

**NORTH DAKOTA BOARD OF UNIVERSITY AND SCHOOL LANDS  
POTASH MINING LEASE AND RIGHT OF FIRST REFUSAL TO PORE SPACE  
 (Solution Mining)**

This lease, executed «**lm\_effective**», between the State of North Dakota acting by and through the Board of University and School Lands and its agent, the Commissioner of University and School Lands, 1707 North 9th Street, Bismarck, ND 58501, hereinafter called "Lessor," and

«**na\_last**»

«**na\_addr1**»

«**na\_city**» «**na\_state**» «**na\_zip**»

Hereinafter called ("Lessee"), shall become effective upon the date signed by the Commissioner. The Lessee has duly filed an application for a mining lease for the purpose stated in this Lease, covering the lands described below which are under the jurisdiction of the Commissioner and subject to the terms, covenants, reservations and conditions set out in this Lease and the Rules of the North Dakota Board of University and School Lands

The Commissioner grants to Lessee the right to enter and occupy the (Leased Premises) described below for the sole purpose of exploring for, mining, developing, and producing (collectively "mining") potassium, sodium, phosphorus, other products and byproducts, and other chemical substances of similar occurrence and their salts and compounds and collectively referred to herein as the "Subsurface Minerals", in and on the following described lands located in North Dakota, and hereinafter referred to as the "Leased Premises":

**«mt\_county» COUNTY, NORTH DAKOTA**

**TOWNSHIP «mt\_twp» NORTH, RANGE «mt\_rng» WEST**

**SECTION «mt\_sec»: «mt\_subdv»**

**1. Inspection by Lessee.** Lessee is leasing the Leased Premises "as is" based on Lessee's own inspection of and judgment regarding the Leased Premises. Lessee agrees that Lessor makes no representations or warranties of any kind or nature whatsoever with regard to the Leased Premises.

**2. Term.** This Lease is granted for a primary term of five (5) years and for a secondary term of so long thereafter as Subsurface Minerals are produced in paying quantities. For purposes of this clause, production shall be deemed to be below "paying quantities" in the secondary term if, over any three consecutive years, the average annual royalty from the Leased Premises falls below \$2,000.

**3. Royalty.** Lessee shall pay to Lessor a 2.5% royalty computed on the gross value of the product after processing, without deductions of any kind, regardless of the place of sale. Payment of royalty shall be made on or before the 20<sup>th</sup> of the month following the sale of the Subsurface Minerals removed from the premises.

**4. Unitization.** Lessee may form a unit for the solution mining of Subsurface Minerals as provided in North Dakota statutes and regulations. Any unit for the solution mining of Subsurface Minerals may include lands covered by federal leases, this lease of State of North Dakota trust lands and fee acreage. Each tract included in the unit will be allocated a share of unit production equal to its "Tract Share" and royalty shall be paid for the Tract Share in accordance with Paragraph 3. The Tract Share shall be determined and approved as part of a separate unit agreement or the mining permit, as deemed appropriate by the State of North Dakota Industrial Commission. The Tract Share established in that unit agreement or mining permit shall form the basis for royalty payments to Lessor when the Leased Premises are contained within a unit. The Tract Shares would be fixed for

the life of the unit, except to the extent the unit is expanded, in which event the Tract Shares would be adjusted to account appropriately for the additional acreage.

**5. Annual Advanced Rental.** Lessee shall pay to Lessor annual rent in advance on or before the effective date of this lease. The amount of rent shall be one dollar (\$1.00) for each net mineral acre or part of an acre comprising the Leased Premises. Example: The amount of rent shall be one hundred sixty dollars (\$160.00) per full quarter section times our mineral interest percentage for each and every year this lease is in effect.

**6. Payment Submittal.** Payment of all sums due from Lessee to Lessor under the terms of this Lease, including but not limited to payment of rents, royalties, bonuses, and fees shall be made by delivery to the Office of the Commissioner of University and School Lands, 1707 North 9<sup>th</sup> Street, Bismarck, ND 58501.

**7. Late Payment.** Lessee shall pay interest on delinquent rental and royalty payments at the rate of one percent (1%) per month, or fraction of a month, accruing from the date due. Such interest shall, for security purposes only, be deemed additional rent secured by Lessor's statutory lien, and nonpayment shall entitle Lessor to all other remedies available at law or in equity.

