



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
LANSING



RODNEY A. STOKES
DIRECTOR

September 19, 2011

TO: Rodney A. Stokes, Director

Information: Natural Resources Commission

Subject: Updated Nonmetallic Mineral Limestone Lease

Authority: Part 5, Department of Natural Resources, Section 502, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)

**Discussion
and Background:**

The nonmetallic mineral limestone lease has not been updated since 1999. The major updated items in the lease include:

- 1) The revised language and format updates the indemnification, insurance, and bonding provisions of the lease to be consistent with the Attorney General's recommendations for mineral leases.
- 2) The revised language and format changes royalty payment frequency from a monthly to a quarterly basis, which reduces industry and staff expense without materially affecting cumulative royalty revenue due to the state.
- 3) The revised lease removes the awkward production royalty adjustment formula by eliminating the recalculation of royalty rate at the end of the third year. While intended to keep the royalty rate in step with cost of living or inflation increases over the seven-year term of the lease, this provision has historically been fraught with difficulties. These include elimination of the referenced price indices, changes in the base level index, elimination of regional indices, and the substitution of one index by another type of index. Since these are fixed ten-year leases, the one-time adjustment did not dramatically affect revenue to the state but sometimes resulted in reduced production as a result of higher costs for operators.

Notice: This item appeared on the September 6, 2011 DNR Business Calendar and was eligible for approval on September 15, 2011.

This draft lease was circulated to existing nonmetallic producers and industry representatives for comment. No comment has been received.

Updated Nonmetallic Mineral Limestone Lease

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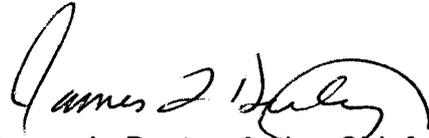
Recommendation: The updated nonmetallic mineral limestone lease be adopted pursuant to staff recommendations



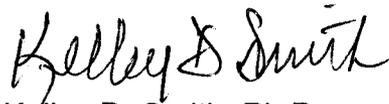
Lynne M. Boyd, Chief
Forest Management Division



Russ Mason, Ph.D., Chief
Wildlife Division



James L. Dexter, Acting Chief
Fisheries Division



Kelley D. Smith, Ph.D.
Acting Natural Resources Deputy

I approve the staff recommendation.

Rodney A. Stokes
Director

Approval Date



MICHIGAN DEPARTMENT OF NATURAL RESOURCES
FOREST, MINERAL AND FIRE MANAGEMENT DIVISION

NO.

NONMETALLIC MINERALS LEASE FOR LIMESTONE AND/OR DOLOMITE

By authority of PART 5, SECTION 502, Public Act 451 of 1994, as amended.

This Lease, made and entered into this ____ day of _____ in the year 200__.

By and Between the DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES for the STATE OF MICHIGAN, hereafter called "LESSOR", whose address is P.O. Box 30452, Lansing, Michigan 48909-79528 and _____, whose address is _____, hereafter called "LESSEE".

WITNESS, that the LESSOR is the owner of rights to any nonmetallic minerals and/or nonmetallic mineral products lying on, in or under the lands described below and has the authority to lease the lands for exploration, mining and taking away of the following nonmetallic minerals and/or nonmetallic mineral products.

Limestone and/or Dolomite

NOW THEREFORE, the LESSOR for and in consideration of the first year minimum royalty rate in hand paid, and of the covenants and agreements hereinafter contained on the part of the LESSEE to be paid, kept and performed, has granted, demised, leased, and let, and by these presents does grant, demise, lease and let without warranty, expressed or implied, unto the said LESSEE all of those certain tracts of land situated in the State of Michigan, and more particularly described below for the sole and only purpose of mining and producing nonmetallic minerals and/or nonmetallic mineral products therefrom, for selling the same. Included is the reasonable right to ingress and egress, the right to construct buildings, make excavations, stockpiles, impoundments, treatment, tailings or settling basins, roads, utilities, and other improvements as may be necessary to produce, save, and take care of such nonmetallic minerals and/or nonmetallic mineral products on or from the leased premises. The locations of all such activities and the use of all highways, surface conveyances, leases, licenses, or easements of public record are subject to LESSOR approval. No operations shall be conducted by the LESSEE on any of the following described land situated in the State of Michigan without obtaining all separate written permissions required by the LESSOR or any other local, State, or Federal Governmental Agencies:

COUNTY, _____ TOWNSHIP
T, R, _____ Section

Parcels

Description	SECTION	Acres	Equity
TOWNSHIP			MIN % SUR %
TOWNSHIP			MIN % SUR %

Stipulations: None

Containing _____ acres, more or less.

A. DEFINITIONS

For the purposes of this Lease, the following definitions apply:

1. "Assignment" means the transfer of lease rights by writing.
 2. "Commingled Waste Materials" means waste materials from property of the LESSEE mixed with waste materials from property of the LESSOR.
 3. "Leased Premises" means the land, property, and/or mineral rights of the LESSOR herein leased to the LESSEE.
 4. Limestone and/or Dolomite – Bedrock consisting primarily of CaCO_3 and/or $\text{CaMg}(\text{CO}_3)_2$ sedimentary rock. Frequently mined to produce aggregates, chemical feedstock, etc.
 5. "Mining" means part or all of the process involved in the harvesting and/or removal of specified nonmetallic mineral and/or nonmetallic mineral products including development, extraction, beneficiation, water storage, and separation of waste.
 6. "Mining Operation Area" means the land area where active mining operations are, have been, or are projected, to take place, and as delineated in the mining and reclamation plan. Areas include, but are not limited to stockpiles, roads, processing plants, impoundments, treatment and settling basins, drainage ditches, water level control structures, and shipping facilities.
 7. "Performance bond" means a bond received from LESSEE in cash, or other approved form. Bonding amount varies with department schedule, which LESSOR may apply to cover costs for activities required of, but not provided by, LESSEE.
 8. "Production" means the extraction, processing, stockpiling, and/or sales of specified nonmetallic minerals and/or nonmetallic mineral products from the leased premises. For royalty purposes, production only includes materials sold, which leave the property, or are moved into a secondary product processing and/or storage area.
 9. "QUARTERLY" REFERS TO THE CALENDAR YEAR, AND ENDS ON THE LAST DAY OF MARCH, JUNE, SEPTEMBER, AND DECEMBER.
 10. "Reclamation" means reconditioning or rehabilitation of the affected leased premises as delineated in the mining and reclamation plan OR PORTIONS THEREOF BY THE LESSEE FOR USEFUL PURPOSES AND THE PROTECTION OF THE NATURAL RESOURCES, INCLUDING THE CONTROL OF EROSION AND THE PREVENTION OF ROCK OR LAND SLIDES, SLUMPING, INVASIVE SPECIES, AND AIR, LAND, AND WATER POLLUTION.
- "Short Ton" means 2,000 pounds avoirdupois.
11. "Specified Nonmetallic Minerals and/or Nonmetallic Mineral Products" include, and are limited to, limestone and/or dolomite. No other materials may be removed or mined under the terms and conditions of this lease unless specified by LESSOR.
 12. "Tailings" mean waste materials that have been placed in a confined waste or storage basin.
 13. "Tailings Basin" means land on which tailings are deposited including surrounding dikes constructed to contain the tailings.
 14. "TON" means SHORT TON (2,000 pounds avoirdupois).
 15. "Waste" means soil and vegetation, overburden, waste rock, and other materials of no economic value originating on the leased premises directly resulting from or displaced by mining, and deposited on the surface of the leased premises and other property under control of the LESSEE. Ninety (90) percent or better of waste product shall pass through a number four (#4) screen with openings approximately 4.75mm or .187 inches in size.

