

Attachment C



**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
3700 Airport Way
Fairbanks, Alaska 99709
LEASE AGREEMENT**

ADL No. 421704

Effective this day of , , this lease agreement is entered into by the State of Alaska, hereafter referred to as "lessor," and Shovel Creek Wind, LLC , hereafter referred to as "lessee," whether one or more, whose sole addresses for purposes of notification under this lease agreement are listed in section 28.

The lessor and the lessee agree that this lease, including all attachments and documents that are incorporated in this lease by reference, contains the entire agreement between the parties, and each of the covenants and conditions in this lease including any attachments will be binding upon the parties and upon their respective successors and assigns. The lessor and the lessee further agree that this lease is conditioned upon satisfactory performance by the lessor and the lessee of all covenants and conditions contained in this lease. The lessee is aware of the provisions of Title 38, Alaska Statutes, Title 11, Alaska Administrative Code, and other applicable laws, regulations, and ordinances, and fully understands the duties and obligations of the lessee under this lease, and the rights and remedies of the lessor.

This lease is subject to all applicable state, federal, and municipal statutes, regulations, and ordinances in effect on the effective date of this lease, and insofar as is constitutionally permissible, to all statutes, regulations, and ordinances placed in effect after the effective date of this lease. A reference to a statute, regulation, or ordinance in this lease includes any change in that statute, regulation, or ordinance, whether by amendment, repeal and replacement, or other means. This lease does not limit the power of the State of Alaska, its political subdivisions, or the United States of America to enact and enforce legislation or to adopt and enforce regulations or ordinances affecting, directly or indirectly, the activities of the lessee or its agents in connection with this lease or the value of the interest held under this lease. In case of conflicting provisions, statutes, regulations, and ordinances take precedence over this lease. This lease shall not be construed as a grant or recognition of authority for promulgation or adoption of municipal ordinances that are not otherwise authorized.

1. Grant. This lease is issued under the authority of , for a term of year(s) beginning on the day of and ending at 12 o'clock midnight on the day of , unless sooner terminated, subject to: compensation as specified in section 2; the attached development plan approved by the state on ; and attached stipulations, if any, that are incorporated in and made a part of this lease, for the following, hereafter referred to as the "leasehold":

LEGAL DESCRIPTION TO BE DEVELOPED AFTER SURVEY IS COMPLETED

Excepting and reserving any general reservations to the lessor that are required by law and that may be stated elsewhere in this lease, and the following, which the state reserves for itself and others:

Excepting and reserving any general reservations to the lessor that are required by law and that may be stated elsewhere in this lease, and the following, which the state reserves for itself and others:

The lease is subject to all valid existing rights in and to the land under this authorization. The State of Alaska make no representations of warranties whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.

2. Compensation. (a) The lessee shall pay to the lessor compensation as follows, without the necessity of any billing by the lessor: . The lessor may, upon 10 days' notice, review and copy any records of the lessee that are necessary to verify the lessee's compliance with this paragraph.

(b) In accordance with AS 38.05.105, the lease compensation is subject to adjustment by the lessor at the commencement of the sixth year of the term and every fifth year thereafter (the "adjustment date"). The compensation adjustment takes effect on the applicable adjustment date, regardless of whether the adjustment determination occurs before or after that date. All reasonable costs of the adjustment, including reappraisal if required by the lessor, will be borne by the lessee.

3. Denial of Warranty. The lessor makes no warranty, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the leasehold, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the profitability or fitness of the leasehold for any use. The lessee represents that the lessee has inspected the leasehold and determined that the leasehold is suitable for the use intended, or has voluntarily declined to do so, and accepts the leasehold "as is" and "where is."

4. Use of Leasehold. Prior to execution of this lease and to commencing use or development of the leasehold, the lessee shall submit a development plan for the leasehold to the lessor and obtain the lessor's approval of the plan. Any use or development of the leasehold must be consistent with the development plan approved by the lessor. Any proposed revisions to the development plan must be submitted to the lessor for approval before any change in use or development occurs. The lessee shall use and occupy the leasehold in compliance with the approved development plan and all applicable laws, regulations, ordinances, and orders that a public authority has put into effect or may put into effect, including those of a building or zoning authority and those relating to pollution and sanitation control. The lessee may not permit any unlawful occupation, business, or trade to be conducted on the leasehold. The lessee shall properly locate all activities and improvements on the leasehold, and may not commit waste of the parcel. The lessee shall maintain and repair the leasehold including improvements in a reasonably neat and clean condition, and shall take all necessary precautions to prevent or suppress grass, brush, or forest fires, and to prevent erosion, unreasonable deterioration, or destruction of the land or improvements. The lessee agrees not to place any aboveground or underground fuel or chemical tanks on the leasehold without the prior written approval of the lessor.

5. Encumbrance of Leasehold. The lessee may not encumber or cloud the lessor's title to the leasehold, or any portion of the leasehold, nor enter into any lease, easement, or other obligation of the lessor's title without the prior written approval of the lessor.

6. Assignment of Interest. The lessee may not assign or sublet any interest held under this lease, including a security interest, without the prior written approval of the lessor. The lessor may approve such assignment or subletting if the lessor finds it to be in the best interest of the state. No such assignment or subletting will be effective until approved by the lessor in writing, and the assignee agrees to be subject to and governed by the provisions of this lease, any subsequent amendments to this lease, any additional stipulations, or reappraisal as deemed appropriate by the lessor, and all applicable laws, regulations, and ordinances in the same manner as the original lessee. No assignment or subletting of the leasehold, or any portion thereof, by the lessee will annul the lessee's obligation to pay the compensation required for the full term of this lease. Except as provided in this lease, no subdivision of the leasehold interest may occur without the prior written approval of the lessor.

7. Conditional Lease. If all or part of the leasehold has been tentatively approved, or approved, but not yet patented, by the United States to the lessor, then this lease will be conditioned upon receipt by the lessor of such patent. If for any reason the lessor does not receive patent, any compensation paid to the lessor under this lease will not be refunded. Any prepaid compensation for land to which patent is denied the lessor will be refunded to the lessee of record in the amount of the pro-rata portion of the unexpired term. The lessor will have no further liability to the lessee for the termination of the lease.

8. Payment of Taxes and Assessments. The lessee shall pay prior to delinquency all taxes and assessments accruing against the leasehold.

9. Section Line Rights-of-Way. If the leasehold borders on or includes one or more section lines, the lessor hereby expressly reserves unto itself and its successors and assigns a right-of-way or rights-of-way pursuant to AS 19.10.010.

10. Navigable and Public Waters. (a) Pursuant to AS 38.05.127, the lessor reserves a public access easement to and along all public or navigable water bodies that border on or are included in this leasehold. No public access easement may be obstructed or otherwise rendered incapable of reasonable use for the purposes for which it was reserved. No public access easement may be vacated, abandoned, or extinguished without the prior written approval of the lessor.