**8. Exclusive & Nonexclusive Rights.** The rights to explore for, develop, and produce Subsurface Minerals from the Leased Premises shall be exclusive to Lessee. However, Lessor reserves the right to grant the rights to explore for, develop and produce minerals other than those previously defined herein, including but not limited to coal, oil and gas, and construction aggregate, from the Leased Premises to any other person or company during the term of this lease. It is the intent of this lease to promote and encourage co-development of minerals from the Leased Premises. To that end, Lessee and holders of other leases for the Leased Premises will work with the State of North Dakota State Land Department (herein "Land Department") to resolve any and all conflicts that arise between lessees with respect to the Leased Premises. To the extent that a resolution agreeable to all parties cannot be reached, the North Dakota Industrial Commission will hear and decide upon a resolution to the conflict between lessees.

**9. Casing.** Lessee agrees that all casing used for solution mining of Subsurface Minerals shall be cemented through all oil producing zones and fresh water aquifers.

**10. Use of Surface Estate, Liability.** To the extent Lessor owns the surface of the Leased Premises Lessor hereby grants, lets and leases to Lessee the right to use and disturb so much of the surface of the Leased Premises as may be reasonably necessary, convenient or incidental to the exercise of Lessee's rights hereunder and its conduct of the mining or storage operations, in accordance with the methods adopted, employed and/or used by Lessee to produce subsurface minerals from the Leased Premises. Use of the surface of the Leased Premises shall be subject to review and approval by Lessor before construction begins. Lessee shall not have the right to use the Leased Premises for mining, processing or storage operations for Federal leases or fee acreage. Lessee shall have the exclusive right to excavate, remove, deposit and/or otherwise displace any and/or all earth, rock, other strata and/or materials located in, on and/or under the surface of the Leased Premises as may be reasonably necessary, convenient or incidental to Lessee's conduct of the mining or storage operations; provided, however or except as provided for due to the proven violation of any applicable local, state or federal rule, regulation, ordinance, law or statute. Notwithstanding anything herein to the contrary, lessor and lessee may enter into a separate surface use agreement, which agreement shall supersede and control over the terms of this paragraph No. 10, setting forth their mutual understanding concerning specific uses of the surface of the Leased Premises and the compensation, if any, to be paid therefore. Any such separate surface use agreement shall not alter Lessor's grant to Lessee of any and all interest in the pore space underlying the subject lands.

A. Archeological, historical, and Paleontological Resource Protection

i. Known Archeological, historical, and Paleontological Resources. In the event an archeological, historical, or paleontological resource is known by lessee as of the effective date of the lease, Lessee agrees to provide written notice of the same to Lessor within twenty (20) days of commencing mining or storage operations on the subject lands in the area of the archeological, historical, or paleontological resource, which notice shall include a brief description of the archeological, historical, or paleontological resource, its location upon the subject lands, and the mining or storage operations proposed by Lessee. As soon as practicable after receiving such notice, Lessor shall refer the issue(s) to the North Dakota Historical Board ("Board"), and request a statement of the archeological, historical, or paleontological resource protections required by the Board pursuant to N.D.C.C. § 55-02-07 (2009), which Lessor shall then convey in writing to Lessee as soon as practicable. Lessor shall then make a final determination of the archeological, historical, or paleontological resource protections that Lessee must undertake which protections shall then become a part of and be incorporated with this Lease.

ii. Unknown Archeological, Historical, and Paleontological Resources. In the event an archeological, historical, or paleontological resource is unknown by Lessee as of the effective date, but later becomes known, Lessee agrees to immediately cease its mining operations-in the area of the discovered archeological, historical, or paleontological resource and provide written notice of the same to Lessor, which notice shall include a brief description of the archeological, historical, or paleontological resource, its location upon the subject lands, and the mining operations proposed by lessee. As soon as practicable after receiving such notice, Lessor shall refer the issue to the Board, and request a statement of the archeological, historical, or paleontological resource protections required by the Board pursuant to N.D.C.C. § 55-02-07 (2009) which Lessor shall then convey in writing to Lessee as soon as practicable. Lessor shall then make a final determination of the archeological, historical, or paleontological resource protections that Lessee must under-take, which protections shall then become a part of and be incorporated with this lease. Lessee shall not resume mining operations on the subject lands in the area of the identified archeological, historical, or paleontological resources until Lessor's final written determination has been issued. This Paragraph 10. a.ii shall not be construed to require the cessation of storage operations.