B. TERM OF LEASE

1. This lease shall remain in force for a PRIMARY term of seven (7) years. Lease may be considered for a three (3) year extension by a negotiation process, INCLUDING THE PRODUCTION ROYALTY RATE, begun in the first month of the sixth (6th) year of the existing lease at the sole discretion of the LESSOR. All mining will cease and required reclamation activities shall be completed by the termination of the lease.
2. All applicable laws and rules are made a part and condition of this Lease. Violations of any of the applicable laws or rules shall be considered a violation of the terms of this Lease and the LESSOR, at its sole discretion, may invoke D(7), D(8), D(9), or D(10), or any combination thereof. No rules made after the approval of this Lease shall operate to affect the term of the Lease, rate of royalty, rental, or acreage, unless agreed to by both parties.
3. Production may begin only after payment of first year's minimum royalty, issuance of lease and acceptance by LESSOR of approved mining and reclamation plans.

C. ECONOMIC TERMS

1. Minimum Royalties

- a. LESSEE shall pay to the LESSOR a minimum royalty of _____ per CALENDAR year. ~~Fifty percent of the first year's prorated minimum royalty must be paid within ten (10) BUSINESS days of the bid opening; the remaining fifty percent must be paid before the lease is issued.~~
- b. Subsequent MINIMUM ROYALTY payments shall be paid annually, by LESSEE, in advance of the lease anniversary date PRIOR TO JANUARY 5TH. Lease rights shall terminate and the LESSEE shall be required to file a release with the LESSOR as hereinafter provided whenever these payments remain unpaid for a period of ten (10) BUSINESS days after JANUARY 5TH the anniversary date. LESSOR may, at its sole discretion, waive in writing termination of the lease for unpaid minimum royalties upon LESSEE's submittal in writing of proper and satisfactory proof as to cause, along with payments due. Any payments made by LESSEE under these circumstances shall include interest at the rate of 1.5 percent per month or at the maximum legal rate, whichever is less, on the amount unpaid.
- c. The determined minimum royalty paid by LESSEE to LESSOR is to be credited to the LESSEE for the production royalties owed the LESSOR each year. The paid minimum royalty does not accumulate nor carry forward to successive years. Each year, when the royalty owed to the LESSOR exceeds the lease minimum royalty, the LESSEE must pay production royalties to the State as outlined in Section C.2 below. HOWEVER, ALL ANNUAL PRODUCTION VOLUMES MUST BE REPORTED TO LESSOR, AS OUTLINED IN SECTION H - RECORDS AND REPORTS.

2. Production Royalties

- a. LESSEE shall pay to LESSOR a production royalty for the nonmetallic minerals and/or nonmetallic mineral products mined from the leased premises which shall be the product of the removed mined tonnage (tonnage of material removed from site) times the Production Royalty rate of _____ per ton (2000 lbs. avoirdupois). No allowance shall be made for moisture content of materials.
 - (1) ~~The production royalty rate shall be adjusted at the end of the third (3rd) year and at the end of the seventh (7th) year, if the lease is extended. The adjustment of the royalty rate shall be based upon the average of the changes in the producers price index (PPI) for limestone and/or dolomite (crushed and broken limestone PCU2123122123120) (CBL) for the east north central region as published by the U.S. Bureau of Labor Statistics.~~

_____ The adjusted royalty rate shall be calculated as follows:

_____ Year 3 -

_____ $[PPI(t+3) \div PPI(t)] \times \text{royalty rate bid} = \text{adjusted royalty rate}$

Year 7—

$[PPI(t+7) \div PPI(t)] \times \text{royalty rate bid} = \text{adjusted royalty rate}$

Where:

PPI (t) = annual producer price index for (CBL) for the year in which the lease is bid.

PPI (t+3) = average of the monthly producer price index (CBL) for the latest 12 months available on the third (3rd) anniversary of the lease.

PPI (t+7) = average of the monthly producer price index (CBL) for the latest 12 months available on the seventh (7th) anniversary of the lease.

Royalty rate bid = royalty rate bid at the time of leasing.

- b. Production royalties shall be paid on a ~~monthly~~ QUARTERLY basis on or before the twenty-fifth (25th) day of JANUARY, APRIL, JULY, AND OCTOBER OF EVERY YEAR DURING THE TERM OF THIS LEASE FOR ALL the month following the calendar month in which nonmetallic minerals and/or nonmetallic mineral products were sold DURING THE PRECEDING CALENDAR QUARTER. The LESSEE shall provide ~~monthly~~ QUARTERLY information, such as production volumes and other information, pertinent to the calculation and payment of royalties due the LESSOR in a format provided by the LESSOR.
- c. LESSEE shall secure written authorization of the LESSOR in order to delay any royalty payments beyond the date specified. Payments made after the due dates shall include interest at the rate of 1.5 percent per month, or at the maximum legal rate, whichever is less, on the amount of royalty unpaid. If royalty payments are delayed, or if such authorization is not secured, LESSOR may, at its sole discretion, declare the lease defaulted under the provisions of Section D herein or invoke any other remedies available to LESSOR under the lease.
- d. LESSEE agrees that all royalties accruing to the LESSOR herein shall be without deduction of any costs incurred by the LESSEE unless agreed to in writing by the LESSOR.
- e. The LESSOR is not liable for any taxes incurred by the LESSEE and no tax deductions may be taken in computing the royalty.
- f. LESSEE is responsible to reimburse LESSOR for any collection or legal fees, plus interest at the above rates, which may be required for LESSOR to collect royalties past due from LESSEE. ~~or their agents.~~

3. MINIMUM ROYALTIES In Lieu of Production Royalties

- a. LESSEE may, during the term of this lease, and with the PRIOR concurrence of the LESSOR, suspend production of nonmetallic minerals and/or nonmetallic mineral products from a mining operation area established under the terms of this lease for one year, or longer, at the sole discretion of LESSOR, and may in such case maintain this lease as to those portions of the leased premises contained in a mining operation area by the payment of the determined minimum royalty per year in lieu of production royalties. Suspended production will not extend the term of the lease. Suspended production without PRIOR concurrence of LESSOR shall be determined a default of the lease.
- b. While production is suspended, minimum royalties in lieu of production royalties shall continue to be paid ~~in advance of the lease anniversary date~~ PRIOR TO JANUARY 5TH. Lease rights shall terminate and the LESSEE shall be required to file a release with LESSOR as hereinafter provided whenever these payments shall be and remain unpaid for a period of ten (10) BUSINESS days after the payment is due. LESSOR may, at its sole discretion, waive in writing termination of the lease for unpaid minimum royalties in lieu of production royalty payments upon LESSEE's submittal in writing of proper and satisfactory proof as to cause, along with payment due. Any payments by LESSEE

after the due date shall include interest at the rate of 1.5 percent per month or at the maximum legal rate, whichever is less, on the amount unpaid.

- c. LESSEE's tax obligations, if any, continue as if production were underway.
- d. When LESSEE resumes the production of nonmetallic minerals and/or nonmetallic mineral products on the leased premises, the minimum royalties paid in the current year in lieu of production royalties for those lands included in the mining operation area shall be credited against future production royalties payable under this lease to the LESSOR for the current lease year only.