(b) The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This lease is issued subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The lessor reserves the right to grant other interests to the leasehold consistent with the Public Trust Doctrine.

11. Condemnation of Leasehold or Improvements. If the whole or any part of the leasehold is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions control:

(1) Taking of the entire leasehold. If all of the leasehold is taken by condemnation, this lease and all rights of the lessee will immediately terminate, and the compensation will be adjusted so that it is due only until the date the lessee is required to surrender possession of the leasehold. The lessor is entitled to all the condemnation proceeds, except that the lessee will be paid the portion of the proceeds attributable to the fair market value, as determined in the condemnation proceedings, of any buildings or improvements taken that were placed on the condemned leasehold by the lessee in accordance with the approved development plan.

(2) Taking of substantial part of the leasehold. If the taking is of a substantial part of the leasehold, the following rules apply:

(A) If the taking by condemnation reduces the ground area of the leasehold by at least 30 percent or materially affects the use being made by the lessee of the leasehold, the lessee has the right to elect to terminate the lease by written notice to the lessor not later than 180 days after the date of taking.

(B) If the lessee elects to terminate, the provisions in subsection (1) of this section govern the condemned portion of the leasehold and the covenants and conditions of the lease govern disposal of the remainder of any buildings or improvements made by the lessee in accordance with the approved development plan.

(C) If the lessee does not elect to terminate, the lease continues and the lessor is entitled to the full condemnation proceeds except the portion attributable to the fair market value, as determined in the

condemnation proceedings, of any buildings or improvements taken that were placed on the condemned portion of the leasehold by the lessee in accordance with the approved development plan. Compensation at the existing rate will terminate on the date the lessee is required to surrender possession of the condemned portion of the leasehold. Except as it may be adjusted from time to time under the covenants and conditions of the lease and applicable statutes, compensation for the balance of the term will be adjusted by the lessor to reflect the taking.

(3) Taking of insubstantial part of the leasehold. If the taking by condemnation reduces the ground area of the leasehold by less than 30 percent and the lessor determines that the taking is of such an insubstantial portion that the lessee's use of the leasehold is not materially affected, the lessee may not elect to terminate the lease and the compensation provisions of subsection 2(C) of this section will govern.

12. Valid Existing Rights. This lease is subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land in existence on the date of execution of this lease.

13. Inspection. The lessor will have reasonable access to the leasehold for purposes of inspection.

14. Mineral Reservations. This lease is subject to the reservations required by AS 38.05.125 and the rights and obligations imposed by AS 38.05.130.

15. Concurrent Use. This lease is subject to reasonable concurrent uses as provided under Article VIII, Section 8 of the Constitution of the State of Alaska. The concurrent user who is found to be at fault for damage or injury arising from noncompliance with the terms governing the user's concurrent use is liable for damages and the user's interest is subject to forfeiture or termination by the lessor. In this context, the term "concurrent user" includes the lessee and any other person or entity who lawfully uses the land subject to this lease, but does not include the State of Alaska.

16. Surface Resources. Unless otherwise provided by this lease or other written authorization, the lessee may not sell or remove from the leasehold any timber, stone, gravel, peatmoss, topsoil, or any other material valuable for building or commercial purposes. Material required for the development of the leasehold may be used only in compliance with the approved development plan.

17. Appropriation or Disturbance of Waters. During the term of this lease, the lessee will have the right to apply for an appropriation of ground or surface water on the leasehold in accordance with AS 46.15 and 11 AAC 93.060.

18. Acquisition of Rights or Interests. Any right or interest acquired during the term of this lease and accruing to the benefit of the leasehold will remain appurtenant to the leasehold, and may not be severed or transferred from the leasehold without the prior written approval of the lessor. In the event of termination or forfeiture of this lease, any such right or interest will vest in the lessor.

19. Land Alterations Due to Natural or Artificial Causes. The interest described in this lease constitutes the entire leasehold. If, through natural or artificial causes, accretion or reliction of land occurs contiguous to the leasehold, the Lessee has no right to occupy or use the accreted land unless a separate lease is entered with the Lessor with respect to such lands. The rules of law usually applicable to accretion or reliction of land do not apply to this lease, nor to the interest described in this lease.

20. Waiver or Forbearance. The receipt of compensation by the lessor, with or without knowledge of any default on the part of the lessee, is not a waiver of any provision of this lease. No failure on the part of the lessor to enforce a covenant or condition of this lease, nor the waiver of any right under this lease by the lessor, unless in writing, will discharge or invalidate the application of such covenant or

condition. No forbearance or written waiver affects the right of the lessor to enforce any covenant or condition in the event of any subsequent default. The receipt of compensation by the lessor after termination or any notice of termination will not reinstate, continue, or extend this lease, or destroy, or in any manner impair the validity of any notice of termination that may have been given prior to receipt of the compensation, unless specifically stated by the lessor in writing.

21. Default and Remedies. (a) Time is of the essence in this lease. If the lessee defaults on the performance of any of the covenants or conditions of this lease, and the default is not remedied within 60 days after the lessor issues written notice of such default to the lessee and to the holder of a security interest in the leasehold approved by the lessor, or within any additional period the lessor allows for good cause, the lessee will be subject to legal or any other administrative action deemed appropriate by the lessor, including termination of this lease. The lessor may, in the notice of the default or in a separate written notice, state that if the default is not remedied, this lease shall terminate on a date certain, which shall be at least 60 days after issuance of the notice of default. Upon the date specified in such notice, unless the default has been remedied, the lease shall expire automatically without further notice or action by the lessor and this lease and all rights of the lessee under the lease shall terminate. Upon termination of the lease the lessor shall have an immediate right to possession of the leasehold and any possession by the lessee shall be unlawful. It is specifically agreed that no judicial action shall be necessary to terminate this lease or to allow the lessor to retake possession in the event of default by the lessee. No improvements may be removed from the leasehold while the lease is in default except with the lessor's prior written approval. If this lease is terminated for default, all compensation paid by the lessee is forfeited to the lessor. The lessor is not liable for any expenditures made or undertaken by the lessee under this lease. Any costs or fees, including attorney's fees, reasonably incurred by the lessor for the enforcement of this lease, shall be added to the obligations due and payable by the lessee.

(b) The rights, if any, of third-party security interest holders or lienholders are controlled solely by AS 38.05.103 and 11 AAC 58.590. If the lessee fails to remedy the default within the time allowed in subsection (a) of this section, the holder of an approved security interest who has received notice under subsection (a) of this section may remedy the default. The holder shall act within 60 days from the date of receipt of notice under subsection (a) of this section, or within any additional period the lessor allows for good cause.