**11. Right of First Refusal to Pore Space.** Lessee's mining operations will create pore space on the Leased Premises through the extraction of Subsurface Minerals. Lessee has the right of first refusal to the pore space created through its mining operations on the Leased Premises including for the storage of natural gas, carbon dioxide and other materials and substances. The pore space lease will be negotiated directly with the Lessor. Lessor will make a good faith offer to Lessee based on comparable pore space leases, including saltwater disposal wells, from the surrounding states and provinces. If no comparable leases are found, Lessor shall make a reasonable offer to Lessee. If the terms are not agreed to within 30 days of the first offer, Lessor will submit the lease for the pore space to public auction using the type of process described in Paragraph 13. The terms and provisions of that lease shall supersede the terms and provisions of this Lease with respect to the pore space on the Leased Premises. This paragraph and the rights granted are material and shall survive termination of this Lease.

**12. Change in Ownership.** No change or division in ownership of the subject land, Subsurface Minerals or pore space, the right to receive rentals hereunder, the right to receive royalty hereunder, or the right to receive any other payment hereunder, shall be effective or binding upon Lessee, for any purpose, until sixty (60) days after certified copies of the instrument(s) evidencing such change in ownership are actually received by Lessee at the address set forth herein for the delivery of all notices. Lessee may, at its sole option, choose to recognize such change or division in ownership prior to the expiration of said sixty (60) days; provided, however, that in no event shall any such

change or division in ownership operate to enlarge the obligations or diminish the rights of Lessee hereunder.

**13. Advertisement and Public Auction.** Prior to the offering of potash leases for sale, the Commissioner shall publish notice of the sale in the official newspaper of the county or counties in which lands for lease are located, and in the Bismarck Tribune. The notice must be published once each week for two weeks, the last publication being at least ten days prior to the day of the lease sale. The advertisement shall specify the date, time and place of the lease sale, and shall specify how any interested person may obtain a list of the tracts that are being offered for lease. Bidding shall be on the basis of such bonus as the bidder may offer. Every potash lease granted by the commissioner shall be issued to the successful bidder as soon as possible after collected funds are received and successfully deposited from the successful bidder. Before any lease shall be issued the successful bidder shall pay one year's rental, the bonus bid and the advertising fee specified in section 85-06-06-14. Should publication of any notice be inadvertently omitted by any newspaper or should such notice as published contain typographical errors; the commissioner may proceed with the scheduled leasing where it appears that the omission or error is not prejudicial to the fund.

Bids may be accepted in writing before the potash sale. The highest of those bids will be the opening bid of a particular tract of minerals. Land Department personnel may not bid incrementally on anyone's behalf.

**14. Reservations.** Lessor reserves all rights not expressly granted by this lease, including but not limited to the right: (a) to grant rights of way and easements in, over, under and through the Leased Premises; (b) to grant leases of the surface for commercial, agricultural, grazing and other purposes; (c) to grant leases for the exploration, mining and development of minerals, including geothermal resources, not covered by this Lease; and (d) to sell the Leased Premises, which sale will be subject to this lease so long as this lease remains in effect. In exercising the rights reserved under this lease Lessor shall not unreasonably interfere with Lessee's operations on the Leased Premises, including operations involving utilization of the pore space.

**15. Surety.** Prior to issuance of this lease, Lessee shall have obtained a lease performance and surface improvement damage bond issued by a corporate surety authorized to do business in North Dakota and approved in writing by Lessor or Lessee shall provide Lessor other comparable financial assurance approved in writing by Lessor. The bond shall be in an amount of no less than \$500.00 for each section or fraction of a section comprising the Leased Premises. The bond shall be for the benefit of the Commissioner and shall guarantee Lessee's performance under this Lease, including payment of royalties, reclamation and protection of surface resources and improvements.

When production begins on the Leased Premises, Lessee shall comply with the provisions of North Dakota Administrative Code 43-02-02 including bonding requirements. Lessor may increase the amount of such lease performance bond, as Lessor deems necessary to protect its interests.

Lessee's surety obligations shall remain in effect until Lessor certifies, in writing, that Lessee has performed its obligations under this lease, including payment of all rents and royalties, removal of improvements and equipment, and restoration of the Leased Premises essentially to its original condition. This paragraph shall survive termination of this lease.

