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LIMESTONE QUARRY LEASE

BETWEEN

KERR-MCGEE CHEMICAL CORPORATION,
Lessor,

and

ACE COGENERATION COMPANY,
a California limited partnership,
Lessee

LIMESTONE QUARRY LEASE

This Limestone Quarry Lease ("Lease") is made and entered into as of this 30th day of November, 1990 by and between KERR-MCGEE CHEMICAL CORPORATION, a Delaware corporation, as "Lessor" and ACE COGENERATION COMPANY, a California limited partnership, as "Lessee."

RECITALS

A. On or about April 22, 1988, Lessor and Lessee entered into a Ground Lease ("Ground Lease") pursuant to which Lessee acquired a leasehold interest in certain real property in San Bernardino County, California ("Ground Lease Premises"), a memorandum of which Ground Lease was recorded on April 29, 1988 as Instrument No. 88-129380 in the San Bernardino County Records. The Ground Lease was amended by the Amendment Agreement (Ground Lease) dated as of April 22, 1988 ("First Amendment"), and recorded April 29, 1988, as Instrument No. 88-129381, San Bernardino County Records, and a Second Amendment (Ground Lease) dated as of November 30, 1990 ("Second Amendment"), and recorded in the San Bernardino County Records, substantially concurrently herewith. (The Ground Lease, First Amendment and Second Amendment are collectively referred to as the "Ground Lease".)

B. Pursuant to the terms of the Ground Lease, Lessee acquired certain rights and interests in connection with Lessor's limestone quarry located in Inyo County, California. In connection with the deletion of such rights and interests from the Ground Lease pursuant to the Second Amendment, Lessor and Lessee now desire to set forth their respective rights, duties and obligations in connection with the ownership, use and operation of the limestone quarry in this Lease; provided, however, this Lease shall not be appurtenant to the Ground Lease.

NOW, THEREFORE, in consideration of the rents hereinafter reserved and the covenants and agreements herein after contained, Lessor and Lessee hereby agree as follows:

I. PREMISES; TERM.

1.01 Lease of Premises.

Lessor hereby grants, demises and leases to Lessee, and Lessee hereby hires from Lessor, for the term, at the rentals and upon all of the conditions hereinafter set forth, Lessor's right, title and interest in the patented placer mining claims and millsite(s), and the unpatented placer mining claims located in the County of Inyo, State of California ("Land") and more particularly described in Exhibit "A" attached hereto, together with all appurtenances, rights, privileges and easements appertaining thereto, and together with a non-exclusive easement and right over any right, title and interest of Lessor in and to the existing roads and access ways running between the Land and the Ground Lease Premises for (i) ingress and egress to and from the Land for construction, maintenance, operation and replacement of any capital equipment or improvements on the Land, (ii) ingress and egress to and from the Land for the transportation and delivery by truck of all limestone, materials, supplies, fuel and waste products, (iii) installation and maintenance of any electrical lines, telephone, water or any other utility lines necessary for the operation of the limestone quarry on the Land, and (iv) as may otherwise be reasonably required for the term of this Lease in connection with the maintenance or operation of the limestone quarry, which Lessor and Lessee shall execute upon determination of the legal description thereof. Such real property, appurtenances, rights, privileges and easements are hereinafter collectively referred to as the "Premises".

1.02 Initial Lease Period; Lease Term; Lease Year.

The initial term of this Lease shall commence on November 30, 1990 (the "Commencement Date") and shall terminate on May 1, 2012 provided that the Lease shall terminate at midnight on the date of expiration or earlier termination of the Ground Lease, as amended or extended from time to time, unless sooner terminated pursuant to any provision hereof ("Lease Term") and further provided that Lessee may terminate this Lease with sixty days prior written notice to Lessor, except that such termination shall not terminate Lessee's reclamation and indemnity obligations under this Lease.

1.03 Option Terms.

Lessee shall have the option to renew the Lease for two (2) successive five year periods on the same terms and condition as set forth herein. Lessee must exercise the first five year option in order to exercise the second five year option. Such exercise shall be by notice in writing delivered to Lessor and shall be exercised as least ninety (90) days prior to the expiration of the then existing term of the Lease. Notwithstanding anything to the contrary contained herein, no exercise by Lessee of any such extension option shall be effective unless Lessee shall have extended the term of the Ground Lease for a concurrent five-year period, in accordance with the provisions thereof.

1.04 Reservation.

Lessor hereby reserves the right to use the Premises for any purpose not inconsistent with Lessee's full enjoyment of the rights granted under this Lease, including, without limitation, the right to use the Premises to mine, remove and transport limestone for its own use or to sell limestone to other parties, and for any other incidental purposes in connection with such mining operation; provided such use shall not unreasonably interfere with Lessee's mining operation on the Land and its rights hereunder. Lessor shall pay to Lessee a reasonable reimbursement for the cost of any capital improvements furnished by Lessee if used by Lessor, and Lessor shall use the capital improvements in compliance with Lessee's reasonable rules and regulations and in compliance with all applicable laws.

II. RENT.

2.01 Rental.

Lessee shall pay to Lessor the sum of One Dollar (\$1.00) per year and Five Dollars (\$5.00) per ton of limestone removed from the Land, which rent shall be payable as set forth in Section 2.03 hereof; provided, however, after determination of the reclamation costs as set forth in Section 3.02, Lessee may deduct such costs from the rental payments next coming due under this Lease until Lessee has fully recovered such estimated costs; and further provided that nothing herein shall be construed to obligate Lessee to conduct mining operations.

2.02 Security Deposits; Advance Rent.

Lessee shall not be obligated to pay any amount of rental prior to the Commencement Date, nor shall Lessee be required to pay any security deposit to Lessor.

2.03 Rent Payments.

a. All rentals described herein shall be paid to Lessor at the address set forth in Section 15.03 herein, or to such other address as Lessor may from time to time specify in writing, in lawful money of the United States of America, without deduction, offset or prior notice.

b. All rentals shall be payable in arrears within thirty (30) days after the end of each calendar month herein.

2.04 Additional Rents.

Lessee shall also pay, as additional rent hereunder, any and all other charges, fees, costs, taxes, impositions, expenses and other sums required to be paid by Lessee to Lessor or to others under the terms of this Lease, whether or not the same shall be specifically designated as "additional rent." In the event of non-payment of all or any part of such additional rents when due, Lessor shall have all rights and remedies provided hereunder or by law for the non-payment of rent or for the breach of a condition.

2.05 Late Payments.

Payments due Lessor hereunder shall be treated as late if sent more than fifteen (15) days after Lessee's receipt of written notice from Lessor that such payment has not been received. Late payment shall bear interest at a rate of ten percent (10%) per annum, not to exceed the maximum applicable rate permitted by law.

2.06 Accounting; Audit.

Lessee shall cause all limestone removed by Lessee from the Land to be weighed at the Ground Lease Premises. Lessee shall deliver to Lessor, concurrently with each rental payment made by Lessee pursuant to Section 2.03, a written statement of the amount in tonnage of limestone removed by Lessee from the Land during the month to which such rental payment relates. Lessee shall keep complete and accurate records of the amount of all limestone removed by Lessee from the Land. Lessor shall

have the right, at its sole cost and expense, to audit such records of Lessee on not more than one occasion during each Lease Year. Any such audit shall be made only upon not less than seventy-two (72) hours' prior written notice to Lessee and during Lessee's regular business hours.

III. USE OF PREMISES.

3.01 Use.

Lessee shall have the right to use the Land to mine, remove, and transport limestone, at Lessee's expense, for consumption by Lessee in connection with the generation of electricity, or for sale of limestone to affiliates of Lessee and for any other incidental purposes in connection with such mining operations. Lessee shall not be obligated to conduct any mining operations on the Land and may cease mining operations and recommence such mining operations from time to time during the Lease Term. So long as no default has occurred and is continuing hereunder, Lessor covenants peaceful and quiet enjoyment of the Premises by Lessee. Notwithstanding the foregoing, Lessee acknowledges that the continued validity and effectiveness of the unpatented placer mining claims and millsite(s) included in the Land are subject to the making of annual filings with the United States Bureau of Land Management ("BLM") and the expenditure of annual assessment work; Lessee hereby agrees to make all filings with the BLM and cause to be performed all assessment work necessary to maintain such unpatented placer mining claims and millsite(s) in full force and effect.