D. DEFAULT OF LEASE

1. All mine reclamation requirements are the obligation of the LESSEE as defined in Section H I, regardless as to the circumstances involved in the releasing of the rights to mine or the termination of the lease. The right to mine under this lease may be forfeited. However, forfeiture of mining rights will not relieve LESSEE of any obligations for reclamation of the premises.
2. In the event the LESSOR shall determine a default in the performance by the LESSEE of any express or implied covenant of this Lease, the LESSOR shall give notice, in writing, by ~~personal service or~~ certified or REGISTERED United States mail, return receipt requested, to the LESSEE's last known address, specifying the facts by which default is claimed. Except as to MINIMUM ROYALTY, PRODUCTION royalty OR MINIMUM ROYALTY IN LIEU OF PRODUCTION ROYALTY requirements as herein provided, the LESSEE shall have thirty (30) calendar days from the date such notice is mailed in which to satisfy the obligation of the LESSEE, if any, with respect to the LESSOR's notice, OR PROVIDE LESSOR SATISFACTORY PROOF THAT LESSEE IS NOT IN DEFAULT, OR IF IN DEFAULT AND LESSEE IS NOT ABLE TO CURE WITHIN THIRTY (30) DAYS, LESSEE SHALL SUBMIT FOR LESSOR'S APPROVAL A PERFORMANCE SCHEDULE WITH A DATE CERTAIN TO SATISFY OR CURE DEFAULT OF LESSEE.
3. IF THE DEFAULT IS NOT CURED, AS PROVIDED ABOVE, LESSOR MAY TAKE POSSESSION OF THE LEASED PREMISES OR ANY PART THEREOF, AND ALL NONMETALLIC MINERALS AND/OR NONMETALLIC MINERAL PRODUCTS, MACHINERY, FIXTURES, IMPROVEMENTS, AND LESSEE'S PERSONAL PROPERTY ON THE LEASED PREMISES AND DECLARE THIS LEASE TERMINATED AND LESSEE'S RIGHTS FORFEITED. RE-ENTRY BY LESSOR DOES NOT ELIMINATE ANY OTHER LEGAL REMEDY BY LESSOR. No tools, fixtures, machinery or other property of the LESSEE shall be removed from said premises, if any royalties, damages, or other payments are due to the LESSOR, and all sums due on royalties, damages, or other payments, shall be a lien on all implements, tools, movable machinery, and all other chattels used in operating said property, and also upon all of the unsold limestone and/or dolomite obtained from the land herein leased, as security for the payment of said royalties, damages, or other payments. THIS LIEN MAY BE FORECLOSED IN THE MANNER AS CHATTEL MORTGAGES ARE FORECLOSED.
4. IN ADDITION TO ANY OTHER REMEDY, THE LESSOR MAY DRAW UPON THE BOND OR LETTER OF CREDIT AS PROVIDED IN SECTION E.
5. IN ADDITION TO ANY OTHER REMEDY, THE LESSOR, AT THE LESSOR'S SOLE OPTION, MAY DETERMINE THAT THE LESSEE CAN BE PLACED ON THE "HOLD ACTION" LIST UNTIL SUCH TIME AS ANY AND/OR ALL INFRACTIONS BY THE LESSEE HAVE BEEN RESOLVED TO THE SATISFACTION OF THE LESSOR. PLACEMENT ON SAID LIST MAY RESULT IN BARRING THE LESSEE FROM ANY FURTHER LEASES, ASSIGNMENTS, EASEMENTS, OR OTHER APPROVALS REQUIRED BY THE LESSEE. HOWEVER, PLACEMENT ON SAID LIST DOES NOT ELIMINATE THE LESSOR'S ABILITY TO FORFEIT ANY OR ALL PARTS OF SAID LEASE UNDER D(5).
6. IF LESSEE FAILS TO ADDRESS ANY CLAIM OF DEFAULT AS HEREIN PROVIDED, THE LESSOR MAY PROCEED, AT ITS SOLE DISCRETION, WITH FORFEITURE OF ALL OR PART OF SAID LEASED PREMISES IN ACCORDANCE WITH THE PROVISIONS OF ACT 81 OF THE PUBLIC ACTS OF 1929, BEING SECTION 554.281 AND 554.282 OF MICHIGAN COMPILED LAWS.
7. Should the LESSEE be prevented from complying with any express or implied covenant of this Lease, from conducting operations thereon, or from producing limestone and/or dolomite therefrom, after effort made in good faith, for any cause beyond the reasonable control of the LESSEE, such as, but not limited to war,

rebellion, riots, strikes, acts of God, or an order or rule of governmental authority, then while so prevented, the LESSEE's obligation to comply with such covenant shall be suspended upon proper and satisfactory proof presented to the LESSOR in support of the LESSEE's contention.

The LESSEE shall not be liable for damages for failure to comply therewith except in the event of lease operations suspended for wrongful acts or omissions of the LESSEE. This Lease shall be extended as to such portion of the leased premises as, while, and so long as the LESSEE is prevented, by any such cause, from producing limestone and/or dolomite thereon or therefrom, provided, however, that nothing herein shall be construed to suspend the payment of royalties as herein provided.

The LESSEE is expected to make application for all separate written permissions required by governmental agencies, including but not limited to easements, mining permits, and surface use permits, prior to production under the Lease. LESSEE's obligations under this Lease shall not be excused by failure to make timely applications for permits, annual frost law road restrictions, winter snow conditions or other conditions which are reasonably foreseeable.

E. PERFORMANCE BOND

1. ~~As required by R299.4006 (3), before a lease will be executed for limestone and/or dolomite production, the LESSEE shall file with the LESSOR a lease performance bond, in an amount established by the LESSOR, to cover costs incurred by the LESSOR due to breach of any clause contained herein by the LESSEE, including but not limited to the costs of any enforcement actions necessary on the part of the LESSOR, costs of any necessary environmental remediation, clean-up or site restoration and AS A GUARANTEE OF ITS FAITHFUL PERFORMANCE OF ITS OBLIGATIONS UNDER THIS LEASE, THE LESSEE SHALL FILE HERewith A PERFORMANCE BOND, ACCEPTABLE TO THE LESSOR, conditioned that the LESSEE, its heirs, executors, administrators, successors, and assigns, shall faithfully perform the covenants, conditions, and agreements specified in the Lease, and the laws and rules of the State of Michigan which apply.~~
2. THE LESSOR SHALL DETERMINE, AND SET FORTH IN A PUBLISHED SCHEDULE, THE INITIAL ACCEPTABLE AMOUNT REQUIRED FOR THE PERFORMANCE BOND. THE LESSOR SHALL ANNUALLY REVIEW THE LEVEL OF THE PERFORMANCE BOND AND SHALL REQUIRE THE AMOUNT OF THE BOND TO BE INCREASED OR DECREASED TO REFLECT CHANGES IN THE COST OF FUTURE RECLAMATION OF THE LEASED PREMISES. A REVIEW OF THE PERFORMANCE BOND SHALL BE MADE WITHIN THIRTY (30) DAYS OF RECEIPT BY LESSOR OF WRITTEN NOTICE OF TERMINATION BY THE LESSEE AND SHALL CONSIDER ADEQUACY OF BOND FOR REMOVAL OF PERSONAL PROPERTY NOT DESIRED BY EITHER LESSEE OR LESSOR.
3. The LESSEE shall keep in full force and Effect a sufficient lease performance bond to cover the acreage held under this Lease. If the amount of the lease performance bond in effect becomes depleted or partially depleted because of any claim or claims, the LESSEE shall file a new or additional lease performance bond as required by the LESSOR.
4. LIABILITY UNDER THE BOND SHALL BE FOR THE DURATION OF EXPLORATION, MINING, AND RECLAMATION OPERATIONS AND FOR A PERIOD COINCIDENT WITH LESSEE'S RESPONSIBILITY UNDER THE APPROVED RECLAMATION PLAN.
5. ~~The LESSOR may invoke part or all of the ENTIRE lease performance bond when it determines that part or all of the covenants, conditions, or agreement specified in the Lease are not being fulfilled, AND SHALL NOTIFY LESSEE. INVOKING THE PERFORMANCE BOND IS NOT NECESSARILY RELATED TO ANY ACTION TAKEN BY LESSOR UNDER SECTION D OF THIS LEASE.~~
8. ~~In addition to invoking a part of or all of the lease performance bond noted under D(7), the LESSOR, at the LESSOR's sole option, may determine that the LESSEE be placed on a "Hold Action" list until such time as any and/or all infractions by the LESSEE have been resolved to the satisfaction of the LESSOR. Placement on said list may result in barring the LESSEE from any further leases, assignments, easements, extensions or other approvals required by the LESSOR. However, placement on said list does not eliminate the LESSOR's ability to forfeit any or all parts of said Lease under D(9).~~
9. ~~If the LESSEE fails to voluntarily satisfy the claim of default as herein provided relative to any condition or any express or implied covenants of this Lease, the LESSOR may proceed, at its sole discretion, with forfeiture of~~