(c) The lessor may, at the lessor's option, following the lessee's default and failure to remedy, or after termination of this lease due to such default and failure to remedy, accelerate the unpaid compensation for the remainder of the term of this lease. The lessee's obligation to pay such accelerated rent to the lessor survives termination of this lease.

(d) If this lease is terminated, or all or any portion of the leasehold is abandoned by the lessee, the lessor may immediately enter, or re-enter and take possession of the leasehold, and without liability for any damage, remove all persons and property from the leasehold and may, if necessary, use summary proceedings or an action at law. The words "enter" and "re-enter" as used are not restricted to their technical legal meaning. Any entry, re-entry, possession, repossession, or dispossession by the lessor, whether taken with or without judicial action, does not absolve, relieve, release, or discharge the lessee, either in whole or part, of any liability under the lease.

(e) The lessor, upon or at any time after giving written notice of any default, may enter or re-enter the leasehold to remedy any default by the lessee or exercise any right given under this lease, all without the intervention of any court being required. The curing of such default shall not be deemed for any purpose to be for the benefit of the lessee.

(f) At any time after termination of this lease, the lessor may re-let the leasehold, or any part thereof, in the name of the lessor for such term and on such conditions as the lessor may determine, and may

collect and receive the compensation therefor. The lessor shall not be responsible or liable for failure to re-let the leasehold or for any failure to collect any compensation due upon such re-letting, nor shall the lessor be required to account for or pay to the lessee any excess compensation received as a result of such re-letting. The lessee shall be liable for any deficiency, and for all costs, expenses, and fees incurred by the lessor arising out of the default, including the lessor's efforts to re-let the leasehold.

(g) No right or remedy conferred upon or reserved to the lessor in this lease or by statute, or existing in law or equity, is intended to be exclusive of any other right or remedy, and each and every right shall be cumulative.

22. Disposition of Improvements and Chattels After Termination. AS 38.05.090 will govern disposition of any lessor-approved chattels or improvements left on the leasehold after termination. At the lessor's sole option, improvements not approved by the lessor shall be removed from the leasehold and the site restored to its original condition at the lessee's sole expense, or be forfeited to the lessor. The lessee shall be liable to the lessor for any costs, expenses, or damages arising out of the disposition of improvements not approved by the lessor, and may be required to pay rent on any improvements or chattels left on the parcel in accordance with 11 AAC 58.680.

23. Indemnity to Lessor. The lessee shall indemnify, defend, and hold the lessor harmless from and against all claims, demands, judgments, damages, liabilities, penalties, and costs, including attorney's fees, for loss or damage, including but not limited to property damage, personal injury, wrongful death, and wage, employment, or worker's compensation claims, arising out of or in connection with the use or occupancy of the leasehold by the lessee or by any other person holding under the lessee, or at the lessee's sufferance or invitation; and from any accident or fire on the leasehold; and from any nuisance made or suffered on the leasehold; and from any failure by the lessee to keep the leasehold in a safe and lawful condition consistent with applicable laws, regulations, ordinances, or orders; and from any assignment, sublease, or conveyance, attempted or successful, by the lessee of all or any portion of the leasehold or interest therein contrary to the covenants and conditions of this lease. The lessee holds all goods, materials, furniture, fixtures, equipment, machinery, and other property whatsoever on the parcel at the sole risk of the lessee, and shall defend, indemnify and hold the lessor harmless from any claim of loss or damage by any cause whatsoever, including claims by third parties.

24. Insurance. If required by the lessor, the lessee shall obtain insurance in an amount determined by the lessor to be sufficient. The lessor shall be named as an additional insured party of any such insurance. The types and amount of insurance shall be specified in the attached stipulations made a part of this lease agreement and may be adjusted periodically. The lessee shall maintain that insurance as long as required by the lessor. Any insurance acquired by the lessee for the purpose of providing insurance coverage under this lease must be issued by an insurer authorized to do business in the State of Alaska under the provisions of AS 21.09.010 and AS 21.27.010 for the type of policy being written.

25. Bonding. If required by the lessor, the lessee shall furnish a bond, cash deposit, certificate of deposit, or other form of security acceptable to the lessor in an amount determined by the lessor to be sufficient to ensure faithful performance of the covenants and conditions of this lease, and to cover the cost of site cleanup and restoration and any associated costs after termination of the lease. The amount and conditions of the bond shall be specified in the attached stipulations made a part of this lease agreement. The lessee shall maintain the bond as long as the lessor deems necessary, and in the amount required by the lessor, which amount may be adjusted periodically.

26. Environmental Compliance. (a) The lessee shall, at the lessee's own expense, comply with all existing and hereafter enacted environmental responsibility laws ("Environmental Laws"). The lessee shall, at the lessee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the

Environmental Laws.

(b) Should the Authority require that a remedial action plan be prepared and that a remedial action be undertaken because of the presence of, or any disposal, release, spill, or discharge, or threatened disposal, release, spill, or discharge of or contamination by hazardous materials at the leasehold that occurs during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease, then the lessee shall, at the lessee's own expense, prepare and submit the required plans and financial assurances and carry out the approved plans. The lessee's obligations under this section shall arise if there is any event or occurrence at the leasehold during the term of this lease, or arising out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease, that requires compliance with the Environmental Laws.

(c) At no expense to the lessor, the lessee shall promptly provide all information requested by the lessor for preparation of affidavits or other documents required by the lessor to determine the applicability of the Environmental Laws to the leasehold, and shall sign the affidavits promptly when requested to do so by the lessor.

(d) The lessee shall indemnify, defend, and hold harmless the lessor from all fines, penalties, suits, judgements, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of or in any way connected with the presence of or any disposal, release, spill, or discharge or any threatened disposal, release, spill, or discharge of or contamination by hazardous materials at the leasehold that occurs during the term of the lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease; and from all fines, penalties, suits, judgements, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of the lessee's failure to provide all information, make all submissions, and take all steps required by the Authority under the Environmental Laws or any other law concerning any spill, discharge, or contamination that occurs during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease.

(e) The lessee agrees that it will not discharge or dispose of or suffer the discharge or disposal of any petroleum products, gasoline, hazardous chemicals, or hazardous materials into the atmosphere, ground, wastewater disposal system, sewer system, or any body of water.

(f) In any court action or administrative proceeding, in addition to all other applicable presumptions, it shall be rebuttably presumed that any environmental contamination of the leasehold (i) has been released on the leasehold; (ii) has resulted from acts or omissions of the lessee or its agents; and (iii) has occurred during the term of this lease. The lessee has the burden of rebutting the presumptions by clear and convincing evidence.