Lessor and Lessee shall jointly diligently prosecute to completion all approvals for use and operation of the Land under any zoning restrictions, covenants, restrictions, easements or agreements which affect the mining of limestone or the operation and maintenance upon the Premises of a limestone quarry and related capital equipment and facilities and shall reasonably cooperate with each other in obtaining such approvals and permits in the name of the appropriate party.

3.02 Compliance with Ordinances, Etc.

Lessee shall with the reasonable cooperation of Lessor, and subject to Lessee's right to contest pursuant to Section 15.15 hereof, comply with the requirements of all applicable municipal, county, state and federal authorities now in force, or which may hereafter be in force, in any manner pertaining to Lessee's use or

occupancy of the Land, and any improvements constructed or equipment installed by Lessee thereon; Lessee shall faithfully observe in such use all applicable municipal, county, state and federal statutes, ordinances, rules, regulations, orders and directives now in force or which may hereafter be in force. Notwithstanding the foregoing, Lessor and Lessee acknowledge and agree that Lessor has prepared and submitted a reclamation plan ("Reclamation Plan") under the Surface Mining and Reclamation Act ("SMRA") to the applicable governmental authorities for approval. Lessor and Lessee shall diligently prosecute to completion and approval the reclamation plan. After such approval, the Lessor and Lessee shall obtain responsible bids for the costs and expenses of performing the obligations of owner and/or operator under the Reclamation Plan, any other reclamation plan approved by the applicable governmental authorities, or any other reclamation obligations of the owner and/or operator under SMRA and any other applicable laws and regulations which shall be allocated as follows: Lessor shall be obligated to perform, or to bear the cost of performing, that portion of such reclamation obligations resulting from or attributable to Lessor's activities on the Land, subsequent to the Commencement Date; and Lessee shall be obligated to perform, or pay the cost of performing, the balance of such reclamation obligations.

3.03 Toxic Substances.

In the event any act done or permitted to be done by Lessee on the Land results in the presence of hazardous waste or toxic substances in violation of applicable laws or regulations, Lessee agrees to promptly comply with such laws or regulations at its sole cost and expense, including, without limitation, removal, encapsulation or other treatment of such materials if required by such laws or regulations. In the event any act done or permitted to be done by Lessor on the Land results in the presence of hazardous wastes or toxic substances in violation of acceptable laws or regulations, Lessor agrees to promptly comply with such laws or regulations at its sole cost or expense, including, using limitation, removal, encapsulation, or other treatment of such matters as required by such laws or regulations.

3.04 Indemnity by Lessee.

Except for claims arising from the negligence or willful misconduct of Lessor, Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises for the conduct

of its business or from any activity, work or other thing done, permitted or suffered by Lessee in, upon or about the Premises or arising from any act or negligence of Lessee or any of its agents, employees, invitees or customers in, upon or about the Premises, and from and against all reasonable costs, reasonable attorneys' fees, expenses and liabilities incurred in connection with any such claim or any action or proceeding brought thereon.

3.05. Indemnity by Lessor. Except for claims arising from the negligence or willful misconduct of Lessee, Lessor shall indemnify and hold harmless Lessee from and against any and all claims arising from Lessor's use of the Premises and the conduct of its business or from any activity, work or other thing done, permitted or suffered by Lessor in, upon, or about the Premises, or arising from any act of negligence of Lessor or any of its agents, employees, invitees, or customers in, upon or about the Premises, and from and against all reasonable costs, reasonable attorney's fees, expenses and liabilities incurred in connection with any such claim or any action or proceeding brought thereon.

IV. CAPITAL IMPROVEMENTS; MAINTENANCE; DAMAGE

4.01 Lessee's Determinations Regarding Improvements.

Lessee has purchased and is currently operating on the Land certain capital equipment, including, but not limited to, crushers, belts and associated electrical equipment necessary for the conduct of the mining operation. Lessee has also located a trailer and storage shed upon the Land. Lessee does not currently anticipate the construction of any improvements; however in the event Lessee should elect to make any such improvements, the determination of what capital improvements to construct on the Land shall be made by Lessee in its sole and absolute discretion, subject to the limitations on use set forth in Article III, above. Any construction by Lessee on the Land shall be in accordance with Article III and this Article IV. In addition, at any time during the Lease Term, Lessee may alter, modify or demolish any such improvements in its sole and absolute discretion, and in compliance with all applicable law.

4.02 Financing.

Lessee shall be entitled, in accordance with the provisions of Section 10.03 hereof, to encumber its

interest in the Premises and this Lease and to obtain financing for the construction of improvements on such terms and conditions as may be agreed upon between Lessee and any such lender (including any equity participant of Lessee) at Lessee's sole and absolute discretion. As used herein, the term "financing" includes both construction (or interim) financing and take out (or permanent or long-term) loans (including re-financing of any construction or permanent financing) and the terms "Leasehold Mortgage" and "Leasehold Mortgagee" include, without limitation, respectively, deeds of trust and the beneficiaries thereof. Lessor agrees to cooperate in executing any documents reasonably requested of Lessor by Lessee or by any financial institution encumbering this Lease or by any governmental agency, in connection with such financing; provided, however, under no circumstances shall Lessor be obligated to subordinate its fee interest in the Premises or its interest as Lessor of this Lease to any new lien placed on the Premises or to agree to any amendments of this Lease in connection therewith.

4.03 Limitation on Lessor's Liability.

Nothing contained in this Article IV or elsewhere in this Lease shall be construed or deemed to create any obligation or liability, including, without limitation, liability as a guarantor or surety, on the part of Lessor with respect to any improvements constructed from time to time on the Premises, or any plans and specifications, construction contracts, financing or other matter, instrument or document of any nature whatsoever relating to such improvements. Except as set forth in Section 3.03, Lessor is not and shall at no time be liable to any creditor of Lessee or any other persons occupying any part of the Premises or the improvements thereon, as a sublessee, licensee or otherwise or to any claimant against the estate or property of Lessee or such other occupants for any of their debts, losses, contracts, or other obligations, except to the extent Lessor has defaulted, or committed acts which, with the passage of time or giving notice, or both, would constitute a default under the Lease.

4.04 Lessor's Cooperation.

At any time and from time to time during the Lease Term, Lessor agrees to, upon the written request of Lessee, join with Lessee in delivering such instruments as may be reasonably required by Lessee for the purpose of (i) the grant or dedication of any easement, right of way or other property right to Lessee or to any public entity or

service corporation for the development of or operation of the mining operation on the Land as contemplated herein, so long as such grant or dedication does not substantially impair the value of Lessor's right, title and interest in the Land or adversely affect the rights reserved to Lessor herein, or (ii) the application to any governmental authority for, or the obtaining of, approvals, consents, zoning changes, conditional uses, variances, subdivision maps or the like, in each instance for the purpose of providing adequate utility services to the Land or of permitting Lessee to conduct mining operations thereon.

4.05 Ownership of Improvements.

All improvements constructed on the Land by Lessee at any time and from time to time during the Lease Term shall be owned by Lessee during the term of this Lease. All improvements on the Land at the end of the Lease Term shall remain Lessee's property to be disposed of by Lessee for Lessee's account; provided, however, that this provision shall not affect Lessee's rights under Section 4.01 to alter, modify, or demolish any such improvements in its sole and absolute discretion or its rights under Article IX.

4.06 Lessor's Maintenance and Repair Obligations.

Lessor shall not be required or obligated to do any maintenance or to make any repairs, changes, alterations, additions, improvements or replacements of any nature whatsoever in, on or about the Premises, or any part thereof, at any time during the Lease Term. Nothing contained herein shall be construed as requiring Lessor to make any repairs or to do any maintenance necessitated by reason of the negligence of Lessee or anyone claiming under Lessee, or by reason of the failure of Lessee to observe or perform any conditions, covenants or agreements contained in this Lease, or by reason of any damage to or destruction of other property caused by any improvements, alterations or additions made by Lessee or anyone claiming through Lessee.

4.07 Lessee's Maintenance and Repair Obligations.

At all times during the Lease Term, Lessee shall, at its sole cost and expense, operate any improvement located on the Land, and every part thereof, in good order, and, provided that nothing contained in this Section 4.07 shall limit Lessee's rights set forth in Section 4.01

hereof to alter or demolish any improvements constructed by Lessee on the Land.

4.08 General Cooperation.

Notwithstanding anything herein to the contrary, Lessor and Lessee agree to reasonably cooperate with each other to ensure mutual compliance with all applicable permits, environmental and other health and safety laws which regulate the Land.