~~all or part of said leased premises in accordance with the provisions of Act 81 of Public Acts of 1929, being Sections 554.281 and 554.282 of the Michigan Compiled Laws with invocation of all or part of the lease performance bond or with any combination thereof.~~

- ~~10. LESSOR reserves the right to recover any and all staff and attorney fees and costs associated with any legal action required of the lease from LESSEE associated with carrying out the provisions of Section D (default of lease) of the lease.~~

F. ASSIGNMENTS AND CONTRACTS

1. No assignments of this lease, or any rights hereunder, shall be valid except upon written approval of the LESSOR, and upon payment of an administrative fee as established by the LESSOR in a published schedule. Such approval shall not be unreasonably withheld. Application for assignment must be submitted in a format designated by LESSOR.
2. Assignments by LESSEE of any portion of the leased premises shall be construed as creating a separate lease agreement as to the acreage or portions assigned. Development on the assigned acreage, after the assignment has been made, shall not affect the rate of royalties or term of the lease on the unassigned acreage; and, conversely, development on the unassigned acreage, after the assignment has been made, shall not affect the rate of royalties or term of the lease on the assigned acreage.
3. If the LESSEE's interest or any part thereof is assigned, each and every clause and covenant hereof shall extend to the assignee, its or their heirs, executors, administrators, successors, agents, or assigns.

G. SURFACE USE DAMAGE PAYMENTS

1. LESSEE shall pay or agree upon payment to the surface owner, or any person, or governmental agency, holding under the owner, for all damages or losses (including any loss of the use of all or part of the surface) caused directly or indirectly by operations hereunder, whether to growing timber or farm crops, buildings, to any person or property, or to other operations. AUTHORIZATION TO UTILIZE THE SURFACE FOR ANY FACILITY OR STRUCTURE SHALL BE GRANTED BY A SURFACE USE LEASE, OR OTHER SEPARATE WRITTEN PERMISSION, APPROVED BY THE LESSOR. THE SURFACE USE LEASE, OR OTHER SEPARATE WRITTEN PERMISSION, SHALL SPECIFY THE TERMS OF USE, RENTAL AMOUNT, AND REQUIREMENTS FOR ABANDONMENT AND RESTORATION OF THE SITE(S).
2. Before mining operations may be commenced on the land in which the State of Michigan owns mineral rights only, and as described in this lease, proof shall be submitted to the LESSOR, in writing, that either voluntary agreement or stipulated settlement relative to surface use and damages has been reached between the LESSEE or LESSEE's authorized agent and the surface owner, or F G(3) is invoked.
3. When a mutually satisfactory agreement relative to surface use and damages cannot be reached, either party can inform the LESSOR, in writing, that a dispute exists and LESSOR will notify both parties and will grant a negotiation period of thirty (30) days in which no mining operations may be conducted by the LESSEE. This time period is to allow for the resolution of the dispute. If, at the end of this period, proof of the agreement is not submitted in writing to the LESSOR, mining operations will not be prohibited by the LESSOR and resolution of the dispute rests solely with the LESSEE and the surface owner independent of the LESSOR.

H. RECORDS AND REPORTS

1. Production Reports
 - a. LESSEE shall keep an accurate account of all mining operations under this lease, including daily production volumes, SALES, PRICES, AND DATES OF SAME, and shall submit to LESSOR at the time of each ~~monthly~~ QUARTERLY payment of production royalties, a signed CERTIFIED statement, showing the quantities of the specified nonmetallic minerals and/or nonmetallic mineral products produced in the past ~~month~~ QUARTER. The quantities sold and their sales value, quantities otherwise disposed of from the leased premises, and methods used to determine same shall be submitted at lease termination.

All specified nonmetallic minerals and/or nonmetallic mineral products produced from the leased premises and further processed or combined with other materials within the mining operation or leased area shall be weighed, gauged, or measured prior to any additional processing or combining with other materials.

- b. If any specified nonmetallic minerals and/or nonmetallic mineral products produced from the leased premises are transported to a point outside of the mining operation area before being weighed, gauged or measured, LESSEE shall have all the material weighed, gauged or measured by the transporting firm and shall furnish LESSOR with the transporter's statements of the weights of all shipments during the preceding ~~month~~ QUARTER. Any written certificate or statement of any transporter concerning any shipment from the leased premises and its weight, and any copies of transcripts from the books of any transporter concerning shipments or their weights SHALL ~~may~~ be PRIMA FACIE admitted as evidence of those facts in any suit or controversy between LESSEE and LESSOR.
- c. LESSEE shall also furnish LESSOR with annual reports on the anniversary date of the lease BY MARCH 31ST OF THE FOLLOWING CALENDAR YEAR. THE ANNUAL REPORT WILL INCLUDE of the status of mining development and reclamation efforts to date and current mine maps of the leased premises and premises from which specified nonmetallic minerals and/or nonmetallic mineral products are mined, showing the area mined, as well as any other pertinent information to determine royalties. ANNUAL REPORTS DETAILING THE PREVIOUS CALENDAR YEAR'S REVENUE PAYMENTS WILL BE SUBMITTED BY THE LESSEE IN A FORMAT PROVIDED BY THE LESSOR.
- d. Upon termination of this lease or surrender of any part of the leased premises, LESSEE shall furnish to LESSOR an up-to-date report of all mining development and reclamation efforts conducted by LESSEE on that part of the leased premises. This report shall contain suitable maps and information on the location and extent of surface workings, and other pertinent information, including the following:
- (i) ~~The TONNAGE (or equivalent unit of measure)~~ of all commingled specified nonmetallic minerals and/or nonmetallic mineral products mined from the leased premises.
 - (ii) ~~The tonnage (or equivalent unit of measure)~~ of all commingled specified nonmetallic minerals and/or nonmetallic mineral products as determined at the first point at which an actual weight measurement is taken.
 - (iii) ~~The tonnage (or equivalent unit of measure)~~ of specified nonmetallic minerals and/or nonmetallic mineral products from all premises, including the leased premises, processed at the processing plant, less losses which can be accounted for by LESSEE.
 - (iv) The tonnage and average grade of concentrates or remaining product derived from the leased premises and all commingled specified nonmetallic minerals and/or nonmetallic mineral products.
 - (v) The tonnage of processed specified nonmetallic minerals and/or nonmetallic mineral products produced.
 - (vi) ~~The tonnage (or equivalent unit of measure)~~ of specified nonmetallic minerals and/or nonmetallic minerals produced, from which processed specified nonmetallic minerals and/or nonmetallic mineral products were produced.
 - (vii) Copies of receipts from sales of specified nonmetallic minerals and/or nonmetallic mineral products.
 - (viii) Such additional data on production and sales as may be necessary to determine royalty.
- e. LESSEE shall, at the sole discretion of the LESSOR, submit to an audit of all transactions, contractual agreements RELATIONSHIPS, VOLUME, and production, SALES, VALUATION, INVOICES, or such other records as LESSOR may determine appropriate which are related to

establishment of the removed mined tonnage GROSS PROCEEDS, DEDUCTIONS, THE STATE OF MICHIGAN'S DECIMAL INTEREST AND CORRESPONDING CORRECTNESS OF ROYALTY PAYMENTS, OR ANY OTHER TYPES OF PAYMENTS used to calculate the correct royalty due TO the LESSOR. The audit may be performed by the LESSOR, or contracted for by the LESSOR, at THE LESSOR's discretion. The LESSEE shall be responsible for the cost of the audit if, based upon the final audit report, any underpayment of royalty calculated before interest is in excess of five percent (5%) of the payment made for the audit period.