(g) This section of this lease does not in any way alter the State of Alaska's powers and rights or the lessee's duties and liabilities under Title 46 (or its successor) of the Alaska Statutes or other state, federal, or municipal statutes, regulations, or ordinances. For example, notwithstanding the provisions of this lease, the State of Alaska shall not be precluded from claiming under AS 46.03.822 that the lessee is strictly liable, jointly and severally, for damages and costs incurred by the state for clean up of contamination on the leasehold. The obligations and provisions of this section 26 shall survive the termination of this lease.

(h) As used in this lease, the term "hazardous materials" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any municipal governmental authority, the State of Alaska, or the United States government.

27. Surrender of Leasehold. Upon the expiration, termination, or cancellation of this lease, the lessee

shall peacefully leave and deliver up all of the leasehold in good, sanitary, and marketable condition, order, and repair.

28. Notices. (a) Any notice or demand by the lessee will be made by hand delivery to the Director, Division of Mining, Land and Water, or by certified mail, postage prepaid, addressed as follows (or to a new address that the lessor designates in writing), with delivery occurring upon receipt by the lessor:

To the Lessor: Division of Mining, Land and Water
3700 Airport Way
Fairbanks, Alaska 99709

(b) Any notice or demand by the lessor will be issued as provided in 11 AAC 02.040(c). If issuance is by mail, the notice or demand will be addressed as follows (or to a new address that the lessee or its successor in interest designates in writing):

To the Lessee:

The lessor will issue a copy of any such notice or demand to each holder of a security interest in the leasehold whose assignment has been approved by the lessor under section 6 of this lease. Any security interest not approved as provided in section 6 is insufficient to require notice by the lessor under AS 38.05.103.

(c) Any notice or demand regarding the lease must be in writing and will be complete if given as set out above.

29. Penalty Charges. The lessee shall pay a fee for any late payment or returned check issued by the lessee as follows:

(1) Late Payment Penalty: The greater of either the fee specified in 11 AAC 05.010 or interest at the rate set by AS 45.45.010(a) will be assessed on a past-due account until payment is received by the lessor. Acceptance of a late payment or of a service charge for a late payment is subject to the lessor's rights under sections 20 and 21 of this lease.

(2) Returned Check Penalty: A returned check fee as provided in 11 AAC 05.010 will be assessed for any check on which the bank refuses payment. If the bank refuses payment, the default termination date remains the same. Late penalties under subsection (1) of this section shall continue to accumulate.

30. Modification. This lease may be modified or amended only by a document signed by both parties. Any purported amendment or modification has no legal effect until placed in writing and signed by both parties.

31. Choice of Law. This lease shall be construed under the laws of the State of Alaska. The lessee confers personal jurisdiction on the courts of the State of Alaska for any litigation under this lease.

32. Severability of Clauses of Lease Agreement. If any clause or provision of this lease is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the lessor and the lessee agree that the remainder of this lease will not be affected, and in lieu of each clause or provision of this lease that is illegal, invalid, or unenforceable, there will be added as a part of this lease a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

By signing this lease, the lessor and the lessee agree to be bound by its provisions.

LESSEE:

Shovel Creek Wind, LLC

LESSOR:

Director, Division of Mining, Land and Water

APPROVED:

Commissioner, Department of Natural Resources

STATE OF ALASKA)
) ss.

Judicial District)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, _____, before me personally appeared _____, known to me to be the person named and who signed the foregoing lease and acknowledged voluntarily signing the same.

Notary Public in and for the State of Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.

Judicial District)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, _____, before me personally appeared _____, of the Division of Mining, Land and Water of the Department of Natural Resources of the State of Alaska, who executed the foregoing lease on behalf of the State of Alaska, and who is fully authorized by the State to do so.

Notary Public in and for the State of Alaska
My commission expires: _____

Approved as to form February 9, 1994, and September 25, 2001.

/s/ Elizabeth J. Barry, Assistant Attorney General

Recorder's Office:

State Business; No Fee

Return the recorded document to:

**DNR, DMLW, NRO
3700 Airport Way
Fairbanks, Alaska 99709**

Additional Lease Stipulations

In addition to the terms of the lease listed within the lease document, the following stipulations will be incorporated as part of the lease. The AO reserves the right to modify the following stipulations or include additional stipulations as necessary prior to lease issuance.

1. Authorized Officer. The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.

2. Preference Right. No preference right for subsequent authorizations is granted or implied by this authorization.

3. Development Plan: Section 4 of the lease is hereby amended to include the following: Development shall be limited to the authorized area and improvements specified in the approved development plan or subsequent modifications approved by the AO. The grantee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.

4. Specific Land Use. Section 4 of the lease is hereby amended to include the following: This lease is issued for a specific use and development plan, and use of the area for purposes other than those specified constitutes a breach of the lease agreement and may result in revocation. The lease may be terminated upon a finding by the AO that the land or a part of it has not been used by the Lessee for the purpose specified in the lease for a period of two years. The lease cannot be assigned or subleased except with the consent of the AO. A Lessee may not change the use specified in the lease to another or additional use except with the consent of the AO.

5. Waste Disposal: Section 4 of the Lease is amended to include the following: Waste disposal: On-site refuse disposal is prohibited, unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this authorization shall be removed and disposed of at an off-site ADEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and discarded equipment.

6. Site Disturbance. Section 4 of the lease is hereby amended to include the following: The Lessee, its contractors, and sub-contractors shall take all reasonable precautions to prevent water pollution, erosion, or sedimentation on or in the vicinity of the leased area.

Site disturbance shall be kept to a minimum to protect local habitats. All activities at the site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems. Any ground disturbances that may occur shall be contoured to blend with the natural topography to protect human and wildlife health

and safety. Particular attention must be paid to preventing pollution and siltation of any waterways and to preventing disturbances to fish and wildlife populations and habitats.

7. Assignment. Section 6 of the lease is hereby amended to include the following: In the event the Lessee desires to transfer their interest in the lease to another party the Lessee shall submit to the AO a request for assignment and a copy of a draft agreement which identifies the provisions of the assignment between the parties. If the assignment changes the type or level of use such that new lease compensation or stipulations are necessary to protect the Lessor's interest the AO reserves the right to require/renegotiate new terms or conditions for the lease prior to approving any assignment. The AO reserves the right to require an assignment between the Lessee and another party in the event of a change in corporate ownership, LLC/LLP membership or name change involving the leased site.

8. Relinquishment. The lease may be relinquished if the Lessee files a written relinquishment form certifying the condition of the parcel. Lessor acceptance of this relinquishment request is discretionary, but acceptance shall not be unreasonably withheld. Lease rental payments are non-refundable regardless of whether the lease is relinquished or terminated for cause.