V. MECHANIC'S LIENS.

Lessee shall not suffer or permit any liens to stand against the Premises, or any part thereof, by reason of any work, labor, services or materials done for, or supplied to, or claimed to have been done for, or supplied to, Lessee or anyone holding the Premises, or any part thereof, through or under Lessee. If any such lien shall at any time be filed against the Premises or the improvements thereon, Lessee shall cause the same to be discharged of record within sixty (60) days after the date of the filing of same, by either payment, deposit or bond, unless a bond therefor is already in effect.

VI. INSURANCE; EXONERATION AND INDEMNITY.

6.01 Liability Insurance.

At all times during the Lease Term, Lessee, at its own cost and expense, shall provide, or cause to be provided, and keep in force, (i) to the extent required by law for its operations, worker's compensation insurance policies as required by law and (ii) comprehensive general liability insurance policies, in standard form, protecting Lessor and Lessee against any and all liability in a combined single limit amount of not less than \$1,000,000 in respect of injuries to or death of any person or persons and destruction of or damage to any property. All such policies shall cover the entire Premises and any usage thereof by Lessee and its agents, employees and invitees.

6.02 Fire and Extended Coverage Insurance.

In the event and at such time as Lessee may construct any capital improvements on the Land, Lessee may, at its election, at its own cost and expense, provide and keep in force insurance policies, protecting Lessor and

Lessee as their interests may appear, against loss or damage to any such improvements on the Land.

6.03 Insurance Policies.

All policies of insurance required to be provided for herein shall be issued by insurance companies qualified to do business in California, shall be Best rated A or better, shall name Lessee as the insured and Lessor and Lessee's Mortgagee as additional insureds, and shall provide that they may not be cancelled by the insurer for nonpayment of premiums or otherwise or be terminated or lapse of their own accord or by their own terms until at least thirty (30) days after service by registered or certified mail of notice of the proposed cancellation upon all parties named in such policies as insureds. All public liability and property damage policies shall contain the provision that Lessor, although named as an insured, shall nevertheless be entitled to recovery under such policies for any loss occasioned to it and its servants, agents and employees by reason of the negligence of Lessee. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with any other coverage which Lessor may carry. Lessee shall deliver to Lessor and Lessee's Mortgagee copies of the policies for all the insurance required to be carried by Lessee hereunder, or certificates evidencing the existence and the amounts of such insurance, or renewals thereof or binders thereto, if applicable, (i) at least ten (10) days prior to the date Lessee is first required to obtain such insurance, and (ii) at least ten (10) days prior to the expiration of any such policies.

VII. UTILITY SERVICES.

Lessor shall not be obligated to pay or otherwise be liable for any costs, expense, fees or charges relating in any manner whatsoever to the installation, maintenance and repair of utility systems servicing the Land or to any utility services used on or in or supplied to or for the Land, except to the extent the same result from Lessor's own mining operations on the Land.

VIII. TAXES AND OTHER CHARGES.

8.01 Taxes Defined; Lessor's/Lessee's Obligations.

Lessor covenants and agrees that it will, subject to the provisions of this Article VIII, pay and discharge, punctually as and when the same shall become due and payable without penalty, all real estate taxes, personal property taxes, privilege taxes, excise taxes, gross sales taxes, water charges, sewer charges, assessments and bonds and all other governmental taxes, fees, impositions and charges of every kind and nature, which shall be or become due and payable under or by virtue of any law, statute, ordinance, regulation or other requirement of any governmental authority, whether federal, state, county, city, municipal or otherwise (all of such taxes, charges, assessments and other governmental impositions hereunder being hereinafter collectively referred to as "Tax" or "Taxes"), which at any time during the Lease Term shall be levied, assessed or imposed upon or against (i) the Land or any portion thereof or any personal property thereon, or any interest of Lessor therein or under this Lease, or (ii) the possession, leasing, operation, maintenance, improvement, use or occupancy by Lessee of the Land or any portion thereof; provided, however, if Lessee is conducting mining operations and if for any year Taxes exceed rental payments for that year, Lessee shall pay such excess Taxes.

8.02 Lessee's Obligations.

Lessee shall pay and discharge, punctually as and when the same become due and payable, without penalty, any personal property taxes or like charges levied or assessed against Lessee's personal property or improvements on the Land. Nothing contained in this Lease shall require Lessee to pay any franchise, estate, inheritance, succession, capital levy or transfer taxes of Lessor, any net income, gross revenue, excess profits or revenue tax or tax which is personal to Lessor.

8.03 Payment in Installments.

If by law any Tax is payable, or may at the option of the taxpayer be paid in installments, Lessor or Lessee, as the case may be, whether or not interest shall accrue on the unpaid balance thereof, may pay such Tax, and any accrued interest on any unpaid balance thereof, in installments as each installment becomes due and payable, but in any event prior to the date upon which any fine, penalty, interest or cost may be added thereto for

nonpayment of any installment of such Tax or the accrued interest thereon. Lessor agrees to execute or join with Lessee in the execution of any application or other written instrument that may be necessary to permit the payment of any Tax in installments.

8.04 Tax Protest.

Lessor and Lessee shall have the right to contest or review the amount or validity of the Taxes by appropriate legal proceedings. Lessor and Lessee agree to cooperate, each with the other, in any such contest, including, without limitation, executing and/or delivering any documents or instruments reasonably requested; it being understood, however, that neither party shall be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by the other, and Lessor and Lessee agree to indemnify and save harmless the other from any such costs or expenses.

IX. EMINENT DOMAIN.

9.01 Lease Governs.

In the event of any acquisition of or damage to all or any part of the Land or any interest therein by eminent domain, whether by condemnation proceeding or transfer in avoidance of an exercise of the power of eminent domain or otherwise during the term of this Lease, the rights and obligations of the parties with respect to such appropriation shall be as provided in this Article 9.

9.02 Definitions.

As used herein:

a. "Taking" shall mean any taking or damage, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance in lieu of an exercise of eminent domain or while condemnation proceedings are pending. The taking shall be deemed to take place on the earlier of (i) the date actual physical possession is taken by the condemnor or (ii) the date on which the title passes to the condemnor.

b. "Total Taking" shall mean the taking of fee title to all of the Land or so much of the Land that the

portion of the Land not so taken as, in the reasonable judgment of Lessee, not reasonably suited for the uses of the Land that have been previously made by Lessee. A Temporary Taking, defined below, may be treated as a Total Taking if it meets the test set forth above.

c. "Partial Taking" shall mean any taking of fee title that is not a Total Taking.

d. "Temporary Taking" shall mean the taking for temporary use of all or any portion of the Land for a period ending on or before the expiration of the Lease Term.

e. "Limited Taking" shall mean the taking of less than a fee title interest in all or any part of the Land.

f. "Award" shall mean all compensation paid for the taking whether pursuant to a judgment or by agreement or otherwise.

g. "Notice of Intended Taking" shall mean any notice or notification on which a reasonably prudent man would rely and which he would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal and shall include without limitation the service of a condemnation summons and complaint on either Lessor or Lessee or the receipt by either Lessor or Lessee from a condemning agency or entity of a written notice of intent to take containing a description or map of the taking reasonably defining the extent thereof.

9.03 Notice to Other Party.

Upon receipt of any of the following by either party hereto, such party shall promptly deliver a copy thereof, endorsed with the date received, to the other and Lessor's Mortgagee and Lessee's Mortgagee, as the case may be:

h. Notice of Intended Taking;

i. Service of any legal process relating to the condemnation of all or any part of the Land;

j. Notice in connection with any proceedings or negotiations with respect to any such condemnation; and

k. Notice of intent or willingness to make or negotiate a private purchase, sale or other transfer in lieu of condemnation.

9.04 Separate Representation.

Lessor, Lessee and all persons holding under Lessee, including, without limitation, Lessee's Mortgagee and the Fee Mortgagee (as hereinafter defined), shall each have the right to represent its respective interest in each proceeding or negotiation with respect to any taking or intended taking and to make full proof of its claims. No agreements, settlement, sale or transfer to or with the condemning authority shall be made without the prior written consent of Lessor, the Fee Mortgagee, Lessee and Lessee's Mortgagee. Each of the parties hereto agrees to execute and deliver to the other any instruments that may be required to effectuate or facilitate any of the provisions of this Article IX where such execution or delivery will not adversely affect the right of such party to receive just compensation for any loss sustained in such negotiation or proceeding.

9.05 Total Taking.

In the event of a Total Taking this Lease and all interest, rights and obligations of Lessee hereunder and in and to the Premises shall terminate as of the date of Taking or as of such later date on which the Taking is completed by deed or final order of condemnation.