2. Waste and Unused Materials Reports

- a. LESSEE shall keep an accurate and cumulative record of the waste and unused materials, and LESSEE shall annually furnish LESSOR a waste and unused materials report for the preceding lease- CALENDAR year BY MARCH 31ST OF THE FOLLOWING CALENDAR YEAR. on the anniversary date of the lease.
- b. The waste and unused materials from this lease shall belong to the LESSOR.
- c. In order to make maximum use of the resources, now and in the future, LESSEE shall stockpile all waste and unused materials in size classified designated waste and storage areas of the lease as defined by the mining and mine reclamation plans approved by LESSOR.

3. Site Resource Exploration and Development Reports

- a. In the event any site resource exploration and development studies are conducted under this lease, the LESSEE shall retain and store all factual site resource exploration and development data and records at a location(s) mutually agreeable with LESSOR and LESSEE. The LESSOR retains the right to examine all such data and records, including representative material samples from drill holes, test pits, etc., along with geologic data, geophysical test and drill hole data, maps, and reports IN SUCH A MANNER AS TO RESPECT THE CONFIDENTIALITY OF SUCH DATA AND RECORDS AS MAY BE PROVIDED FOR UNDER PART 625 OF THE NREPA OR OTHER APPLICABLE STATUTES.
- b. Upon termination of this lease or surrender of any part of the leased premises, LESSEE shall furnish to LESSOR any representative material samples requested by LESSOR, and an up-to-date report of any and all site resource exploration and development studies conducted by LESSEE on that part of the leased premises. Final reports shall contain copies of all factual data generated from any and all site resource exploration and development activities on the leased premises as of the date of surrender, including data, records, and materials listed in "a." above.

I. MINING AND RECLAMATION OPERATION

1. LESSEE Reclamation Obligation

- a. LESSEE is obligated to comply with all steps of the approved mining and reclamation plan prior to complete termination of the lease and return of the bond.
- b. Reclamation efforts and requirements are triggered by termination of the lease due to time limitation of the lease, voluntary termination, or through default of the lease agreement by LESSEE.
- c. LESSOR will use all legal avenues to obtain the required reclamation efforts, including revocation of the performance bond and legal actions.

2. Mining and Reclamation Plan

- a. No mining shall take place on leased premises without a LESSOR approved mining and reclamation plan developed by LESSEE based upon requirements of AND APPROVED BY LESSOR.
- b. If the surface rights are not owned by the LESSOR, LESSEE WILL PROVIDE CURRENT SURFACE OWNER INFORMATION, AND the LESSOR shall notify the surface owner and provide an opportunity of 20 work days to review and comment on the plan prior to its approval.

- c. LESSEE shall reclaim the surface of the leased premises in accordance with the approved mining and reclamation plan. The reclamation shall proceed concurrently with mine production in accordance with this plan and shall be completed following termination of mine operation and prior to the termination of the lease.
- d. A mining and reclamation plan for the leased premises shall be developed to ENSURE to the maximum extent practicable that:
- (i) Mining and extraction operations do not have significant adverse impacts on WATER QUALITY, air QUALITY, plant, wildlife OR fishery, surface and groundwater resources, and wetlands of the S State, or on public safety.
 - (ii) Waste and unused material piles are located, designed and utilized to minimize the threat to public safety, to minimize impact to resources, to minimize negative impacts on aesthetics, TO PREVENT INTRODUCTION OF INVASIVE SPECIES, and to allow prescribed reclamation.
 - (iii) Mining is conducted in a manner which will prevent or mitigate hazardous conditions.
 - (iv) Areas are reclaimed in an acceptable manner given prior uses, necessary disruption caused by mining operations, reclamation techniques, the public trust in the natural resources, and applicable statutes, laws, rules, and ordinances.
- e. The mining and reclamation plan shall include the following:
- (i) Accurate plan maps, with appropriate scale, and other supporting data showing:
 - (a) Location of the proposed mining operation area.
 - (b) Resources proposed to be affected throughout the mining phase, including existing groundwater, streams, lakes, wetlands, floodings and impoundments, threatened and endangered species, and significant plant and animal communities. Proposed protection and mitigation measures should be included where applicable.
 - (c) Description of proposed development of the mining operation area including materials handling and overburden stripping plans on the leased premises.
 - (d) Product and raw materials storage areas and loading facilities.
 - (e) Proposed and alternative locations, where feasible, and designs of waste, waste material, and unused material piles, settling basins, tailings treatment basins, and topsoil and subsoil storage.
 - (f) Existing and proposed buildings, utility corridors, roads, and auxiliary facilities to be used and/or constructed on leased lands.
 - (g) Land contours, both existing prior to development and proposed after reclamation.
 - (ii) A description of proposed reclamation of the mining operation area on the leased premises including:
 - (a) A description of the capacity of the land to support its anticipated use or uses following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses after reclamation.
 - (b) Provisions for grading, establishing self-sustaining NON-INVASIVE vegetation and stabilization that will minimize erosion and sedimentation and public health and safety problems of pits, banks, waste piles and waste material piles, roads and tailings basins during and upon completion of the mining phase.

- (c) Provisions for buffer areas, landscaping and screening.
 - (iii) Estimated timetables necessary for accomplishing the events contained in the mining and reclamation plan shall be developed by LESSEE and approved by LESSOR.
 - (iv) Evidence that all necessary permits and licenses required by Federal, State and Local units of government have been obtained, as provided by the LESSEE.
- f. The LESSOR WILL APPROVE OR REJECT THE PLAN WITHIN ONE HUNDRED TWENTY (120) DAYS OF RECEIPT OF A COMPLETE MINING PLAN FROM THE ~~and~~ LESSEE. IF THE LESSOR REJECTS THE PLAN, LESSOR WILL IDENTIFY THOSE ELEMENTS OF THE PLAN INVOLVING ACTIVITIES ON THE LEASED PREMISES WHICH ARE LIKELY TO POLLUTE, IMPAIR, OR DESTROY THE AIR, WATER, OR OTHER NATURAL RESOURCES OR THE PUBLIC TRUST THEREIN, OR ARE OTHERWISE UNACCEPTABLE. THE LESSOR WILL ALSO IDENTIFY THOSE ALTERNATIVES OR MITIGATING MEASURES (IF ANY) WHICH COULD MAKE THE PLAN ACCEPTABLE. A MEETING SHALL BE HELD BETWEEN THE LESSEE AND THE LESSOR WITHIN SIXTY (60) DAYS OF THE REJECTION OF THE PLAN IN AN ATTEMPT TO RESOLVE DIFFERENCES IN THE PLAN, SHOULD EITHER PARTY REQUEST IT. NOTICE OF SUCH LESSOR ACTIONS AND ANY MEETINGS SHALL BE TIMELY MADE TO CONCERNED PARTIES. IF LESSOR DENIES THE PLAN, LESSEE MAY RESUBMIT A PLAN(S) WITHOUT PREJUDICE. ~~shall meet and discuss the plan prior to commencement of any operations under the lease. Prior to beginning mining operations each year, an application to commence or continue mining shall be submitted to LESSOR. The application shall be accompanied by updates to the plan and a fee to cover LESSOR'S costs of review or monitoring as provided by law. Any mining changes to the annual updated mining and reclamation plan shall be approved by LESSOR prior to start of mining each year.~~
- g. ~~Proposed and alternative locations/methods of disposal for tree tops, branches, roots, stumps and other vegetational debris generated during clearing activity shall be part of the plan.~~
- g. Any change(s) proposed by LESSEE in an approved plan shall be prepared and submitted as an ~~application for a modified plan IN ACCORDANCE WITH SECTION H I(2) ABOVE. to LESSOR. If the(se) change(s) would result in the need for amendments of any permits or licenses issued by Federal, State or Local units of government, these amendments shall be obtained prior to submitting a modified plan and shall be attached to this plan. Any such changes shall not be commenced until LESSOR has reviewed and approved such modified plan.~~

