any workings, mills or reduction works thereon, or wherever said ore 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. 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 land.

6. Lessee shall pay, prior to delinquency, all taxes and assessments levied and assessed on the mineral and mining rights hereby leased, and on all personal property and improvements on said land which become a lien on said land 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.

7. Lessee agrees to pay to Lessor interest at the rate of 7% 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.

8. Lessee shall not interfere with, destroy or remove any fences on or enclosing said land; nor leave gates open; nor interfere with livestock grazing within such enclosures.

9. In the operation and development of said leased premises, Lessee shall comply with and observe all applicable laws and governmental rules and regulations including, but not limited to, Employers' Liability, Workmen's Compensation and Workmen's Unemployment Insurance. Lessee agrees to indemnify and hold harmless Lessor from and against the payment of any and all damages, claims, costs and expenses due to the existence of such enactments, and of any and all claims, costs and expenses in connection therewith under any claim of subrogation provided for by said enactments or otherwise.

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10. Lessee agrees to release and to indemnify and hold harmless Lessor, and any corporation wholly or in part affiliated with, owned or controlled by Lessor, from and against all claims, causes of action, liability, cost and expense for loss of, or damage to, all property whatsoever and injuries to, or deaths of, all persons whatsoever, arising out of, or in any way connected with, the use and occupation of the leased premises or exercise of the rights hereunder. Without limiting the foregoing, the indemnification covenant contained herein shall apply to all such claims, cost, expense, loss, damage, injuries or deaths for which any party hereto, or herein mentioned, may or shall be liable.

11. Lessee shall do any and all work necessary to safeguard against accidents and to properly conserve said land 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 properly covered or fenced against livestock. Lessee shall occupy and hold for Lessor all cross or parallel lodes, spurs, feeders, crevices or mineral deposits of any kind which may be discovered in working under this lease.

12. 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 notice of non-responsibility as provided by law. Lessee agrees to pay in full all persons who perform labor services on, furnish materials joined or affixed to, or provide equipment for, said land, or the construction, reconstruction, repair or placement of any structure or improvement on said land, at Lessee's instance or request. Lessee shall not permit or suffer liens of any kind or nature to be enforced against said land for such labor, services, materials or equipment. Lessor shall have the right to pay any amount required to release any such lien or liens or to defend any action brought thereon, and to pay any judgment entered therein, and Lessee shall be liable to Lessor for all costs, damages and reasonable attorney fees and any amounts expended in defending any proceedings or in payment of any of said liens or any judgment obtained therefor.

13. Lessee shall not do or suffer to be done in or upon said land any act or thing which is or may be a nuisance and shall not use or permit others to use said land, or any part thereof, for any unlawful or immoral purposes.

14. Lessee shall not mine for any of the minerals excepted from this lease and shall not destroy, cut or remove, or 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 land. Lessee may, subject to existing rights, use any unappropriated water reasonably required for mining operations.

15. 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.

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

17. Lessee may construct, maintain and use such roads, ditches, buildings, fixtures and machinery on, through and upon said land as may be necessary or convenient in carrying on mining operations. At the termination hereof Lessee may remove all machinery, tools, appliances, and buildings and all personal property placed 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 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 (60) 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.

18. 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 prorata 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.

19. In case Lessee shall be adjudged a bankrupt, by either voluntary or involuntary proceedings, Lessor may, at its option, terminate this lease by written notice. The receipt of rent or other payments from any person for the use of the demised premises after the date of adjudication of bankruptcy, shall not constitute a waiver of Lessor's option to terminate this lease. After termination by notice, Lessor may re-enter the demised premises and take exclusive possession. The option of Lessor herein provided also shall be exercisable in the event that Lessee becomes insolvent or any action or proceedings for debtor relief of Lessee be commenced by or against Lessee or general debtor relief be sought by Lessee by extrajudicial means. Upon exercise of the option to terminate, the estate and rights of Lessee and any person claiming through the Lessee by act of the parties or operation of law shall immediately terminate. If there are two or more Lessees hereunder, or if Lessee is a partnership, then the option of Lessor to terminate the entire lease shall be exercisable in case any one of the Lessees or partners is adjudged a bankrupt or becomes subject to or participates in any other proceedings or procedure herein mentioned.

20. Upon violation or breach by the Lessee of any of the terms, covenants or conditions of this lease and Lessee's failure to remedy the default within thirty (30) days after written notice from Lessor so to do, then at the option of the Lessor, notice of which shall be given to the Lessee in writing, this lease shall forthwith cease and terminate and all rights of the Lessee in and to said land 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

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condition thereof shall not be deemed a waiver of any other or subsequent breach hereof nor of any other covenant or condition hereof.

21. In the event a plant is constructed to treat minerals from the leased premises, Lessor agrees to construct a branch line of railroad to serve said plant from Lessor's then existing main line at the closest practical point and such transportation facilities as may be required in connection therewith to the extent it is economically justifiable to Lessor to do so; provided, that necessary property therefor can be acquired, that all necessary authority can be secured from governmental bodies having jurisdiction in the premises and that Lessee shall bear the actual cost, and shall deposit with Lessor in advance the estimated cost of the acquisition of such property and the construction of such branch line and transportation facilities. The amount so paid to, and deposited with, Lessor shall be subject to refund to Lessee at a fair and reasonable rate per ton of mineral products or ores shipped over such branch line, to be determined at the time of the execution of the agreement between the parties hereto covering the construction and maintenance thereof.

22. Any and all notices required hereunder, or permitted to be given by either party to the other, shall be considered to have been delivered at the expiration of forty-eight (48) hours following deposit in the United States Mail, with registered or certified postage paid thereon, and addressed:

(a) For the Lessor, to: Room 205, 65 Market St., San Francisco, Calif. 94105

(b) For the Lessee, to: 39 Exchange Place, Salt Lake City 11, Utah

Either of the parties may change the location to which required notices to it shall be addressed, upon five (5) days' written notice to the other party.

23. Lessee may at any time surrender and terminate this lease in whole or as to any one or more 40-acre subdivisions of said land upon giving notice in writing to Lessor to that effect and paying all minimum rentals and royalties and any other sums due, on the land so surrendered. Upon termination of this lease in any manner, Lessee shall surrender and deliver unto Lessor the quiet and peaceful possession of said premises in neat, clean and safe condition.

24. 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.

25. Lessee shall have the option of renewing the lease annually from year to year for a period not exceeding _____ years from the date of the expiration of the term hereof, subject to the same reservations, terms, covenants, payments and conditions as affect the original term of this lease; 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 (6) months, nor less than thirty (30) days prior to the expiration of said term or each annual period, as the case may be.

26. Time is of the essence of this lease.

27. This lease shall inure to the benefit of and be binding upon the respective heirs, administrators, executors, successors and assigns of the parties hereto, but no assignment of this lease and no underleasing or subletting of the leased property, or any part thereof, or any buildings or structures thereon shall be valid unless made with the written consent of Lessor.

28. 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.

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

SOUTHERN PACIFIC COMPANY

By _____
Manager, Land Department

Lessee

Witnessed by _____

Post-Office-Address _____
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COPY

OFFICIAL RECORDS
RECORDED AT THE REQUEST OF
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Frontier Title
'90 JUN 29 A9 54

EUREKA COUNTY NO. 4374
M.M. REBELETTI, RECORDER
FILE NO. FILE # 1100
131270

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