**16. Inspection.** Lessor shall have the right to enter the Leased Premises at any time in order to inspect the Leased Premises to ensure compliance with the terms and conditions of the lease. Lessor shall have the right to inspect all records, books or accounts pertaining to the mining, extraction, transportation and marketing of Subsurface Minerals produced from the property and, at the request of Lessor, Lessee shall furnish contracts, reports, samples, logs, assays or cores within reasonable bounds as the Commissioner may reasonably determine to be necessary to the proper administration of the Leased Premises and this lease. In addition, Lessee shall furnish annually and at such other

times as Lessor may reasonably require, plats, maps, or tracings, clearly and accurately showing all development work upon the property, and other related information, with a report as to all buildings, structures, or other work placed in or upon the leased lands, and a statement as to the amount and value of Subsurface Minerals produced and sold, or other tax reports. Lessor may enter and inspect the Leased Premises at any time without advance notice.

**17. Improvements.** Lessee may make or place upon the Leased Premises those buildings, equipment, workings, and other improvements necessary to Lessee's operations under this Lease, such improvements shall be subject to review and approval by Lessor before construction begins.

**18. Mine Operations and Reclamation.** Prior to any surface or subsurface disturbance of the Leased Premises, Lessee shall submit, for Lessor's prior approval, a solution mine operations plan and a surface reclamation/closure plan which are deemed adequate by Lessor to protect Lessor's interests and to ensure reclamation of the Leased Premises essentially to its original condition. Once approved, the solution mine operations plan and the surface reclamation/closure plan shall be incorporated into this Lease by reference and shall be enforceable in the same manner as any other covenant of this lease. The plans shall be updated annually and submitted for approval to Lessor by the anniversary date of this lease.

Upon termination of the lease, Lessee shall reclaim the subject lands in accordance with the requirements of the approved surface reclamation/closure plan.

**19. Notices.** Lessee shall post and maintain signs at all vehicular entrances to pits and excavations advising as to state ownership and warning against trespass.

**20. Compliance with Standards and Laws.** All activities and operations of Lessee under this lease shall be conducted in conformance with industry standards and practices, and shall be done in a workmanlike manner. Lessee shall at Lessee's sole expense comply with all federal, state and local statutes, regulations, rules, and ordinances that apply to Lessee's operations on the Leased Premises.

**21. Indemnity.** Lessee shall save, hold harmless, indemnify, and otherwise defend the State of North Dakota, its agencies, officers and employees in both their official and individual capacities, from any and all claims of any nature, including all costs (including without limitation damages, costs related to compliance with court orders, losses, penalties, fines, expenses, judicial or administrative litigation costs and fees, and arbitration or mediation costs and fees) which may in any manner result from or arise out of any act or omission of Lessee or its agents (including without limitation Lessee's employees, contractors, the Sublessee, sub-sublessees, and invitees) that further arises from or is related to this lease and which occurs during the term of this Lease.

**22. Water Rights.** Unless Lessor and Lessee otherwise agree in writing, all water rights appurtenant to the leased Premises and all water rights developed on the Leased Premises, whether or not appurtenant thereto, shall become the sole property of Lessor upon termination of this Lease, after which Lessee shall have no further interest in such water rights and shall not be entitled to any compensation for water rights from any person. Lessee shall execute such deeds, change of ownership forms or other such instruments as may be necessary to transfer the water rights to Lessor.

Lessee, at its own expense, shall comply with all applicable laws and shall obtain all necessary permits to obtain any water rights from the North Dakota State Engineer's Office.. Lessee shall have the use of such water rights only for lease operations during the term of the lease, and in no event shall any water rights be severed or transferred from the Leased Premises. During the term of this Lease, Lessee shall preserve, protect, and defend such water rights. This paragraph shall survive termination of this Lease.

### **23. Storage and Disposal of Materials.**

A. Lessee shall not dispose of any trash, debris, or any hazardous or other waste materials in, under, or upon the Leased Premises, nor allow others to do so, and Lessee shall promptly remove all such materials from the Leased Premises and provide for their lawful disposal.