In the event of a Taking of fee title to less than all of the Land which Lessee reasonably believes to be a Total Taking, Lessee may, by written notice to Lessor approved by Lessee's Mortgagee, within one hundred twenty (120) days after Lessee receives Notice of Intended Taking thereof, elect to treat such taking as a Total Taking. If Lessee fails to make such timely election, such Taking shall be deemed to be a Partial Taking for all intents and purposes.

Any taking determined to be a Total Taking in accordance with the foregoing paragraph shall be treated as a Total Taking if (i) Lessee delivers possession of the Land to Lessor within one hundred twenty (120) days after Lessee shall have delivered written notice to Lessor electing to treat such taking as a Total Taking and (ii) Lessee has complied with all of the provisions hereof relating to the apportionment of the awards.

In a Total Taking, all sums, including damages and interest, awarded for the right, title and interest of Lessor or for the leasehold or both shall be (i) delivered to Lessor and Lessee (or to Lessee's Mortgagee), respectively, if such award has been apportioned between Lessor and Lessee by such condemning authority, or (ii) deposited promptly with Lessee's Mortgagee (or in the event that there is no leasehold mortgage of record, with an escrow agent selected by Lessee in the reasonable exercise of its discretion), if only a single award is made, and distributed and disbursed as follows:

1. First, to Taxes constituting a lien on all or any part of the Land;

m. Second, to Lessor an amount equal to the then present value of Lessor's interest in the income stream from rental payments due hereunder to the expiration of the Lease Term (the "Expiration"), plus an amount equal to the then present value of the revisionary interest of Lessor in the Land (valued at its highest and best use and unimproved) at the Expiration.

n. Third, subject to the rights of Lessee's Mortgagee, the balance of the award to Lessee.

Sums being held by Lessee's Mortgagee or an escrow agent pending disbursement shall be deposited in a federally insured interest-bearing account and, upon distributing, each party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of said sums.

9.06 Partial Taking.

In the event of a Partial Taking, this Lease shall remain in full force and effect as to the portion of the Land remaining, and rent shall be payable as provided in Section 2.1 hereof.

In a Partial Taking, all sums, including damages and interest, awarded for the right, title and interest of Lessor or for the leasehold or both shall (i) be delivered to Lessor and Lessee (or to Lessee's Mortgagee), respectively, if such award has been apportioned between Lessor and Lessee by such condemning authority, or (ii) be deposited promptly with Lessee's Mortgagee (or if there is no leasehold mortgage then of record with an escrow agent selected by Lessee in the reasonable exercise of its discretion) if there only a single award is made, to be distributed and disbursed as follows:

o. First, to Taxes constituting a lien on the portion of the Land taken;

p. Second, to Lessor an amount equal to the then present value of Lessor's interest in the income stream from rental payments attributable to the portion of the Land being taken, plus an amount equal to the then present value of the reversionary interest of Lessor at the Expiration in that portion of the Land (valued at its highest and best use and unimproved) that is taken in such partial taking; and

q. Third, subject to the rights of Lessee's Mortgagee, the balance of the award to Lessee.

Sums being held by Lessee's Mortgagee or an escrow agent pending disbursement shall be deposited in a federally insured interest-bearing account and, upon disbursement, each party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of said sums.

9.07 Temporary Taking.

In the event of a Temporary Taking, this Lease shall remain in full force and effect, neither the rents reserved hereunder nor the term hereof shall be reduced or affected in any way, and Lessee shall be entitled to any award for the use or estate taken, subject to the requirements of Lessee's Mortgagee.

9.08 Limited Taking.

In the event of a Limited Taking, the effects thereof on this Lease, and the term hereof and the apportionment of the award shall be determined by the mutual written agreement of Lessor, Lessee, Lessor's Mortgagee and Lessee's Mortgagee or, in the absence of such agreement, by arbitration with the intention of apportioning any award in a manner similar to that set forth in Sections 9.05 and 9.06.

X. ASSIGNMENT; SUBLETTING; HYPOTHECATION.

10.01 Right to Assign and Sublet.

Lessee shall have the right with the prior written consent of Lessor, which consent shall not be unreasonably withheld, to assign or otherwise transfer all or any part of Lessee's interest in this Lease or in the

Premises. Lessor may withhold consent only if the proposed assignee's financial condition is such that it is or will be upon its acquisition of the Lessee's interest in this Lease, reasonably unable to meet its obligations under the Lease as they become due. Provided the Lessee's assignee assumes all of Lessee's obligations under this Lease, upon the assignment of all of Lessee's interest here under, Lessee shall have no further liability for any obligation hereunder. Lessee shall have the right, without the consent of Lessor, to sublet the whole or any part of the Premises. Lessor's consent shall not be necessary for any transfer of this Lease at a foreclosure sale, either to Lessee's Mortgagee or to any other party taking at such sale, or for an assignment by Lessee in lieu of foreclosure, or in conjunction with the appointment of a receiver or other enforcement proceedings initiated by Lessee's Mortgagee. Lessor's consent shall also not be necessary for any assignment of this Lease by Lessee to a partnership, joint venture, corporation or other legal entity from which Lessee is entitled to receive at least twenty percent (20%) of all profits and losses of such entity relating to the Premises or the Lease, and upon such assignment of all of Lessee's obligations under this Lease, Lessee shall have no further liability for any obligation hereunder. Notwithstanding anything to the contrary contained herein, Lessee shall not have the right to transfer or assign all or any part of Lessee's interest in this Lease or in the Premises, or to sublet all or any portion of the Premises, except to an assignee or transferee of Lessee's leasehold estate under the Ground Lease, or to a sublessee of all or any portion of the Ground Lease Premises, as the case may be, concurrently with any such assignment or transfer of Lessee's leasehold estate under the Ground Lease, or any such subletting of the Ground Lease Premises, and to the extent permitted under the Ground Lease, provided, however, nothing contained herein shall prevent Lessee from employing an operator to perform the mining operations contemplated hereby on Lessor's behalf.

10.02 Non-Disturbance Agreement.

Upon the execution of any sublease of the Premises by Lessee, Lessor shall, at Lessee's written request, execute a Non-Disturbance and Attornment Agreement providing, among other things, that (i) so long as such subtenant is not in default under the sublease, Lessor shall not disturb subtenant's quiet enjoyment of the subleased premises in the event the Lease is cancelled, and (ii) Lessor shall not be liable for any defaults by

Lessee, as sublessor, accruing prior to expiration of this Lease.

10.03 Leasehold Mortgage.

Lessee is hereby given the express right, in addition to any other rights granted herein, and without the necessity of obtaining Lessor's consent, to mortgage this Lease or the Leasehold, or any part or parts thereof, and any sublease of the Premises, under one or more leasehold mortgages, and to encumber and/or assign this Lease or the Leasehold, or any part or parts thereof, and any sublease, as collateral security, by one or more such mortgages, upon the condition that all rights acquired under such mortgage or mortgages shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease and to all rights and interests of Lessor therein, none of which covenants, conditions or restrictions is or shall be waived by Lessor by reason of the foregoing, except as expressly provided herein. In the event of any conflict between the provisions of this Lease and the provisions of any leasehold mortgage, the provisions of this Lease shall control, except as herein specifically provided. Notwithstanding the foregoing, Lessee shall only have the right to mortgage this Lease or the leasehold estate hereunder to a mortgagee of Lessee's leasehold estate under the Ground Lease to the extent permitted thereunder.

10.04 Leasehold Mortgagee's Rights.

If Lessee shall mortgage this Lease or Leasehold, or any part or parts thereof, and if the holder ("Lessee's Mortgagee") of such leasehold mortgage shall send to Lessor a true copy thereof, together with written notice specifying the name and address of the mortgagee and the pertinent recording data with respect to such mortgage, Lessor agrees that so long as any such leasehold mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to Lessor, the following provisions shall apply:

10.4.1 There shall be no termination, cancellation, surrender, supplement or modification of this Lease by Lessee or by joint action of Lessor and Lessee without the prior consent in writing of each Lessee's Mortgagee, nor shall any election, determination or waiver by Lessee (whether through action or inaction) that materially impairs the value of this Lease or the Leasehold be effective without such prior written consent.

10.4.2 Lessor shall, upon serving Lessee with any notice pursuant to the provisions of this Lease, simultaneously serve a copy of the notice upon each Lessee's Mortgagee. No notice by Lessor to Lessee under this Lease shall be deemed to have been served unless and until a copy thereof shall have been served upon each Lessee's Mortgagee as set forth herein.