9. Subleasing. Section 6 of the lease is hereby amended to include the following: The AO reserves the right to require an increased annual compensation as a condition of a sublease approval. Said increase shall be determined by negotiation between the Lessee and AO, but shall not be less than 25% of all compensation paid annually to the Lessee by the Sublessee. Neither the terms of this sublease provision nor any actual compensation derived from a sublease shall have any effect upon a determination of the annual fee pertaining to AS 38.05.075(a) or appraised market value pertaining to AS 38.05.840 and/or this lease parcel. Sublease shall be defined to include any lease, rental, storage, or accommodation agreement between the Lessee and another individual, business or corporation utilizing or benefiting from the lease parcel. Sublessee shall be defined to mean any individual, business, or corporation executing an agreement, as above, with the Lessee. The amount of sublease compensation shall be subject to change at the same time as the lease compensation adjustment and whenever the terms or conditions of the agreement between the Lessee and Sublessee change. Approval of a sublease shall also be conditioned upon:

- a) the Lessee is in full compliance with lease conditions and is in good standing with all other authorizations;
- b) submission by the Lessee of a draft copy of the agreement(s) which will govern the relationship and compensation provisions between the Lessee and Sublessee; failure of Lessee to provide complete, true and accurate information regarding sublease compensation will, at Lessor's discretion, be grounds for termination of the lease;

c) submission by the Lessee of a proposed plan of operations and development for the subleased area and, if necessary, an amended plan of operations and development for the entire lease area; and; and

d) a best interest finding by the AO and amendments to the lease contract as necessary, if significant changes to the use and development are proposed.

Notwithstanding other requirements described in the lease agreement and additional stipulations, assignments or subleases shall be restricted to those entities which are also eligible to obtain a lease under the same statutory authority for which this lease was issued.

10. Inspections. Section 13 of the lease is hereby amended to include the following: The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the grantee is found to be in noncompliance the authorized area may be subject to reinspection. The grantee may be charged for actual expenses of any inspection.

11. Concurrent Usage. Section 15 of the lease is hereby amended to include the following: The AO reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land covered under this authorization. Authorized concurrent users of state land, their agents, employees, contractors, subcontractors and licensees shall not interfere with the operation or maintenance activities of other authorized users. Any future concurrent permit, lease or sublease will be subject to the conditions and stipulations contained in the lease, including the additional collection of fees or rents by the AO from any subordinate Lessee or Sublessee.

12. Violations. Section 21 of the lease document is hereby amended to include the following: Lessee expressly agrees they may be required to come into compliance with provisions of this or any other authorization granted under AS 38.05 prior to grant of any other authorization from DMLW. This authorization may be terminated upon violation of any of its terms, conditions, stipulations or upon failure to comply with any applicable state, federal and local laws, statutes and regulations..

13. Indemnification. Section 23 of the lease is hereby amended to include the following:

- a. Lessee assumes all responsibility, risk and liability for its activities and those of its employees, agents, contractors, subcontractors, assignees, licensees, or invitees, directly or indirectly related to this lease, whether such risk and liability accrue during or after the term of this lease.
- b. Lessee holds all goods, materials, furniture, fixtures, equipment, machinery, structures, or other chattels on the leasehold premises at its sole risk.
- c. Lessee shall defend, indemnify, and hold harmless the Lessor and the State of Alaska, its agents and employees, from and against any and all suits, claims, actions, injuries

to persons or property, losses, costs, penalties, and damages of whatever kind or nature, including all attorneys' fees and litigation costs, arising out of or in connection with, Lessee's or its employees', agents', contractors', subcontractors', licensees', or invitees' use or occupation of the leasehold or activities arising out of the lease, except that Lessee shall not be required to indemnify and hold harmless the Lessor and the State of Alaska in the event the proximate cause of the injury or damage is the sole negligence or willful misconduct of the State or a person acting on the State's behalf. In addition, Lessee shall not be responsible for indemnifying Lessor or the State of Alaska in the event the suit, claim, action, injury to persons or property, losses, costs, penalties, or damages arise out of or are in connection with Contamination identified in an Environmental Baseline accepted by Lessor as described in Section 17 of these Additional Lease Stipulations.

- d. . Within 15 days, Lessee shall accept any such cause, action or proceeding upon tender by the State. This indemnification shall survive the termination of the lease.
- e. Lessee shall additionally indemnify Lessor as provided in Section 26, as amended in Stipulation 16 of these Additional Lease Stipulations.

14. Insurance. As per Section 24 the Lessee shall secure or purchase at its own expense, and maintain in force at all times during the term of this lease, liability coverage and limits consistent with what is professionally recommended as adequate to protect the lessee (the insured) and lessor (the State, its officers, agents and employees) from the liability exposures of ALL the insured's operations on state land. Certificates of Insurance must be furnished to the AO prior to the issuance of this lease and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The lessee must provide for a 60-day prior notice to the State before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, are material breaches of this lease and shall be grounds, at the option of the State, for termination of the lease. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. The policy shall be written on an "occurrence" form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State must be named as an additional named insured on the policy with respect to the operations of the lessee on or in conjunction with the leased premises.

15. Performance Guaranty. As per Section 25 of the lease the Lessee must post a performance guaranty in the amount of [REDACTED] to secure faithful performance with all terms and condition of the lease and to insure site restoration of the leasehold. The performance guarantee must remain in effect for the duration of the lease term or until released in writing by the AO.

Failure by the Lessee to provide replacement security, upon notice of non-renewal of an existing form of security, shall be grounds for the AO to make a claim upon the existing security to protect the Lessor's interests.

The guaranty amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments to the lease, assignments, re-appraisals, changes in the development plan, approval of a reclamation plan, any change in the activities conducted or performance of operations conducted on the leased premises and as a result of any violations to the lease agreement.

The guaranty may be utilized by the AO to cover actual costs incurred by the State of Alaska to pay for any necessary corrective actions in the event the Lessee does not comply with the site utilization, restoration requirements and/or other stipulations contained in the lease agreement. If the Lessee fails to perform the obligations under the lease agreement within a reasonable timeframe, the AO may perform the Lessee's obligations at the Lessee's expense. The Lessee agrees to pay within 20 days following demand, all costs and expenses reasonable incurred by the State of Alaska as a result of the failure of the Lessee to comply with the terms and conditions of the lease agreement. The provisions of these authorizations shall not prejudice the State's right to obtain a remedy under any law or regulation.

The performance guaranty will be released upon expiration of the lease provided that all terms and conditions of the lease have been met, including complete removal and restoration of the leased area leaving the site in a safe and clean condition.

16. Environmental Provisions: Section 26 of the lease is hereby amended and replaced with the following provisions.

SECTION 26. ENVIRONMENTAL ISSUES

A. Definitions for Section 26, Environmental Issues:

Affected Property – Any property adjacent to the Leasehold that contains Contamination in, on, or under the surface, including groundwater.

Contamination – The unpermitted presence of any Released Hazardous Substance.