B. Except as provided below, or unless authorized in writing by Lessor, Lessee shall not cause or permit any hazardous materials to be brought upon or across, or to be used, kept, stored, generated, or disposed of in, under, or upon, the Leased Premises. As used in this Lease, hazardous materials includes, but is not limited to, oil, petroleum products, explosives, PCB's, asbestos, formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated, or polluting materials, substances or wastes, including without limitation any materials defined as, or listed as "hazardous substance", "hazardous water", "hazardous material", "toxic substances" or "regulated substances" under any federal, state, or local laws, ordinances or regulations relating to landfills, industrial hygiene, environmental protection, or the manufacture, use, generation, presence, analysis, transportation, handling, storage, treatment, or disposal of any such material or materials.

C. This prohibition does not prevent the stockpiling or storage of spoils that results from mining operations on the Leased Premises for use in reclamation of the lands. Spoils materials from mining operations on property other than the Leased Premises may not be brought onto, dumped, or disposed of, on the lands, unless expressly authorized in writing by Lessor. This prohibition is not intended to prevent the use or temporary storage of reasonable amounts of oil, petroleum products, explosives, or materials required for or the use of such items such as storage drums and filters necessary for Lessee's ordinary day-to-day operations under the terms of this Lease, provided such materials are used and stored in compliance with all applicable laws and regulations.

**24. Leaks and Spills.** Due care shall be used to prevent leaks and spills of salts, oil, and petroleum products used in Lessee's operations. Lessee shall, at Lessee's sole expense, report and clean up all leaks and spills on the Leased Premises in accordance with all applicable state, federal and local laws. Lessee shall notify Lessor within twenty-four (24) hours of any reports made pursuant to this paragraph.

**25. Commissioner's Option to Purchase Production.** Lessor may, at any time, purchase, at the market price prevailing in the area on the date of purchase, all or any part of Lessee's production from the Leased Premises.

**26. Cultural Properties.** Any archaeological sites, historical artifacts, or other cultural resources, including but not limited to pottery, bone, modified stone, and early historic remains, on or within the Leased Premises is the Lessor's, subject to applicable laws. Lessee shall immediately report the discovery of any such material to Lessor and shall comply with all applicable laws.

Adequate fencing may be required to protect and preserve any significant sites as determined by the Commissioner.

Lessee shall bear sole liability for damages to cultural resources, including restoration costs during the term of this Lease. If the presence of cultural resources materially and adversely affects the ability of Lessee to use a portion or all of the Leased Premises, Lessee may, upon approval of the appropriate state agency or agencies, negotiate an effects mitigation plan for legal removal of the cultural resources; surrender the entire legal subdivision in which the archaeological sites or other cultural resources are located; or relinquish the Leased Premises as provided for in this Lease.

**27. Assignment of Lease.** Lessee shall not assign all or part of any interest in the Leased Premises without the written consent of Lessor, and the payment of applicable fees. An assignment of the Leased Premises includes any direct or indirect transfer of an interest in the Leased Premises, including but not limited to any conditional transfer of the Leased Premises by operation of law, or the transfer of a controlling interest in the Lessee. Any attempted assignment without Lessor's written

consent shall be void and constitute a breach of this lease. In addition, partial assignments may only be made by relinquishing the portion to be assigned to Lessor in order that a new and separate lease may be issued to the approved assignee. Lessor's approval may be conditioned upon additional terms and requirements. Lessor's approval of an assignment shall not relieve the Lessee from obligations and duties arising from or in connection with Lessee's use of the Leased Premises. The assignee shall succeed to all of the rights and privileges of the assignor under this lease and shall be held to have assumed all of the duties and obligations of the assignor to Lessor. Any assignment shall be made upon forms approved by Lessor.

**28. Cancellation.** Lessor may cancel this lease for violation of any of the terms or covenants thereof; provided, however, that before any such cancellation shall be made, Lessor shall mail to Lessee, by registered or certified mail, addressed to the current address on file with the Commissioner, a thirty (30) day notice of intention to cancel this lease.. No proof of receipt of notice shall be necessary and thirty (30) days after such mailing the Commissioner may enter cancellation unless the Lessee shall have sooner remedied the default.

**29. Relinquishment.** Lessee, with the express written consent of Lessor, and payment of the fee designated by the Commissioner, may at any time relinquish all or a part of the Leased Premises to Lessor. No relinquishment shall be effective, under any circumstances, until Lessee has complied with the following conditions:

A. All terms of this lease must have been fully complied with, and Lessee shall fully cure any default or breach of this lease. If, after a relinquishment, Lessor shall institute any proceeding to enforce the terms of this Lease, that relinquishment shall be deemed to have been void in violation of this clause.