J. STORAGE OF PRODUCT, AND WASTE AND UNUSED MATERIALS

1. Waste and Unused Materials and Tailings Disposal

~~Waste and unused materials resulting from the mining and processing operations shall be deposited managed by the LESSEE in accordance with the approved mining and reclamation plan. Waste and unused materials shall not be deposited on other premises without a mutually agreed upon method of accounting for the LESSOR's interest.~~

2. Stockpiling

~~Specified nonmetallic minerals and/or nonmetallic mineral products taken from the leased premises, whether stockpiled or otherwise, shall at all times be kept separate and distinct from any other nonmetallic minerals and/or nonmetallic mineral products obtained from other sources, until measured and sampled to determine and preserve the rights and liens of the LESSOR therein.~~

K. TAXES

1. ~~LESSEE, or agent, shall pay all taxes and assessments, whether general, special or specific, including but not limited to property taxes on personal property, levied upon the leased premises, on any part thereof, or any property or improvements on the leased premises. If the State, as LESSOR, only owns and leases mineral ownership, LESSEE must have a signed agreement with the private surface owner as to any~~

~~additional property tax obligations due to the sand and gravel extraction operation being located upon said property.~~

2. Upon the termination of this lease for any cause and with respect to any of the leased premises, LESSEE, ~~or agent,~~ shall pay the taxes and assessments whether general, special, or specific, assessed or levied on all of the leased premises for the entire calendar year.
3. LESSEE, ~~or agent,~~ shall have the right consistent with statutes in such cases made and provided to contest the validity of any tax and assessment whether general, special, or specific, and may seek its cancellation, reduction, readjustment or equalization.
4. LESSEE, ~~or agent,~~ shall not permit the leased premises, any part thereof, any nonmetallic minerals and/or nonmetallic mineral products, or any improvements or personal property thereon, to be sold at any time for any taxes or assessments whether general, special or specific.

L. PROTECTION OF PROPERTY AND PUBLIC SAFEGUARDS

1. LESSEE, ~~or agent,~~ shall not alter, or authorize others to alter, the leased premises ~~except as authorized by the lease.~~
2. LESSEE, ~~or agent,~~ shall maintain for the term of this lease, proper fences or other protective barriers around any OPEN PITS, SHAFTS, OR OTHER openings on the leased premises created by LESSEE. LESSEE shall further employ all reasonable and practical safeguards for the protection of all persons entering in or upon such leased premises used or occupied by LESSEE in conjunction with operations under this lease.
3. At the termination of this lease, in whole or in part, for whatever reason, LESSEE shall surrender the leased premises to LESSOR in a safe condition. All pits, openings, and other dangerous areas created by LESSEE, ~~or agent,~~ shall be fenced, filled, or protected so as to adequately protect public safety to the satisfaction of LESSOR. ~~Post-mining and lease termination requirements to fulfill the conditions of this section shall be specified in the Mining and Reclamation Plan under Section H. I of this lease.~~

M. LAWS, RULES AND REGULATIONS

1. Any operations under this lease shall be subject to all applicable ~~Local, FEDERAL, AND S-STATE, AND LOCAL~~ laws, AND rules or ordinances now or hereafter in force. This lease is not in itself an authorization to mine. In addition to compliance with the provisions of this lease, LESSEE must obtain all permits which may be or are required under FEDERAL, STATE, AND LOCAL ~~Local, Federal and State~~ laws, or any rules or ordinances adopted thereunder.
2. NO RULES ADOPTED BY THE STATE OF MICHIGAN OR ANY AGENCY THEREOF AFTER THE APPROVAL OF THIS LEASE SHALL OPERATE TO AFFECT THE TERM OF THE LEASE, RATE OF PRODUCTION ROYALTY, RENTAL, PAYMENTS IN LIEU OF PRODUCTION ROYALTIES, MINIMUM ROYALTIES, OR ACREAGE, UNLESS AGREED TO BY BOTH PARTIES.

N. INSURANCE

1. LESSEE shall obtain and maintain all worker's compensation insurance as required by ~~S~~ State law in accordance with ~~Act 317 of Public Acts of 1969 PA 317,~~ as amended, as well as liability insurance and policies of insurance against risks in amounts customarily obtained in similar mining operations, and shall furnish LESSOR proof of insurance prior to the commencement of any operations, and provide annual Certificates of Insurance.
2. All insurance shall be maintained by LESSEE at its own expense. ~~The companies issuing such policies shall also be required to furnish the LESSOR written notice thirty (30) days prior to cancellation, termination, or other change of any insurance. THE LESSEE SHALL, AT LESSEE'S EXPENSE, DURING THE TERM OF THE LEASE AND ANY EXTENSIONS THEREOF, OBTAIN AND MAINTAIN INSURANCE WHICH INSURES THE PREMISES FOR PUBLIC LIABILITY IN AMOUNTS NOT LESS THAN THOSE SET BELOW, NAMING THE STATE OF MICHIGAN, ITS SEVERAL DEPARTMENTS, COMMISSIONS, BOARDS, OFFICERS, AND EMPLOYEES AS ADDITIONAL INSURED, AND PROTECTING AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS OR CAUSES OF ACTION AND JUDGEMENTS, SETTLEMENTS~~

OR RECOVERIES, FOR BODILY INJURY, DEATH, OR PROPERTY DAMAGE ARISING OUT OF LESSEE'S USE OR OCCUPANCY OF OR OPERATIONS CONDUCTED UPON THE LEASED PREMISES. LESSEE AGREES TO MAINTAIN MINIMUM POLICY LIMITS IN THE AMOUNT OF \$1,000,000 PER OCCURRENCE FOR PROPERTY DAMAGE AND \$1,000,000 PER OCCURRENCE FOR BODILY INJURY OR DEATH, AND TO PROVIDE THE STATE WITH A CERTIFICATE OF INSURANCE, WITHIN THIRTY (30) DAYS FOLLOWING FINAL EXECUTION AND DELIVER OF THIS LEASE TO LESSEE. THE COMPANIES ISSUING SUCH POLICIES SHALL ALSO BE REQUIRED TO FURNISH THE LESSOR WRITTEN NOTICE THIRTY (30) DAYS PRIOR TO CANCELLATION, TERMINATION, OR OTHER CHANGE OF ANY SUCH INSURANCE. THE LESSOR SHALL PERIODICALLY REVIEW THE LEVEL OF THE INDEMNIFICATION INSURANCE AND MAY REQUIRE THE AMOUNT OF SUCH INSURANCE TO BE INCREASED OR DECREASED TO REFLECT CHANGES IN RISK EXPOSURE.