Environmental Assessment – An assessment of property, prepared in a manner consistent with generally accepted professional practices, that is supported by reports and tests that determine the environmental condition of a property and the presence, type, concentration, and extent of any Contamination in, on, and under the surface of the property.

Environmental Law – Any federal, state, or local statute, law, regulation, ordinance, code, permit, order, decision, or judgment from a governmental entity relating to environmental matters. It includes, but is not limited to, AS 46 (Alaska Water, Air, Energy, and Environmental Conservation Acts); 18 AAC (Environmental Conservation) implementing AS 46; 42 U.S.C. §§ 7401-7671 (Clean Air Act); 33 U.S.C. §§ 1251-1387 (Federal Water Pollution Control Act); 42 U.S.C. §§ 6901-6992 (Resource Conservation and Recovery Act); 42 U.S.C. §§ 9601-9657 (Comprehensive Environmental Response, Compensation, and Liability Act); and 15 U.S.C. §§ 2601-2692 (Toxic Substances Control Act).

Environmental Liability Baseline – A description, accepted by the Lessor and documented by one or more Environmental Assessments and any other relevant documents, of the existence, location, level, and extent of Contamination in, on, or under the surface of the Leasehold that was neither caused nor Materially Contributed To by the Lessee, nor otherwise assumed by the Lessee.

Hazardous Substance – Any substance that is defined under an Environmental Law as hazardous waste, hazardous substance, hazardous material, toxic, pollutant, contaminant, petroleum, petroleum product, or oil.

Leasehold – The real property defined in Section 1 of this lease.

Materially Contribute To – To significantly add to or make worse, including by inaction, the Release or migration of a Hazardous Substance.

Release – means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding

- (a) Any release that results in exposure to a person solely within a workplace, with respect to a claim that those persons may assert against the persons' employer; and
- (b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel.

- B. Compliance with Laws. Lessee shall comply with all Environmental Laws relating to the handling, use, generation, accumulation, storage, transportation, disposal, release, treatment or sale of Hazardous Substances in, on or under the Leasehold.
- C. Lease Site Condition/Potential Contaminants. Lessee has the sole responsibility under this lease to ascertain the environmental condition and presence of Contamination in, on, or under the surface of the Leasehold. Lessor makes no representations and no warranties, express or implied, concerning the existence or absence of any Hazardous Substances or Contamination on the Leasehold. Lessor does not assume any liability for the removal of Hazardous Substances, nor for the remediation of the Leasehold and any Affected Property should such substances be found.

D. Environmental Liability Baseline. Lessee is conclusively presumed to have caused or to have Materially Contributed To any Contamination of, or originating on, the Leasehold. Lessee may establish an Environmental Liability Baseline that will serve as a benchmark for the condition of the Leasehold as of the effective date of the lease and as a reference for the Clearance Assessment in Subsection I, below. Lessee will not be presumed to have caused or to have Materially Contributed To any Contamination of, or originating on, the Leasehold identified in the Environmental Liability Baseline. Lessee is responsible for the acts or omissions of its employees, agents, invitees, sublessees, contractors and guests on the Leasehold, and Contamination caused or Materially Contributed To by activities of the Lessee's employees, agents, invitees, sublessees, contractors and guests on the Leasehold are deemed to be caused by or Materially Contributed To by the Lessee. Lessee shall be solely responsible for any and all costs associated with conducting the Environmental Assessment and/or establishment of the Environmental Liability Baseline.

- a. Notice of Environmental Assessment. If the Lessee decides to add to or establish an Environmental Liability Baseline for all or any portion of the Leasehold or Affected Property during the term of the lease, or any renewal or assignment, if applicable, thereof, the Lessee shall notify the Lessor of the intent to conduct an Environmental Assessment for that portion of the Leasehold or Affected Property. The Lessee shall provide a description of activities for conducting the Environmental Assessment. The Lessee shall provide Lessor with the final Environmental Assessment report.
- b. Establishing an Environmental Liability Baseline.
 - i. If the Lessee discovers Contamination in, on, under the surface of, or emanating from, the Leasehold, for any portion of the Contamination to be considered for inclusion in the Environmental Liability Baseline, the Lessee must demonstrate to the satisfaction of the Lessor that the Contamination proposed for inclusion was not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, nor otherwise assumed by the Lessee. Contamination caused or Materially Contributed To by activities of the Lessee's employees, agents, invitees, sublessees, contractors and guests on the Leasehold are deemed to be Materially Contributed To by the Lessee.
 - ii. Only that portion of Contamination not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities, nor otherwise assumed by the Lessee, shall be included in the Environmental Liability Baseline.
 - iii. Lessee is responsible for inspecting the Leasehold and reporting, in writing, any evidence of conditions on the Leasehold as of the effective date of the lease, which differ from the conditions reported in the Environmental Liability Baseline. By entering into the lease, Lessee expressly accepts the Leasehold and acknowledges that notwithstanding the provisions of the Environmental Liability Baseline,

- the Leasehold may contain Hazardous Substances not mentioned in the Environmental Liability Baseline.
- c. Adding to an Existing Environmental Liability Baseline.
 - i. If, after an Environmental Liability Baseline is established for any portion of the Leasehold or Affected Property, the Lessee discovers Contamination in, on, under the surface of, or emanating from, that portion of the Leasehold having an Environmental Liability Baseline, which Contamination the Lessee or the Lessee's operations or activities did not cause or Materially Contribute To, and which the Lessee did not otherwise assume, the Lessee may, at its own cost, submit an additional Environmental Assessment reflecting that information to the Lessor for the Lessor's consideration to add to the Environmental Liability Baseline. The Lessee's additional Environmental Assessment must demonstrate to the satisfaction of the Lessor which portion of the additional Contamination on the Leasehold or Affected Property was not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities nor otherwise assumed by the Lessee.
 - ii. Only that portion of Contamination not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, nor otherwise assumed by the Lessee, may be added to the existing Environmental Liability Baseline.
 - d. Lessor's Acceptance or Rejection of Lessee's Environmental Assessment.