10.4.3 Each Lessee's Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee under this Lease, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions to prevent termination of this Lease. Each Lessee's Mortgagee and its agents and contractors shall have full access to the Land for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Lessee's Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Lessee.

10.4.4 Anything contained in this Lease notwithstanding, if any default shall occur which, pursuant to any provision of this Lease, purportedly entitles Lessor to terminate this Lease, Lessor shall nevertheless not be entitled to terminate this Lease and any notice of termination shall be rendered void, unless (1) Lessor, following the expiration of any periods of time given Lessee in this Lease to cure such default or breach, shall have given each Lessee's Mortgagee written notice stating Lessor's intent to terminate this Lease, and (2) within 90 days after such written notice is given to each Lessee's Mortgagee, no Lessee's Mortgagee shall either:

a. cure the default if the same consists of the nonperformance by Lessee of a covenant or condition of this Lease requiring the payment of money by Lessee to Lessor; or

b. if the default or breach does not involve such a covenant or condition (and is not otherwise cured within the above-described 90-day period), either (i) cure such default or breach, if the same is reasonably capable of being cured by each Lessee's Mortgagee within such 90-day period, or (ii) if such default or breach is not reasonably capable of being so cured within such 90-day period, (A) commence, or

cause any trustee under the leasehold mortgage to commence, and thereafter to diligently pursue to completion steps and proceedings to foreclose on the interests covered by the mortgage, and (b) perform or cause the performance of all of the covenants and conditions of this Lease requiring the payment of money by Lessee to Lessor until such time as this Lease and/or the Leasehold shall be sold upon foreclosure pursuant to the mortgage or shall be transferred upon judicial foreclosure or by deed of assignment in lieu of foreclosure. Any default or breach which is not susceptible of being cured by each Lessee's Mortgagee shall be deemed cured if any Lessee's Mortgagee shall diligently pursue to completion steps or proceedings to foreclose under its leasehold mortgage.

10.4.5 [Intentionally omitted.]

10.4.6 If any Lessee's Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, the times specified in Section 10.4.4, above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition; provided that the Lessee's Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee to Lessor under this Lease and shall continue to pay currently those monetary obligations as and when the same fall due and shall further exercise reasonable diligence to lift such prohibition.

10.4.7 Lessor agrees that the Lessee's Mortgagee(s) shall be the "loss payees" (in order of lien priority) under any and all casualty and similar insurance policies that may be carried by Lessee or Lessor under this Lease and that all insurance proceeds attributable to damage to or destruction of the improvements constructed by Lessee on the Land are to be applied in the manner specified in the senior most leasehold mortgage. In addition, Lessor agrees that all condemnation awards in connection with the improvements constructed by Lessee on the Land shall be applied in the manner specified in the senior most leasehold mortgage.

10.4.8 Lessor agrees that, in the event of termination of this Lease for any reason (including without limitation by reason of any default by Lessee or by reason

of the disaffirmance thereof by a receiver, liquidator or trustee for Lessee or its property), Lessor, if requested by any Lessee's Mortgagee, shall enter into a new lease of the Land with the most senior Lessee's Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the terms of the Lease, at the same rent and additional rent and upon the same terms, provisions, covenants and agreements as those set forth in the Lease and subject to the rights, if any, of any subtenants of Lessee then in possession of any part of the Premises, provided:

a. The Lessee's Mortgagee shall make written request upon Lessor for the new lease within 30 days after the date of termination.

b. The Lessee's Mortgagee shall pay to Lessor at the time of the execution and delivery of the new lease any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Lease but for their termination, and in addition thereto any expenses, including reasonable attorneys fees', to which Lessor shall have been subjected by reason of Lessee's default;

c. The Lessee's Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under the terminated Lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the Lessee's Mortgagee;

d. The new lease shall be expressly made subject to the rights, if any, of Lessee under the terminated Lease; and

e. The tenant under the new lease shall have the same right, title and interest in and to the buildings and improvements on the Land as Lessee had under the terminated Lease immediately prior to its termination.

10.4.9 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to Section 10.4.8, above, shall be prior to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of the Premises, and shall be accompanied by a conveyance of title to the improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Lessor) for a term of years equal to

the term of the new lease subject to the reversion in favor of Lessor upon expiration or sooner termination of the new lease.

10.4.10 Nothing herein contained shall obligate any Lessee's Mortgagee to enter into a new lease pursuant to Section 10.4.8, above, nor to cure any default of Lessee referred to above.

10.4.11 Foreclosure of any leasehold mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the leasehold mortgage, or any conveyance of this Lease and/or the Leasehold from Lessee to any Lessee's Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor or constitute a breach of any provisions of, or a default under, this Lease, and upon such foreclosure, sale or conveyance, Lessor shall recognize the purchaser or other transferee in connection therewith as the Lessee under this Lease.

10.4.12 In the event any Lessee's Mortgagee or any designee of it becomes the Lessee under this Lease or under any new lease obtained pursuant to Section 10.4.8, above, the Lessee's Mortgagee or its designee shall be personally liable for the obligations of Lessee under this Lease (or new lease) only to the extent that they arise during the period of time that the Lessee's Mortgagee or its designee constitutes the actual beneficial holder of the Leasehold. The right of such Lessee's Mortgagee, or its designee, to thereafter assign or transfer this Lease (or the new lease) shall not be subject to any restriction.

10.4.13 If a Lessee's Mortgagee shall elect to demand a new lease, Lessor agrees, at the request of, on behalf of and at the expense of the Lessee's Mortgagee, upon a guaranty or other assurance from it reasonably satisfactory to Lessor, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Lessee from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

10.4.14 Unless and until Lessor has received notice from each Lessee's Mortgagee that each Lessee's Mortgagee elects not to demand a new lease as provided in Section 10.4.8, above, or until the period therefor has expired, Lessor shall not cancel or agree to the termination or surrender of any existing subleases nor

enter into any new subleases hereunder without the prior written consent of each Lessee's Mortgagee.

10.4.15 [Intentionally omitted.]

10.4.16 Lessor shall give each Lessee's Mortgagee notice of any condemnation proceedings, or of any pending adjustment of casualty insurance claims. Any Lessee's Mortgagee shall have the right to intervene in any condemnation proceedings or insurance adjustment proceedings and to be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Lessee's Mortgagee shall not elect to intervene or become a party to the proceedings, that Lessee's Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

10.4.17 Lessor and Lessee shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Lessee's Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 10.4 and of allowing the Lessee's Mortgagee reasonable means to protect or preserve the lien of its leasehold mortgage upon the occurrence of a default under the terms of this Lease. Lessor and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect substantially and adversely affect any rights of Lessor under this Lease.

10.4.18 Lessor shall, upon request, execute, acknowledge and deliver to each Lessee's Mortgagee, an agreement prepared at the sole cost and expense of Lessee, in form satisfactory to each Lessee's Mortgagee, among Lessor, Lessee and each Lessee's Mortgagee, agreeing to all of the provisions of this Article X.

10.05 Defined Terms.

The term "mortgage," whenever used herein, shall include whatever security instruments are used in the locale of the Land, such as, without limitation, deeds of trust, security deeds, and conditional deeds, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code. The term "mortgage," whenever used herein, shall also include any instruments required in connection with a sale-leaseback transaction. The term "mortgagee" shall

include the holder of the secured position under each of the foregoing types of instruments, including but not limited to the beneficiary under a deed of trust, the secured party under a security agreement and the lessor in a sale-leaseback transaction. For the purposes of this Article X, the following terms shall have the following meanings:

a. "Lease" means the Lease and any new lease pursuant to Section 10.4.8, above, and any amendments thereto in accordance with this Article X.

b. "Leasehold" means the leasehold estate and other rights and interests of Lessee, or its successors and assigns, under the Lease.

10.06 Fee Mortgage.

The Lease shall not be subject or junior in priority to any mortgage encumbering the fee interest in the Land. In the event of any default under a mortgage which (1) encumbers Lessor's interest in the Land and (2) is prior to this Lease, Lessee may cure such default and deduct all amounts reasonably expended in so doing from the next installment(s) of rent.

10.07 Merger.

The Leasehold shall not merge with the fee interest in all or any portion of the Land, notwithstanding the ownership of the fee and the Leasehold by the same person(s) or entity(ies), without the written consent of every Lessee's Mortgagee.