O. INDEMNIFICATION

1. ~~In connection with all of its operations under this lease, the LESSEE, or agent, will save, protect and hold harmless the LESSOR against any and all claims, demands, or judgments for loss, damage, death or injury to persons or property arising out of the LESSEE's, or agent's, activities or operations on the leased premises, except with respect to claims of the LESSOR, its assigns, contractors, employees, successors or agents unless the claims arise as a result of negligence or other tortious conduct of the LESSEE, or agent, or violations of the terms of this lease by LESSEE, or agent. LESSOR shall give prompt notice to LESSEE, or agent, of any third party claim for injuries or damage made against LESSOR.~~

LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR, ITS DEPARTMENTS, AGENCIES, BOARDS, COMMISSIONS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM ALL CLAIMS, DEMANDS, ACTIONS, OR LIABILITY FOR PROPERTY DAMAGE, PERSONAL INJURY OR DEATH SUSTAINED BY ANY PERSON ARISING IN ANY MANNER OUT OF LESSEE'S USE OF THE PREMISES OR FROM ANY ACT OR OMISSION OF LESSEE IN EXERCISING ITS RIGHTS UNDER THIS LEASE.

2. ~~The LESSEE shall, at LESSEE's expense, during the term of the lease and any extensions thereof, obtain and maintain insurance which insures the premises for public liability in amounts not less than those set forth below naming the State of Michigan, its several departments, commissions, boards, officers and employees as an additional insured and protecting against all claims, demands, actions, suits or causes of action, and judgments, settlements or recoveries, for bodily injury, death or property damage arising out of LESSEE's use or occupancy of or operations conducted upon the leased premises. LESSEE agrees to maintain minimum policy limits in the amount of \$1,000,000 per occurrence for property damage and \$1,000,000 per occurrence for bodily injury or death, and to provide the State with a Certificate of Insurance within thirty (30) days following final execution and delivery of this lease to LESSEE. The companies issuing such policies shall also be required to furnish the LESSOR written notice thirty (30) days prior to cancellation, termination, or other change of any such insurance. The LESSOR shall periodically review the level of the indemnification insurance and may require the amount of such insurance to be increased or decreased to reflect changes in risk exposure.~~

P. LESSOR RIGHTS

1. LESSOR retains all of its timber, coal, oil and/or gas and other metallic and nonmetallic mineral interests in the leased premises and any nonmetallic minerals or rights not included in this lease, and reserves the right to make any use of the leased premises which may be undertaken without detriment to the rights and privileges herein specifically granted. LESSOR may relinquish its timber rights on the uncleared and unmined portion of the premises for the duration of the lease to LESSEE upon payment to LESSOR of a fee based upon the current timber consideration fee schedule.
2. LESSOR shall not be liable for any damages resulting from failure of its title to rights included herein; provided, however, that if the LESSOR's title fails as to any or all of the rights covered by this lease, the LESSOR shall refund to the LESSEE all minimum royalties, production royalties or payments in lieu of production royalties made by the LESSEE attributable to that part or portion of, or interest in, the title which has failed.

3. Should LESSOR be prevented from complying with any express or implied covenant of this lease because of a force majeure (i.e., for any cause beyond the reasonable control of the LESSOR such as, but not limited to, acts of God, legislative action, rules of any other governmental body, any judgment or injunctive order entered by a court of competent jurisdiction, acts of the public enemy, riots, strikes, labor disputes, labor or material shortages, fire, or flood), then such covenant shall be suspended to the extent made necessary by the aforesaid force majeure. LESSOR WILL NOTIFY LESSEE IMMEDIATELY, AND UPDATE THE LESSEE IN A TIMELY FASHION.
4. LESSOR, and any of its authorized employees, may at all times enter upon the leased premises and ascertain compliance with any condition of this lease and the kind, qualities and quantities of nonmetallic minerals and/or nonmetallic mineral products on the leased premises or removed therefrom. LESSOR shall also have the right to check the movement of nonmetallic minerals, specifically limestone and/or dolomite, and/or their nonmetallic mineral products from the workings of the leased premises to storage and to the processing plant; to be present at all measuring, gauging, weighing, and sampling stations; and to take samples and to observe the flow of these specific nonmetallic minerals and/or nonmetallic mineral products from the leased premises through the processing plant. The LESSOR shall have the right upon reasonable notice to examine the books, records, and supporting documents of the LESSEE insofar as they relate to the amount of production and sale of these specific nonmetallic minerals and/or nonmetallic mineral products derived from the premises herein leased. 'Reasonable notice' means a maximum of three (3) working days advance notice to LESSEE.
5. Unless the leased premises and adjoining or nearby properties are within a common mining operations area, LESSOR reserves the right to deny to THE LESSEE use of the leased premises for operations in connection with LESSEE's operations on adjoining or nearby PROPERTY OR properties.

Q. LESSEE RIGHTS

1. LESSEE may from time to time surrender all or any part of the premises herein leased by giving notice in writing to the LESSOR. LESSEE shall not escape any prior obligation of the lease by filing a release. If the lease being surrendered has been recorded by the Register of Deeds, upon LESSOR'S approval of LESSEE's surrender, LESSEE shall execute and deliver to the Register of Deeds in the county wherein the land is situated, for recording a proper and sufficient instrument of release of all of LESSEE's rights and interest under this lease, insofar as they apply to the premises surrendered, and shall have said instrument delivered to the LESSOR within thirty (30) days after recording with Register of Deeds.
2. LESSEE may at any time remove all machinery and fixtures placed on the leased premises by the LESSEE, provided however that said LESSEE has complied with and fulfilled all other provisions of the lease as herein provided.
3. At NEARING the termination of the lease by any means except default under Section D of this lease, and with LESSEE's fulfillment of all lease obligations, covenants, agreements and context of this lease, LESSEE shall have removed all tools, machinery, structures and all other property situated on the leased premises as to which this lease is being terminated, except any supports placed in openings, any timbers, framework or fences necessary to the use and maintenance of openings, approaches to operating pit, or dikes, water level control structures, roads, or other developments as specified by LESSOR and mutually agreed to by LESSOR and LESSEE. If LESSEE fails to remove its property by the lease termination, the property shall become the property of LESSOR and may be removed by LESSOR with expenses recovered from the performance bond. By agreement of the parties, any of LESSEE's property on the leased premises may become the property of LESSOR.
4. ~~Following~~ IN the CONDUCT OF approved mining and mine reclamation plans on the leased premises, the LESSEE is hereby granted the right to mine and remove the nonmetallic minerals specified to be limestone and/or dolomite, or their nonmetallic mineral products included in this lease by means of openings or pits which may be sunk or made upon adjoining or nearby premises owned or controlled by the LESSEE, and may stockpile any of the specified nonmetallic minerals and/or nonmetallic mineral products from the leased premises or any part thereon upon stockpile ground situated upon any such adjoining or nearby premises. ~~Before products subject to the lease may be stockpiled off lease premises, LESSEE must have prior written approval of LESSOR and provide accurate records of product measurements and sampling to determine and preserve the rights and liens of the LESSOR therein. Prior written authorization of property owner at the adjacent stockpile location must be presented to LESSOR at time of permission request.~~

5. LESSEE may install, maintain and use roads, pipelines, electric transmission lines, and other facilities which are located on surrendered portions of the leased premises, with written consent of LESSOR, and payment of surface use fees as determined by the LESSOR, so long as they are reasonably necessary to LESSEE's operations on leased premises remaining under this agreement. All installations must meet LESSOR'S specifications.
6. LESSEE may mix the specified nonmetallic minerals and/or nonmetallic mineral products taken from the leased premises with any other nonmetallic minerals and/or nonmetallic mineral products from other premises after the nonmetallic minerals and/or nonmetallic mineral products from the leased premises have been measured and sampled to determine and preserve the rights and liens of the LESSOR therein.