When the Lessor receives the Lessee's Environmental Assessment to establish an Environmental Liability Baseline or to add to an existing Environment Liability Baseline, the Lessor, in its sole discretion, will do one of the following:

 - i. Accept the findings of the Lessee's Environmental Assessment and any other relevant documents to establish an Environmental Liability Baseline for that portion of the Leasehold or Affected Property being assessed or to add to the existing Environmental Liability Baseline;
 - ii. Reject the findings of the Lessee's Environmental Assessment for that portion of the Leasehold being assessed and offer the Lessee the opportunity to perform additional environmental testing if the Lessor determines, in writing, that the findings of the Environmental Assessment are inadequate to establish an Environmental Liability Baseline or to add to an existing Environmental Liability Baseline. The Lessor's written rejection of the Lessee's Environmental Assessment will be based on failure of the Lessee's Environmental Assessment to either:
 - 1. follow generally accepted professional practices in determining the environmental condition of the Leasehold or the Affected Property and the presence of Contamination in, on, or under the surface of, or emanating from, the Leasehold; or

2. demonstrate to Lessor's satisfaction the portion of the Contamination that was not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, nor otherwise assumed by the Lessee; or
 - iii. Perform additional environmental testing at the Lessor's expense to verify the environmental condition of that portion of the Leasehold being assessed. If the results of the Lessor's tests conflict with the Lessee's Environmental Assessment, the Lessor and the Lessee will negotiate in good faith an Environmental Liability Baseline or an addition to the existing Environmental Liability Baseline for the portion of the Leasehold or Affected Property being assessed.
 - e. Amending the Environmental Liability Baseline to Delete Contamination Caused, Materially Contributed To or Assumed by Lessee. If, after the Environmental Liability Baseline for any portion of the Leasehold or Affected Property is established, it is discovered that the presence of Contamination identified in the Environmental Liability Baseline was caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, or otherwise assumed by the Lessee, the Environmental Liability Baseline will be amended to delete that portion of the Contamination that was caused or Materially Contributed To by the Lessee or the Lessee's operations or activities or otherwise assumed by the Lessee.
- E. Notice of Hazardous Substance Release. Lessee shall give notice to Lessor promptly after learning of any Release of any Hazardous Substance on or at the Leasehold or surrounding environment. This notice shall include a description of the Release, measures taken or proposed to be taken by Lessee to contain and/or remedy the Release, and any resulting damage to property, persons or the environment. At Lessee's own expense, Lessee shall promptly take all steps necessary to contain and remedy any Release of Hazardous Substances in, on or under the Leasehold or surrounding environment, and all resultant damage or injury to property, persons and the environment (the "Response Action"). Lessee shall be responsible for reporting and coordinating the Response Action with the Alaska Department of Environmental Conservation and/or any other federal, state, or local agency with jurisdiction (collectively, the "Regulator"). Lessee shall provide Lessor with not less than seven days to review and comment on any submittal to a Regulator made as part of a Response Action prior to submission. Upon request by Lessor, Lessee shall provide Lessor copies of any and all documents arising from or related to the Response Action including, but not limited to, any and all communications by Lessee to a Regulator.
- F. Lessor's Right to Perform Testing. At any time, and from time to time, prior to the expiration of the Lease, Lessor shall have the right, but not obligation, to conduct appropriate tests of the Leasehold or any portion thereof to determine whether Contamination has occurred provided, however, that (a) all such testing shall be conducted at Lessor's sole cost and expense except as set forth in the next sentence, (b) Lessor shall coordinate testing activities with the Lessee and shall, to the extent practicable, minimize the impact of testing on the Lessee, (c) Lessor shall promptly

repair any physical damage caused by such testing and restore the Leasehold to substantially the same physical condition it was in immediately prior to such testing, and (d) the Lessor shall not be held liable for any damages, whether direct or indirect, incurred by Lessee as part of the testing. Lessee shall pay all reasonable costs of such tests if such tests reveal that Hazardous Substances exist on the Leasehold due to the acts or omissions of Lessee in violation of state or federal Environmental Laws.

- G. Financial Responsibility for Contamination on the Leasehold and on Any Affected Property. The Lessee assumes financial responsibility to the Lessor for any Contamination in, on, and under the Leasehold and any Affected Property, except for Contamination that is identified in an Environmental Liability Baseline. Lessee shall be responsible for all costs incurred by Lessor to enforce these environmental provisions, including but not limited to action(s) to force Lessee to address a Release of Contamination at the Leasehold or Affected Property, and all attorneys' fees and other costs of such action(s). This is without prejudice to the Lessee's right to seek contribution or indemnity from either prior lessees of the Leasehold and Affected Property, or other potentially responsible parties except for the Lessor.
- H. Environmental Indemnification. Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, demands, damages, costs, fees, penalties, and charges asserted against, imposed upon, and incurred by Lessor (including fees and costs of attorneys, consultants, laboratory testing charges and personal injury claims) as a result of (a) the handling, use, generation, accumulation, storage, transportation, disposal, treatment and/or sale of Hazardous Substances at or from the Leasehold; (b) the release of any Hazardous Substance on, at or from the Leasehold which is attributable to any act or omission of Lessee, or its employees, agents, invitees, sublessees, contractors and guests; (c) the failure of Lessee, or its employees, agents, invitees, sublessees, contractors and guests, to comply with any Environmental Laws; (d) Lessee's failure to remove all Hazardous Substances or decontaminate, decommission, or, if appropriate, sterilize all areas in the Leasehold and any Affected Property in which any of Hazardous Substances were generated, stored, handled, accumulated, or released; and (e) Lessee's failure to comply with any other requirement of this Section. This environmental indemnification is in addition to the indemnification provided for under Section 23 of the Lease.
- I. Environmental Report Upon Expiration or Termination of Lease. Two months prior to Lessee's surrender of possession of any part of the Leasehold, or the expiration or termination of this Lease, Lessee shall provide Lessor with copies of all environmental reports necessary for Lessor to determine whether the Leasehold may contain any Hazardous Substances other than those, if any, that were identified in the Environmental Liability Baseline. If reports indicate the presence of Hazardous Substances, then Lessee shall also provide Lessor with (a) a written assessment addressing any potential releases of Hazardous Substances handled on the Leasehold during the term of the Lease to the workplace, soils, sewers, drywells, surface water, or groundwater, and any threats to human health or the environment posed by Lessee's operations (the "Clearance Assessment"); the scope of the Clearance Assessment must be approved by Lessor, such approval not to be unreasonably withheld, and will

include provisions complying with the standards for Phase I and II Environmental Site Assessment as specified by the ASTM standard in effect at the time or any successor standards published by ASTM International (formerly known as the American Society for Testing and Materials) or any successor organization (or, if ASTM International and its successors no longer exist, a similar entity publishing similar standards); (b) written evidence that all appropriate governmental notifications have been made or releases requested as may be required by laws in effect at that time, including laws pertaining to Releases of Hazardous Substances and the surrender of the Leasehold; and (c) a plan to address any further lease requirements or Contamination which are Lessee's responsibility under this Section. In addition, Lessee agrees to remain responsible after the surrender of the Leasehold for the remediation of any Contamination that Lessee is otherwise responsible for pursuant to this lease, to comply with any recommendations regarding such Contamination, and to continue to pay rent and insurance until the Lessee provides evidence acceptable to Lessor that all Contamination, if any, then present on the Leasehold and any Affected Property are below reportable levels under state and federal laws. Lessee's obligations under this Article shall survive the expiration or earlier termination of the lease.