10.08 Successors and Assigns.

All rights herein granted to Lessee shall also apply to every successor and assign of Lessee (including, but not limited to, any sublessee of Lessee). All rights herein granted to any Lessee's Mortgagee of Lessee shall also apply to any Lessee's Mortgagee of any successor or assign of Lessee (including, but not limited to, any sublessee of Lessee).

XI. LESSEE'S DEFAULT; LESSOR'S REMEDIES.

11.01 Lessee's Default.

The occurrence of any one of the following events shall be considered a default of this Lease by Lessee:

a. The failure of Lessee to pay any of the rents when due hereunder, which failure continues for thirty (30) days after written notice thereof by Lessor to Lessee; or

b. A default by the Lessee under the Ground Lease, continuing beyond the expiration of any applicable care periods contained therein; or

c. The failure of Lessee to observe or perform any of its other covenants or obligations hereunder, which failure continues for forty-five (45) days after written notice thereof by Lessor to Lessee (unless the nature of the default is such that more than forty-five (45) days are required for its cure and Lessee shall have commenced such cure within such forty-five (45) day period and thereafter diligently prosecutes the same to completion).

11.02 Lessor Remedies.

Subject to the provisions of Article X, in the event of any default under this Lease by Lessee, then Lessor shall have all rights or remedies at law, in equity or otherwise, to terminate the Lease, relet the Premises or take such action as may be allowed by law at the time of such default, and shall also have the following rights:

a. Should Lessor elect to reenter, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may either terminate this Lease, subject to the rights of Lessee's Mortgagee pursuant to Section 10.4 hereof, or it may from time to time, without terminating this Lease, or reletting the Land, or any part thereof, for its own account. No such reentry or taking possession of the Premises by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Lessee and Lessee's Mortgagee or unless the termination thereof be decreed by a court of competent jurisdiction.

b. No act by Lessor other than giving express notice to Lessee and Lessee's Mortgagee shall terminate this Lease. Acts of maintenance, efforts to relet any part of the Premises or any other action taken to protect Lessor's interest under this Lease shall not constitute a termination of Lessee's and Lessee's Mortgagee's right to possession.

11.03 Right to Rents, Issues and Profits.

In the event this Lease is terminated pursuant to the provisions of this Article 11, subject, in each event, to the rights of Lessee's Mortgagee set forth in Section 10 hereof, all of the right, title, estate and interest of Lessee in and to (i) the Premises; (ii) all rents, issues and profits of the Premises whether then accrued; (iii) all insurance policies and all insurance monies paid or payable thereunder; and (iv) all subleases then in existence for any part or parts of the Land shall, without compensation being paid therefor, pass unto and vest in and become the property of Lessor.

XII. LESSOR'S DEFAULT; LESSEE'S REMEDIES.

12.01 Lessor's Default.

Lessor shall be in default in the performance of any of its obligations hereunder if it has failed to perform such obligation when required, or if such failure is capable of cure by Lessor, within thirty (30) days after written notice by Lessee to Lessor specifying the nature of Lessor's failure or if such default requires more than thirty (30) days to cure, Lessor shall commence cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion.

12.02 Lessee's Remedies.

In addition to any other rights or remedies it may have at law, in equity or otherwise, in the event of a default hereunder by Lessor of a material provision hereof, Lessee shall have the right, with the prior written consent of Lessee's Mortgagee, to terminate this Lease. Any such default causing damage, the cost of which can be ascertained, shall be deducted from any rent due Lessor by Lessee.

XIII. MORTGAGE BY LESSOR OF LESSOR'S INTEREST.

13.01 If Lessor shall encumber its right, title and interest in the Land or this Lease, or any part or parts thereof, and if the holder ("Fee Mortgagee") of such mortgage shall send to Lessee a true copy thereof, together with written notice specifying the name and address of the mortgagee and the pertinent recording data with respect to such mortgage, Lessee agrees that so long as any such mortgage shall remain unsatisfied of record or until

written notice of satisfaction is given by the holder to Lessee, the following provisions shall apply:

13.02 There shall be no termination, cancellation, surrender or modification of this Lease by Lessor or by joint action of Lessor and Lessee without the prior consent in writing of the Fee Mortgagee, nor shall any election, determination or waiver by Lessor (whether through action or inaction) that materially impairs the value of this Lease or the Land be effective without such prior written consent.

13.03 Lessee shall, upon serving Lessor with any notice pursuant to the provisions of this Lease, simultaneously serve a copy of the notice upon each Fee Mortgagee. No notice by Lessee to Lessor under this Lease shall be deemed to have been served unless and until a copy thereof shall have been served upon each Fee Mortgagee as set forth herein.

13.04 Foreclosure of any mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the mortgage, or any conveyance of this Lease and/or the Land from Lessor to any Fee Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent to Lessee or constitute a breach of any provision of, or a default under, this Lease, and upon such foreclosure, sale or conveyance, Lessee shall attorn to and recognize the purchaser or other transferee in connection therewith as the Lessor under this Lease.

13.05 In the event any Fee Mortgagee or any designee of it becomes the Lessor under this Lease, the Fee Mortgagee or its designee shall be personally liable for the obligations of Lessor under this Lease only to the extent that they arise during the period of time that the Fee Mortgagee or its designee constitutes the actual beneficial owner of the Land.

13.06 Lessee shall give each Fee Mortgagee notice of any condemnation proceedings. Any Fee Mortgagee shall have the right to intervene in any condemnation proceedings and to be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Fee Mortgagee shall not elect to intervene or become a party to the proceedings, that Fee Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

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13.07 Lessee shall, upon request, execute, acknowledge and deliver to each Fee Mortgagee, an agreement prepared at the sole cost and expense of Lessor, in form reasonably satisfactory to each Fee Mortgagee, between Lessor, Lessee and each Fee Mortgagee, agreeing to all of the provisions of this Article XIII.

XIV. ESTOPPEL CERTIFICATES.

Either party hereto, without charge, at any time and from time to time, within fifteen (15) days after receipt of written request by the other party hereto, Lessee's Mortgagee or any Fee Mortgagee, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person, firm or corporation specified by such requesting party:

- a. That this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b. Whether or not to the knowledge of such party there are then existing any offsets or defenses in favor of such party against the enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same, and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and, if not, specifying the same;
- c. The dates to which rent, additional rents and all other charges hereunder have been paid; and
- d. Such other information or statements as may be reasonably requested by a party.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contrary to those contained in the instrument.

The failure of either Lessor or Lessee to deliver such statement within such fifteen (15) day period shall constitute a default hereunder and shall be conclusive upon the requesting party or any other person, firm or corporation for whose benefit the statement was requested, that this Lease is in full force and effect without modification except as may be represented by the requesting

party and that there are no uncured defaults on the part of the requesting party.

XV. MISCELLANEOUS

15.01 Waiver.

The failure of Lessor or Lessee to insist in any instance upon the strict keeping, observance or performance of any covenant or agreement contained in this Lease or to exercise any election herein contained shall not be construed as a waiver or relinquishment for the future of such covenant or agreement, but the same shall continue and remain in full force and effect. No waiver or modification by either Lessor or Lessee of any covenant or agreement contained in this Lease shall be deemed to have been made unless the same is in writing executed by the party whose rights are being waived or modified. No surrender of possession of any part of the Land shall release Lessee from any of its obligations hereunder unless accepted by Lessor, or unless permitted in the Lease. The receipt and retention by Lessor, and the payment by Lessee of additional rent with knowledge of the breach of any covenant or agreement contained in this Lease, shall not be deemed a waiver of such breach by either Lessor or Lessee.

15.02 Surrender of Land; Holding Over.

Lessee agrees on the last day of the Lease Term or on the earlier termination of this Lease, to surrender the Land, and to pay the reasonable costs to close Lessee's mining operation on the Land and dispose of the capital equipment for the account of Lessee. Within said time, Lessor may elect to have the mining operation remain open, in which event Lessee shall have no further liability to Lessor and Lessor shall pay to Lessee the then fair market value of said capital equipment originally purchased by Lessee. Any holding over by Lessee shall be on a month-to-month tenancy, on the same terms and conditions as contained herein.