B. Lessee shall demonstrate to Commissioner's satisfaction, by sworn affidavit, lien release, or other means, that all employees, creditors or others to whom Lessee owes money or who may have an interest in, lien, or claim against the Lessee arising from or in connection with the Lessee's operations or improvements are fairly and equitably protected.

C. Lessee shall make reasonable provision, satisfactory to Commissioner, for the preservation of any mines, productive works, and permanent improvements on the Leased Premises.

**30. Lease Renewal.** Lessee has no right or expectation to renew this lease.

**31. Survival of Terms.** Lessee's obligations under paragraphs governing royalty payments, liens, taxes, lease improvements, mine operations and reclamation, compliance with standards and laws, storage and disposal of materials, leaks and spills, cultural resources, indemnity, and incurred costs shall be binding on the Lessee, its successors, assigns, agents, operators, contractors, or sub lessees. Obligations, duties and/or responsibilities shall survive the termination, cancellation or relinquishment of this Lease, and any cause of action of the Commissioner to enforce any right, liability, claim, loss, damage or expense under those paragraphs shall not be deemed to accrue until the Commissioner's actual discovery of said right, liability, claim, loss, damage or expense. This paragraph shall survive termination of the Lease.

**32. Applicable Law and Venue.** This lease is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this lease must be brought in the District Court of Burleigh County, North Dakota.

**33. Reports and Maps.** On or before the 20th day following the end of each production month, Lessee shall furnish a detailed monthly description and statement, on forms approved by Lessor, of the Lessee's operations, and of production and sale of the Subsurface Minerals computed on the gross value of the Subsurface Minerals after processing, without deductions of any kind, and regardless of the place of sale.

Lessee shall annually furnish to Commissioner a map showing all prospecting and development work on the Leased Premises and other related information, together with a report showing all buildings, structures, and surface and subsurface workings located on the Leased Premises, and a complete statement of the amount of the Subsurface Minerals produced by Lessee's operations.

**34. Commissioner's Lien.** Rentals and royalties under this lease shall, until paid, constitute a first lien on all improvements on the Leased Premises and production therefrom, prior and superior to any other lien or encumbrance whether created with or without notice of this lien.

**35. Solution Lake Monitoring.**

The solution leach lake created by Lessee's operations shall be monitored by the following methods and a subsurface contour map showing the extent of the leach lake submitted annually on or before the anniversary of the approval of the lease by the Commissioner:

A. Primary Monitor: Downhole Pressure Transducer mounted above the motor of the submersible pump within the recovery well.

B. Secondary Monitor: A set of low voltage electrical leads placed downhole until the leach solution is encountered and the circuit is completed. The depth to water is read directly from the leads.

**36. Removal of Improvements and Equipment.** Upon termination of this Lease for any reason, Lessee shall remove its improvements and equipment to the extent they can be removed without material injury to the Leased Premises, provided that all rentals and royalties have been paid and that such removal and surface reclamation of the Leased Premises are accomplished within two (2) years of the termination date or before such earlier date as Lessor may require upon thirty (30) days written notice to the Lessee. At the sole option of Lessor, Lessor may deem forfeited by Lessee any improvements or equipment that Lessee fails to timely remove from the Leased Premises.

Lessee shall be liable for all costs incurred by Lessor in seeking or effecting the removal of Lessee's improvements and equipment and the restoration of the Leased Premises, and all costs incurred in maintaining such improvements and equipment. Lessee shall pay such costs within thirty (30) days after notice thereof is mailed to Lessee and, if not timely paid, and any amounts that are not timely paid shall accrue interest at the rate of twelve percent (12%) per annum until full payment has been made. All such charges and interest shall, for security purposes, be deemed additional rent secured by Lessor's lien. The foregoing rights of Lessor shall be cumulative to Lessor's right to cancel this Lease, and shall not be construed as a waiver of or a bar to any other claim by Lessor for damages or other remedies available at law or in equity.

If reclamation or removal of improvements cannot be completed before the expiration of this lease, Lessor shall issue to Lessee, and Lessee shall accept, a special use agreement or other right of entry authorizing the Lessee to enter the Leased Premises to complete the removal of improvements and equipment and restore the Leased Premises essentially to its original condition. This paragraph shall survive termination of this lease.