- J. Removal of Hazardous Substances prior to Expiration or Termination of Lease. At least 10 days prior to termination of this lease, Lessee shall remove all Hazardous Substances which have been stored, or released onto or from, the area to be vacated and shall decontaminate vacated areas in the Leasehold in which Hazardous Substances were generated, stored, accumulated, released, or otherwise present. If Hazardous Substances were stored in tanks or containers, Lessee shall decommission such equipment. Documentation of this removal and decommissioning shall be included in the Clearance Assessment.
- K. Action Against Potentially Responsible Parties. This article does not restrict either the Lessor or the Lessee from seeking and obtaining cleanup efforts, costs, or damages from other potentially responsible parties.
- L. Authorities of the Alaska Department of Environmental Conservation. These provisions do not in any way alter the State of Alaska, Department of Environmental Conservation's powers and rights under AS 46.03 or 18 Alaska Administrative Code (implementing AS 46.03) (or their successors) and specifically AS 46.03.822. It also does not affect Lessee's duties and liabilities under Title 46 (or its successor) of the Alaska Statutes or other state, federal, or municipal statutes, regulations, or ordinances. For example, notwithstanding the provisions of this lease, the State of Alaska shall not be precluded from claiming under AS 46.03.822 that Lessee is strictly liable, jointly and severally, for damages and costs incurred by the State for cleanup of Contamination on the Leasehold and any Affected Property. The obligations and provisions of this Section shall survive the termination of this lease.

17. Fuel. When fuel storage containers exceed a total combined capacity of 110 gallons, the containers must be stored within either, an Alaska Department of Environmental Conservation approved double walled-tank, or an impermeable diked area, or a portable impermeable containment structure capable of containing 110% of the capacity of the largest independent

container. All containers must be clearly marked with the contents and the Lessee's name. Drip pans and materials, such as sorbent pads, must be on hand to contain and clean up spills from any transfer or handling of fuel. All fuel storage containers and associated materials must be removed by the lease expiration date.

18. Hazardous Substances (other than fuel). Use of herbicides and pesticides by the Lessee is prohibited without prior written approval from the AO. No storage of hazardous material/substances is authorized within the project area without prior written approval from the AO.

19. Notification of Discharge: The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of any amount of oil to water, a discharge of any amount of a hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge must be made to DEC online at ReportSpills.alaska.gov or by phone at 1-800-478-9300.

Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-8528; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.sero.spill@alaska.gov, (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.

20. Alaska Historic Preservation Act. The Alaska Historic Preservation Act, AS 41.35.200, prohibits the appropriation, excavation, removal, injury, or destruction of any state owned historic, prehistoric, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the grantee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.

21. Incurred Expenses. The grantor shall in no way be held liable for expenses incurred by the grantee connected with the activities directly or indirectly related to this authorization.

22. Public Access. The operation, use and maintenance of the project shall not interfere with free use of public access easements. However, if a specific activity poses a safety concern, the AO may authorize a temporary closure of public access easements to or through the project area for a specific period of time. The Lessee is required to contact the AO in advance for approval to close public access easements. No closures are authorized unless specifically authorized in writing by the AO.

23. Destruction of Markers: The grantee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against damage, destruction, or obliteration. The grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the grantee's expense in accordance with accepted survey practices of the DMLW..

24. Compliance with Governmental Requirements. The grantee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.

25. Change of Contact Information: The grantee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO..

26. Compliance. The Lessee shall inform and ensure compliance with these stipulations by its employees, agents, invitees, contractors, subcontractors, or licensees directly or indirectly conducted in connection with this lease. The Lessee is responsible for the accurate location of all construction, operation, and maintenance activities within the area authorized under the terms of this lease.

27. Lease Expiration and Site Reclamation. No later than one (1) year prior to the lease expiration, the Lessee shall file with the AO:

- a) A request for an extension, renewal, or a new lease, and/or
- b) A proposed reclamation plan for the leasehold lands.

28. Site Reclamation.

- a. The Lessee is responsible for site reclamation within the leasehold; this responsibility survives the termination of any lease or other authorization.
- b. Lessee must provide a reclamation plan at least one year prior to the expiration or relinquishment of the lease. The reclamation plan must include a description of the methods and techniques that the Lessee will use to rehabilitate all sites affected by construction and intensive use activities. The plan must also include a schedule that sets forth the steps required for surface rehabilitation, and a specific timeline showing when the Lessee will

accomplish each step. This Plan shall be in addition to any requirements for environmental compliance made part of this lease.

c. Land returned to the Department of Natural Resources for any reason shall be returned in an environmental, physical, and marketable condition acceptable to the AO. The AO and the Lessee agree that the turbine foundations, pads, and roads may be left in place; any other above ground infrastructure is to be removed.

29. Valid Existing Rights: This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.

30. Request for Information: The AO, at any time, may require the grantee to provide any information directly or indirectly related to this authorization, in a manner prescribed by the AO.

31. Public Trust Doctrine: The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This authorization is subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.

32. Penalty Charges: The grantee shall pay a fee for any late payment. The amount is the greater of either \$50.00 or interest accrued daily at the rate of 10.5% per annum and will be assessed on each past-due payment until paid in full.

33. Returned Check Penalty: A returned check penalty of \$50.00 will be charged for any check on which the bank refuses payment. Late payment penalties shall continue to accrue.

34. Site Maintenance: The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein.

35. Maintenance of Improvements: The grantor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the grantor is to be construed as assumption of responsibility.

36. Amendment or Modification: The grantee may request an amendment or modification of this authorization, the grantee's request must be in writing. Any amendment or modification must be approved by the AO in advance, and may require additional fees and changes to the terms of this authorization.

37. Fire Prevention, Protection and Liability: The grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume

full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the grantee's personal property and is not responsible for forest fire protection of the grantee's activity. To report a wildfire, call 911 or 1-800-237-3633.

38. Proper Location: This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, and municipal lands, or lands which are owned or solely managed by other offices and agencies of the State of Alaska. The grantee is responsible for proper location within the authorized area.

39. Waiver of Forbearance: Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the grantee, unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.

The receipt of compensation by the AO, with or without knowledge of any default on the part of the grantee, is not a waiver of any provision of this authorization. The receipt of compensation by the AO after termination or any notice of termination will not reinstate, continue, or extend this authorization, or destroy or in any manner impair the validity of any notice of termination, unless specifically stated by the AO in writing.

40. Severability Clause: If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the grantor and the grantee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

41. Lease Utilization: Per 11 AAC 58.510, leases must be utilized for purposes within the scope of the lease and the land classification. Utilization or development for other than the allowed uses or failure to substantially utilize or develop the lease is a violation of the lease. A development plan may be required on all leases. Failure to make substantial use of the land, consistent with the development plan, within five years, will, in the director's discretion, constitute grounds for cancellation.