15.03 Notices and Consents.

Wherever in this Lease it shall be required or permitted that notice, request, demand or other communication be given or served by either party to this Lease to or on the other, or on Lessee's Mortgagee, such notice, request, demand or other communication shall be given to the party to whom directed, in writing, and delivered personally or forwarded by registered or

certified mail, postage prepaid, return receipt requested,
addressed as follows:

If to Lessor: North American Chemical company
c/o D. George Harris & Associates,
Inc.
61 Broadway, Suite 918
New York, New York 10006
Attention: Anthony J. Petrocelli
Telecopy No.: (212) 480-0623

with a
copy to: Winthrop, Stimson, Putnam & Roberts
One Battery Park Plaza
New York, New York 10004
Attention: Donald G. Kilpatrick, Esq.
Telecopy No.: (212) 858-1500

If to Lessee: ACE Cogeneration Company
c/o Pyropower Corporation
P.O. Box 85480
San Diego, California 92138
Attention: General Manager/President
Telecopy No.: (619) 458-3190

with a
copy to: Lillick & McHose
725 South Figueroa, Suite 1200
Los Angeles, CA 90017-2513
Attn: Carolyn M. Huestis, Esq.
Telecopy No.: (2123) 629-1033

with a
copy to: Constellation Holdings, Inc.
250 West Pratt Street, 23rd Floor
Baltimore, Maryland 21201
Attention: General Counsel
Telecopy No.: (301) 783-2862

Notices sent to Lessee shall not be deemed given unless received by both Lessee and Lessee's Mortgagee (after notice to Lessor of the name and address of Lessee's Mortgagee). Notices sent to Lessor shall not be deemed given unless received by both Lessor and the Fee Mortgagee (after notice to Lessee of the name and address of the Fee Mortgagee).

Either party, Lessee's Mortgagee and the Fee Mortgagee may change its address for notice by written notice given to the other in the manner hereinabove provided. Any notice, request, demand or other

communication shall be deemed to have been duly given or served on the date personally delivered or shown on the return receipt or other evidence of delivery.

15.04 Partial Invalidity; Construction.

If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

15.05 Captions.

The captions and headings in this Lease are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Lease or the intent of any provision thereof.

15.06 Broker's Commissions.

Lessor and Lessee represent to each other that they are not obligated to any broker or other real estate or financing agent in connection with the subject matter of this Lease or any of the transactions contemplated hereby and each party agrees to defend, indemnify and hold the other harmless from any claim, suit or demand made upon the other by any person, firm or corporation for brokerage fees or commissions or other similar compensation with respect to the Lease.

15.07 Counterparts.

This Lease may be executed in one or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

15.08 Sole Agreement.

This Lease contains all of the agreements of the parties hereto with respect to the matters covered hereby, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated in the provisions of this Lease. The provisions of this Lease shall not be amended or altered except by an agreement in writing signed by both of

the parties hereto, which agreement must be approved by Lessee's Mortgagee and the Fee Mortgagee prior to its becoming effective.

15.09 Successors and Assigns.

Subject to the provisions hereof relative to assignment, this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, beneficiaries, transferees, successors and assigns of the respective parties hereto, of Lessee's Mortgagee and of the Fee Mortgagee.

15.10 Time Is of the Essence.

Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Lease.

15.11 Short Form Lease.

At the request of Lessee, Lessor agrees to join in the execution and delivery of a short form memorandum of this Lease to be recorded in the Official Records of Inyo County, California. The parties further agree, however, that the terms, covenants and conditions of this Lease shall control over any such memorandum.

15.12 Governing Law; Venue.

This Lease, and the rights and obligations of Lessor and Lessee hereunder, shall be governed by the laws of the State of California. All actions brought by either party hereunder shall be brought and tried in the applicable states or federal courts of the County of Los Angeles.

15.13 Gender.

As used herein, the neuter gender includes the feminine and the masculine, the masculine includes the feminine and the neuter and the feminine includes the masculine and the neuter, and each includes corporation, partnership or other legal entity when the context so requires.

15.14 [Intentionally omitted.]

15.15 Right of Contest.

Lessee shall have the right to contest in good faith any claim, demand, governmental order, notice or directive, levy, tax or assessment by any third party. Any such contests shall be prosecuted diligently and in a manner which does not prejudice Lessor hereunder.

15.16 No Subordination.

Nothing contained in this Lease shall be deemed to subordinate the right, title and interest of Lessor in the Land to the interest of Lessee or Lessee's Mortgagee hereunder.

15.17 Force Majeure.

Whenever either party hereto shall be required by the terms of this Lease or by law to perform any contract, act, work, construction, labor or services (excepting only the obligation to pay rent due hereunder), or to discharge any lien against the Land, or to perform and comply with any laws, rules, orders, ordinances, regulations or zoning regulations, said party shall not be deemed to be in default herein and the other party shall not enforce or exercise any of its rights under this Lease, if and so long as non-performance or default herein shall be directly caused by strikes, nonavailability of materials, war or national defense preemptions, civil disobedience, governmental restrictions, acts of God or other similar causes beyond the reasonable control of the non-performing party; provided, however, that, notwithstanding any of the provisions of the foregoing, said non-performing party shall in any event pay any sum of money required to discharge any lien if at any time the real property underlying the Land, or any part thereof, shall be in danger of being foreclosed, forfeited or lost, and shall commence such performance and continue the same with diligence and continuity immediately after the removal of any of the causes hereinabove specified.

15.18 [Intentionally Omitted.]

15.19 Consent.

Except as otherwise set forth herein, whenever this Lease requires the consent of Lessor or Lessee, such consent shall not be unreasonably withheld or delayed.

15.20 Relationship of Parties.

The relationship between the parties hereto is solely that of landlord and tenant, and nothing in this Lease shall be construed to create or evidence an intent to create a partnership or joint venture between the parties, it being the express intent of both parties that the business of Lessee on the Land and the goodwill thereof shall be and remain the sole property of Lessee.

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

On this 30 day of November, 1990, before, me, a Notary Public in and for said State and County, personally appeared Slaven Wolf, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Sr. Vice President of KERR-MCGEE CHEMICAL CORPORATION, a Delaware corporation ("KMCC"), the corporation that executed the within instrument, and acknowledged to me that he executed the within instrument as the Sr. Vice President of KMCC and that KMCC executed the within instrument.

WITNESS MY HAND AND OFFICIAL SEAL,

T. T. Kellogg
Notary Public In and For Said County
and State

TODD T. KELLOGG
Notary Public, State of New York
No. 31-4967487
Qualified in New York County
Commission Expires June 4, 1992

TODD T. KELLOGG
Notary Public, State of New York
No. 31-4967487
Qualified in New York County
Commission Expires June 4, 1992

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[KMCC]

EXHIBIT "A"

(Land)

All that certain real property and mining claims situated in the County of Inyo, State of California, and described as follows:

April #6, a placer mining claim, in Inyo County, California, the notice of location of which was recorded May 16, 1955, in Vol. 75 of Mining Locations, at page 20, in the Office of the Recorder of said County.

April #8, a placer mining claim, in Inyo County, California, the notice of location of which was recorded January 17, 1956, in Vol. 81 of Mining Locations, at page 271, in the Office of the Recorder of said County.

April #9, a placer mining claim, in Inyo County, California, the notice of location of which was recorded January 17, 1956, in Vol. 81 of Mining Locations, at page 272, in the Office of the Recorder of said County.

April #10, a placer mining claim, in Inyo County, California, the notice of location of which was recorded January 17, 1956, in Vol. 81 of Mining Locations, at page 273, in the Office of the Recorder of said County.

April #12, a placer mining claim, in Inyo County, California, the notice of location of which was recorded January 17, 1956, in Vol. 81 of Mining Locations, at page 274, in the Office of the Recorder of said County.

April #13, a placer mining claim, in Inyo County, California, the notice of location of which was recorded November 15, 1955, in Vol. 80 of Mining Locations, at page 131, in the Office of the Recorder of said County, as amended by notice of amendment recorded in Vol. 93 of said Mining Locations, at page 507.

April #14, a placer mining claim, in Inyo County, California, the notice of location of which was recorded November 15, 1955, in Vol. 80 of Mining Locations, at page 132, in the Office of the Recorder of said County, as amended by notice of amendment recorded in Vol. 96 of said Mining Locations, at page 9.

April #20, a placer mining claim, in Inyo County, California, the notice of location of which was recorded August 11, 1959, in Vol. 92 of Mining Locations, at page 181, in the Office of the Recorder of said County,

April #21, a placer mining claim, in Inyo County, California, the notice of location of which was recorded August 11, 1959, in Vol. 92 of Mining Locations, at page 182, in the Office of the Recorder of said County.

April #22, a placer mining claim, in Inyo County, California, the notice of location of which was recorded August 11, 1959, in Vol. 92 of Mining Locations, at page 183, in the Office of the Recorder of said County.

April #23, a placer mining claim, in Inyo County, California, the notice of location of which was recorded August 11, 1959, in Vol. 92 of Mining Locations, at page 184, in the Office of the Recorder of said County.

Virginia, a placer mining claim, in Inyo County, California, the notice of location of which was recorded March 31, 1955, in Vol. 72 of Mining Locations, at page 608, in the Office of the Recorder of said County, as amended by notice of amendment recorded in Vol. 75 of said Mining Locations, at page 405.

Virginia #1, a placer mining claim, in Inyo County, California, the notice of location of which was recorded March 31, 1955, in Vol. 72 of Mining Locations, at page 610, in the Office of the Recorder of said County, as amended by notice of amendment recorded in Vol. 75 of said Mining Locations, at page 407.

Virginia #2, a placer mining claim, in Inyo County, California, the notice of location of which was recorded March 31, 1955, in Vol. 72 of Mining Locations, at page 612, in the Office of the Recorder of said County, as amended by notice of amendment recorded in Vol. 75 of said Mining Locations, at page 409.

Virginia #4, a placer mining claim, in Inyo County, California, the notice of location of which was recorded May 16, 1955, in Vol. 75 of Mining Locations, at page 45, in the Office of the Recorder of said County.

Virginia #5, a placer mining claim, in Inyo County, California, the notice of location of which was recorded May 16, 1955, in Vol. 75 of Mining Locations, at page 46, in the Office of the Recorder of said County.

January Millsite, a millsite claim, in Inyo County, California, the notice of location of which was recorded March 11, 1963, in Vol. 97 of Mining Locations, at page 252, in the Office of the Recorder of said County.

Revenue Millsite, a millsite claim, in Inyo County, California, the notice of location of which was recorded March 11, 1963, in Vol. 97 of Mining Locations, at page 251, in the Office of the Recorder of said County.

December Millsite, a millsite claim, in Inyo County, California, the notice of location of which was recorded March 23, 1962, in Vol. 96 of Mining Locations, at page 71, in the Office of the Recorder of said County.

April #1, a placer mining claim, in Inyo County, California, the notice of location of which was recorded May 16, 1955, in Vol. 75 of Mining Locations, at page 15, in the Office of the Recorder of said County.

April #2, a placer mining claim, in Inyo County, California, the notice of location of which was recorded May 16, 1955, in Vol. 75 of Mining Locations, at page 16, in the Office of the Recorder of said County.

Dolomite, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 13, in the Office of the Recorder of said County.

Limestone, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 22, in the Office of the Recorder of said County.

Limestone #1, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 24, in the Office of the Recorder of said County.

Limestone #2, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 26, in the Office of the Recorder of said County.

Limestone #3, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 28, in the Office of the Recorder of said County.

Limestone #8, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 30, in the Office of the Recorder of said County.

Limestone #9, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 32, in the Office of the Recorder of said County.

Limestone #10, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 34, in the Office of the Recorder of said County.

Limestone #13, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in

Vol. 75 of Mining Locations, at page 36, in the Office of the Recorder of said County.

Limestone #14, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 38, in the Office of the Recorder of said County.

Limestone #15, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 39, in the Office of the Recorder of said County.

Limestone #16, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 40, in the Office of the Recorder of said County.

Limestone #17, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 41, in the Office of the Recorder of said County.

Limestone #18, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 42, in the Office of the Recorder of said County.

Limestone #19, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 43, in the Office of the Recorder of said County.

April #7, a placer mining claim, in Inyo County, California, the notice of location of which was recorded in Vol. 75 of Mining Locations, at page 21, in the Office of the Recorder of said County.

April #26, a placer mining claim, in Inyo County, California, the notice of location of which was recorded March 19, 1976, in Vol. 119 of Mining Locations, at page 897, in the Office of the Recorder of said County.

April #27, a placer mining claim, in Inyo County, California, the notice of location of which was recorded March 19, 1976, in Vol. 119 of Mining Locations, at page 898, in the Office of the Recorder of said County.

April #28, a placer mining claim, in Inyo County, California, the notice of location of which was recorded March 19, 1976, in Vol. 119 of Mining Locations, at page 899, in the Office of the Recorder of said County.

AND,

PARCEL NO. 1:

THE APRIL MILLSITE, BEING SURVEY NO. 6685, EMBRACING A PORTION OF SECTION 26, TOWNSHIP 20 SOUTH, RANGE 42 EAST, M.D.M., IN THE COUNTY OF INYO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN PATENT FROM THE UNITED STATES OF AMERICA TO THE STAUFFER CHEMICAL COMPANY RECORDED MAY 15, 1963 IN BOOK 157, PAGE 491 OF OFFICIAL RECORDS.

PARCEL NO. 2:

THOSE CERTAIN PATENTED PLACER MINING CLAIMS KNOWN AS APRIL, APRIL #3, APRIL #4 AND APRIL #5, BEING SURVEY NO. 6589 EMBRACING A PORTION OF SECTION 27, TOWNSHIP 20 SOUTH, RANGE 42 EAST, M.D.M., IN THE COUNTY OF INYO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN PATENT FROM THE UNITED STATES OF AMERICA TO THE STAUFFER CHEMICAL COMPANY RECORDED OCTOBER 15, 1963 IN BOOK 160, PAGE 306 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ANY VEINS OR LODES OR QUARTZ OR OTHER ROCK IN PLACE BEARING GOLD, SILVER, CINNABAR, LEAD, TIN, COPPER OR OTHER VALUABLE DEPOSITS WITHIN THE LAND ABOVE DESCRIBED WHICH MAY HAVE BEEN DISCOVERED OR KNOWN TO EXIST PRIOR TO MAY 10, 1961.

PARCEL NO. 3:

THOSE CERTAIN PATENTED PLACER MINING CLAIMS KNOWN AS APRIL #15, AND APRIL #16, BEING SURVEY NO. 6598, EMBRACING A PORTION OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 42 EAST, M.D.M., IN THE COUNTY OF INYO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN PATENT FROM THE UNITED STATES OF AMERICA TO THE STAUFFER CHEMICAL COMPANY RECORDED SEPTEMBER 26, 1963 IN BOOK 160, PAGE 87 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ANY VEINS OR LODES OR QUARTZ OR OTHER ROCK IN PLACE BEARING GOLD, SILVER, CINNABAR, LEAD, TIN, COPPER OR OTHER VALUABLE DEPOSITS WITHIN THE LAND ABOVE DESCRIBED WHICH MAY HAVE BEEN DISCOVERED OR KNOWN TO EXIST PRIOR TO MAY 10, 1961.

PARCEL NO. 4:

THAT CERTAIN PATENTED PLACER MINING CLAIM KNOWN AS APRIL #17, BEING SURVEY NO. 6604, EMBRACING A PORTION OF SECTION 27, TOWNSHIP 20 SOUTH, RANGE 42 EAST, M.D.M., IN THE COUNTY OF INYO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN PATENT FROM THE UNITED STATES OF AMERICA TO THE STAUFFER CHEMICAL COMPANY RECORDED MAY 15, 1963 IN BOOK 157, PAGE 478 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ANY VEINS OR LODES OR QUARTZ OR OTHER ROCK IN PLACE BEARING GOLD, SILVER, CINNABAR, LEAD, TIN, COPPER OR OTHER VALUABLE DEPOSITS WITHIN THE LAND ABOVE DESCRIBED WHICH MAY HAVE BEEN DISCOVERED OR KNOWN TO EXIST PRIOR TO MAY 9, 1961.

PARCEL NO. 5:

THOSE CERTAIN PATENTED PLACER MINING CLAIMS KNOWN AS APRIL #18, APRIL #19, APRIL #24 AND APRIL #25, BEING SURVEY NO. 6669, EMBRACING A PORTION OF SECTIONS 34 AND 35, TOWNSHIP 20 SOUTH, RANGE 42 EAST, M.D.M., IN THE COUNTY OF INYO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN PATENT FROM THE UNITED STATES OF AMERICA TO THE STAUFFER CHEMICAL COMPANY RECORDED SEPTEMBER 26, 1963 IN BOOK 160, PAGE 99 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ANY VEINS OR LODES OR QUARTZ OR OTHER ROCK IN PLACE BEARING GOLD, SILVER, CINNABAR, LEAD, TIN, COPPER OR OTHER VALUABLE DEPOSITS WITHIN THE LAND ABOVE DESCRIBED WHICH MAY HAVE BEEN DISCOVERED OR KNOWN TO EXIST PRIOR TO MAY 10, 1961.

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