**37. Incurred Costs.** If Lessor is required to incur any cost or expense to enforce the provisions of this lease or approved surface reclamation plan against Lessee, including but not limited to consultants, engineers, soil, air or water sampling, and court costs, Lessee shall be liable for and reimburse Lessor for said costs and expenses. Such costs and expenses shall, if unpaid, be deemed further rent due under the terms of this lease, and shall be secured by Lessor's statutory lien.

**38. Taxes.** Lessee shall pay when due all taxes on all Leased Premises improvements, output of mines and other rights, property, and assets of the Lessee.

**39. Sublease.** Lessee shall not sublease all or any part of any interest in the Leased Premises without Lessor's written permission. Any sublease not permitted by Lessor is void. Lessor's consent



to sublease may be conditioned upon such requirements or additional terms as Lessor deems appropriate, including additional rent or royalties, or the requirement that Lessee relinquish this lease to Lessor to lease directly to the proposed sublessee.

#### **40. Default; Remedies.**

**A. Default.** Lessee shall be in default of this lease if a breach of this lease is not cured within thirty (30) days after Lessor gives Lessee written notice of the breach. A breach of this lease may include, without limitation, a failure to pay any rent, royalties or other monetary obligations due under the lease, or a violation of any term, condition, or covenant of this lease, or the failure to perform or observe any other obligation of the Lessee under this lease.

**B. Notice.** Written notice of a breach shall be sent to Lessee at the current address on record with Lessor by certified mail. Lessor need not send notice to the holder of any leasehold mortgage encumbering a sublease. Lessor need only provide proof of mailing to establish satisfactory compliance with this notice requirement.

**C. Remedies.** On the default of a Lessee, Lessor shall have all the remedies available to Lessor at law or in equity, and as provided in this Lease, including, without limitation, terminating this Lease, retaking possession of the Leased Premises with or without termination of the Lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the lessee. Lessor shall be entitled to reasonable attorney's fees and costs in the event that Lessor prevails in any court action to enforce or defend Lessor's rights under this Lease.

**41. Scope of Lease and Merger.** This lease incorporates all the prior agreements, covenants, and understandings between Lessor and Lessee concerning the subject matter of this lease. No prior agreement or understanding between Lessor and Lessee is valid or enforceable unless expressly stated in this lease.

**42. Lease Amendment.** This Lease shall not be altered, changed, or amended except by an instrument signed by both Lessor and Lessee, and no employee or agent of Lessor has the power, right or authority to orally waive any of the conditions, covenants, or agreements of this lease.

**43. Waiver by Lessor.** Lessor's waiver of any of the conditions, covenants, or agreements of this lease shall not be effective unless in writing and signed by Lessor. Lessor's waiver of any breach or default by Lessee shall not constitute or be construed as a waiver of any other or subsequent breach or default by Lessee. Lessor's failure to enforce any term of this Lease shall not constitute or be construed to be a waiver, nor shall it affect the validity of, or Lessor's right to enforce all or any part of this lease.

**44. Singular and Plural; Use of Gender.** Whenever the singular is used in this lease, the same shall include the plural; whenever a particular gender is used in this lease, the same shall include the other gender and no gender.

**45. Headings and Titles.** The use of section or paragraph headings and titles in this lease is for descriptive purposes only and is independent of the terms of this Lease.

**46. Severability.** In the event that any provision of this lease is held invalid or unenforceable under applicable law, the lease shall be deemed not to include that provision, and all other provisions of this Lease shall remain in full force and effect.

**47. Notices.** Any notice required by this Lease must be in writing and sent by certified mail. Notices shall be sent to Lessor at 1707 North 9<sup>th</sup> Street, Bismarck, ND, 58501. Notices addressed to the Lessee will be sent to the current address on file with Lessor.

**48. Third Party Beneficiaries.** No persons except Lessor and Lessee can enforce the terms of this lease; there are no third-party beneficiaries of this lease.

**49. Additional Site-Specific Obligations.** None.

STATE OF NORTH DAKOTA, BOARD  
OF UNIVERSITY & SCHOOL LANDS

STATE OF NORTH DAKOTA )  
 ) ss.  
COUNTY OF BURLEIGH )

Notary Public

**(Name of LESSEE)**

On Behalf of **(Name of LESSEE)**

STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared \_\_\_\_\_, \_\_\_\_\_ (title), acting on behalf of **(Name of Grantee)**, known to me to be the person who executed this instrument and acknowledged to me that \_\_\_\_\_ executed the same.

Notary Public