R. EXPLORATION OPERATIONS

1. EXPLORATION PLAN

- a. NO EXPLORATION ACTIVITY SHALL TAKE PLACE ON LEASED PREMISES WITHOUT AN EXPLORATION PLAN DEVELOPED BY LESSEE AND APPROVED BY LESSOR.
- b. IF THE SURFACE RIGHTS ARE NOT OWNED BY THE DEPARTMENT, THE DEPARTMENT SHALL NOTIFY THE SURFACE OWNER AND PROVIDE AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PLAN PRIOR TO ITS APPROVAL.
- c. PRIOR TO COMMENCEMENT OF EXPLORATION AND ANNUALLY THEREAFTER ON THE LEASE ANNIVERSARY, THE LESSEE SHALL SUBMIT TO THE LESSOR FOR APPROVAL A PLAN OUTLINING LESSEE'S PROPOSED EXPLORATION ACTIVITIES ON THE LEASED PREMISES DURING THE ENSUING YEAR AND EXPLORATION CONDUCTED TO DATE, IF ANY.
- d. THE EXPLORATION PLAN SHALL CONTAIN THE FOLLOWING:
 - (i) A DESCRIPTION OF PROPOSED EXPLORATION ACTIVITIES AND LOCATIONS OF SITES WHERE SUCH EXPLORATION ACTIVITIES AND LOCATIONS OF SITES WHERE SUCH EXPLORATION ACTIVITIES WERE, OR ARE PROPOSED TO BE, CONDUCTED;
 - (ii) LOCATIONS AND DEPTHS OF ANY KNOWN EXISTING EXPLORATION HOLES, TRENCHES, PITS, DIKES AND WATER LEVEL CONTROL STRUCTURES;
 - (iii) LOCATIONS OF ROADS WHICH WERE, OR ARE PROPOSED TO BE, CONSTRUCTED TO CARRY FORTH EXPLORATION ACTIVITIES; AND
 - (iv) EVIDENCE THAT ALL NECESSARY PERMITS AND LICENSES REQUIRED BY FEDERAL, STATE AND LOCAL UNITS OF GOVERNMENT HAVE BEEN OBTAINED.
- e. LESSOR SHALL APPROVE OR REJECT THE PLAN, FOR REASONS STATED, WITHIN NINETY (90) DAYS OF RECEIPT OF A COMPLETE EXPLORATION PLAN FROM LESSEE. IF LESSOR REJECTS THIS PLAN, LESSEE MAY RESUBMIT A PLAN(S) WITHOUT PREJUDICE.
- f. ANY CHANGE PROPOSED IN THE APPROVED PLAN SHALL BE PREPARED AND SUBMITTED AS A MODIFIED PLAN IN ACCORDANCE WITH SECTION R(1) ABOVE. ANY SUCH CHANGES SHALL NOT BE COMMENCED UNTIL LESSOR HAS REVIEWED AND APPROVED SUCH MODIFIED PLAN.
- g. UPON THE CONCLUSION OF EXPLORATION ACTIVITIES AT A SITE, LESSEE SHALL LEAVE THE SITE IN A CONDITION SATISFACTORY TO THE LESSOR. LESSOR MAY REQUIRE LESSEE TO BARRICADE ENTRANCES TO ANY ROADWAYS, DRILL SITES, CLEARINGS AND/OR EXCAVATIONS ON SURRENDERED LEASED PREMISES TO RECONTOUR AND/OR RESEED THESE AREAS, OR TO LEAVE THESE AREAS AS CONSTRUCTED.

2. EXPLORATION REPORTS. SEE SECTION H(3).

S. NONDISCRIMINATION

LESSEE SHALL COMPLY WITH THE ELLIOTT-LARSEN CIVIL RIGHTS ACT, 1976 PA 453 AS AMENDED, MCL 37.2101 ET SEQ.; THE PERSONS WITH DISABILITIES CIVIL RIGHTS ACT, 1976 PA 220, AS AMENDED, MCL 37.1101 ET SEQ.; AND ALL OTHER FEDERAL, STATE AND LOCAL FAIR EMPLOYMENT PRACTICES AND EQUAL OPPORTUNITY LAWS. LESSEE COVENANTS THAT IT WILL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT WITH RESPECT TO HIS OR HER HIRE, TENURE, TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT, OR ANY MATTER DIRECTLY OR INDIRECTLY RELATED TO EMPLOYMENT, BECAUSE OF HIS OR HER RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE, SEX, HEIGHT, WEIGHT, MARITAL STATUS, OR PHYSICAL OR MENTAL DISABILITY THAT IS UNRELATED TO THE INDIVIDUAL'S ABILITY TO PERFORM THE DUTIES OF A PARTICULAR JOB OR POSITION. LESSEE AGREES TO INCLUDE IN EVERY SUBCONTRACT ENTERED INTO FOR THE PERFORMANCE OF THIS LEASE THIS COVENANT NOT TO DISCRIMINATE IN EMPLOYMENT. A BREACH OF THIS COVENANT IS A MATERIAL BREACH OF THIS LEASE.

T. UNFAIR LABOR PRACTICES

LESSEE SHALL COMPLY WITH THE EMPLOYERS ENGAGING IN UNFAIR LABOR PRACTICES ACT, 1980 PA 278, AS AMENDED, MCL 423.321 ET SEQ.

U. NON-ENFORCEMENT

THE DECISION OF LESSOR NOT TO ENFORCE THE PERFORMANCE OF ANY PROVISION OR ADDENDUM OF THIS LEASE MAY NOT BE CONSTRUED AS A WAIVER OR RELINQUISHMENT OF THE LESSOR'S RIGHT TO PERFORMANCE OF IT. LESSEE'S OBLIGATION TO COMPLY WITH THE LEASE REMAINS IN FULL FORCE AND EFFECT.

The said LESSOR, by its ~~Forest, Mineral and Fire Management~~ DIVISION, Manager of Mineral and Land Management Section, has signed and affixed the seal of the State of Michigan by virtue of action taken by the LESSOR on _____, and the LESSEE has signed and affixed its seal the day and year written below.

ACKNOWLEDGEMENT BY LESSOR

NATURAL RESOURCES DIRECTOR FOR
THE STATE OF MICHIGAN

By: _____
_____, Manager
Mineral and Land Management Section
~~Forest, Mineral and Fire Management~~ DIVISION
DEPARTMENT OF NATURAL RESOURCES

STATE OF MICHIGAN)
) §
County of Ingham)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, Manager, Mineral and Land Management Section, ~~Forest, Mineral and Fire Management~~ DIVISION of the Department of Natural Resources for the State of Michigan.

PREPARED BY:
~~Forest, Mineral and Fire Management~~ DIVISION
MICHIGAN DEPARTMENT OF NATURAL RESOURCES
PO BOX 30452
LANSING, MI 48909-7952

_____, Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____

ACKNOWLEDGEMENT BY LESSEE

LESSEE:
By: _____

STATE OF _____)
) §
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

My Commission Expires _____
Notary Public, _____ County
Acting in _____ County

This Lease was approved by the Michigan State Administrative Board on: