MINING LEASE AGREEMENT

BETWEEN

REGENTS OF THE UNIVERSITY OF MINNESOTA

AND

DAKOTA AGGREGATES, LLC

JUNE 8, 2011
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MINING LEASE AGREEMENT

THIS MINING LEASE AGREEMENT (this “Lease”) is made effective as of June 8, 2011 (the “Effective Date”), by and between REGENTS OF THE UNIVERSITY OF MINNESOTA, a Minnesota constitutional corporation (“University”), and DAKOTA AGGREGATES, LLC, a Minnesota limited liability company (“Lessee”).

RECITALS

A. University is the fee owner of real property located in Dakota County, Minnesota, and more particularly described and depicted on Exhibit A attached hereto (the “Property”) and further depicted on the site plan set forth on Exhibit B attached hereto (the “Site Plan”).

B. The Property contains sand and gravel.

C. Lessee desires to lease and accept from University, and University desires to lease and grant to Lessee, a lease on the Property for the purposes and term, and subject to the terms and conditions, set forth below.

AGREEMENT

In consideration of the foregoing and the mutual covenants contained in this Lease and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, University and Lessee agree as follows:

ARTICLE I
GRANT

Subject to the terms and conditions of this Lease and to all easements, encumbrances, rights-of-way and other matters of record or in use with respect to the Property, University grants, leases and demises to Lessee the Property, subject to the provisions of Section 4.2 relating to University’s Use, for the sole purposes of quarrying, excavating, mining, producing, manufacturing, transporting, processing, drying, stockpiling, removing, and selling the Materials and conducting other activities necessary and incidental thereto, including construction and operation of the Plant and Improvements referenced in Section 4.3.

As used in this Lease, the term “Materials” means all nonmetallic natural mineral aggregate, including sand, silica sand, gravel, crushed rock, limestone, granite, and borrow.

ARTICLE II
TERM

This Lease is granted for a term (the “Lease Term”) of approximately forty (40) years commencing on the Commencement Date and ending on the thirty-ninth (39th) anniversary of the last day of the first Lease Year (as defined in Section 3.1).
As used in this Lease, the term “Commencement Date” means the earliest of the following dates:

(a) The date that the City of Rosemount has issued the Permits (as defined in Section 4.9) required for Lessee to commence its mining operations within any part of the portion of the Property located in the City of Rosemount (the “Rosemount Property”) and the City of Rosemount has issued the Permits necessary for Lessee to operate wet and dry concrete processing facilities (i.e., a ready mix concrete plant and a bagging plant) and an asphalt production plant (the “Plant Permits”) on the Rosemount Property; or

(b) The date that Empire Township has issued the Permits required for Lessee to commence its mining operations within any part of the portion of the Property located in Empire Township (the “Empire Township Property”) and the City of Rosemount has issued the Plant Permits for the Rosemount Property; or

(c) Provided Lessee, in writing, consents to have the Plant located in Empire Township, the date that Empire Township has issued the Permits required for Lessee to commence its mining operations within the Empire Township Property and Empire Township has issued the Plant Permits for the Empire Township Property; or

(d) Provided Lessee, in writing, consents to have the Plant located in Empire Township, the date that the City of Rosemount has issued the Permits required for Lessee to commence its mining operations within the Rosemount Property and Empire Township has issued the Plant Permits for the Empire Township Property; or

(e) The date that Lessee begins its mining operations on any portion of the Property; or

(f) The date that Lessee begins to install or construct the Improvements (including any site preparation) or places any equipment or materials on any portion of the Property.

Notwithstanding anything in this Lease to the contrary, Lessee may not begin its mining operations, begin to install or construct any Improvement (including any site preparation), or place any equipment or materials on any portion of the Property prior to November 30, 2011.

This Lease is binding on the parties from and after the Effective Date. However, if the Commencement Date has not occurred by December 31, 2012, then Lessee or University may terminate this Lease by providing written notice to the other party within sixty (60) days after such date (such 60-day period being the “Termination Period”); provided, however, that the commencement of the Termination Period shall be delayed until up to December 31, 2014, as long as Lessee pays University $25,000 per month beginning January 1, 2013, and on the same day of each subsequent calendar month until and including December 2014. If Lessee fails to
make a $25,000 payment when due, the Termination Period shall commence and Lessee or University may issue the notice of termination. The payments of $25,000 per month are not refundable but shall be a credit against amounts owed for the Production Royalty and Annual Minimum Royalty as stated in Section 3.3(c).

If the Commencement Date has occurred, but Permits required for Lessee to commence its mining operations ("Mining Permits") have not been obtained on both the Rosemount Property and the Empire Township Property, then Lessee shall have until December 31, 2014, to obtain a Mining Permit for the portion of the Property where the Mining Permits have not yet been issued (i.e., either the Rosemount Property or the Empire Township Property). If a Mining Permit has not been obtained for the Rosemount Property or the Empire Township Property by December 31, 2014, then either Lessee or University, by providing written notice to the other party within sixty (60) days after such date, may terminate this Lease with respect to the portion of the Property where a Mining Permit has not been obtained (i.e., either the Rosemount Property or the Empire Township Property); provided, however, the Lease shall remain in effect for the portions of the Property where the Mining Permit has been obtained and where the Plant Permits have been obtained.

If the Commencement Date has occurred, but Plant Permits have not been obtained on the Rosemount Property, Lessee shall have until December 31, 2014, to obtain the Plant Permits for the Rosemount Property. If Lessee has not obtained the Plant Permits for the Rosemount Property by December 31, 2014, then either Lessee or University, by providing written notice to the other party within sixty (60) days after such date, may terminate this Lease with respect to the area of the Plant shown on the existing Site Plan and Operations Plan (as defined in Section 4.1), which is located on the Rosemount Property; provided, however, the Lease shall remain in effect for the portions of the Property where the Mining Permit has been obtained and where the Plant Permits have been obtained. Upon such termination, the Site Plan and the Operations Plan shall be amended to reflect the new location of the Plant Area (as defined in Section 4.3) on the Empire Township Property.

ARTICLE III
PAYMENTS TO UNIVERSITY

Section 3.1 Production Royalty. For all Materials removed from the Property and for all Materials from the Property used in the Plant for production of ready mix concrete, asphalt and similar materials, and products such as bagged products and other products utilizing the Materials (any such removed or used Materials being "Mined"), during any calendar month, Lessee shall, within forty-five (45) days after the last day of such calendar month, pay to University a production royalty (the "Production Royalty") for each type of Material calculated as follows: (a) the Base Royalty (as defined in Section 3.2(a)) then in effect during the applicable Lease Year for the type of Material, multiplied by (b) the weight, in Tons (as defined in Section 3.2(a)), of the Material.

For purposes of this Lease, any Materials shall be considered Mined when the Materials physically leave the Property for an off-site location or are used on the Property for production in the Plant regardless of whether Lessee has or will receive compensation for such Materials.
Materials that are stockpiled on the Property but are not, as yet, transported off of the Property or used in production at the Plant are not Materials that have, as yet, been Mined.

No Production Royalty is owed for any Materials used on the Property for berms, landscaping, site preparation, roads, reclamation, grading, stormwater pond construction, turf restoration or other physical Improvements to the Property.

As used in this Lease, the term “Lease Year” means each twelve (12)-month period during the Lease Term commencing on July 1 and ending on the succeeding June 30; provided that the first Lease Year shall commence on the Commencement Date and shall end on (i) June 30, 2013, if the Commencement Date occurs prior to April 1, 2013; (ii) June 30, 2014, if the Commencement Date occurs on or after April 1, 2013, but before April 1, 2014; and (iii) June 30, 2015, if the Commencement Date occurs on or after April 1, 2014, but on or before December 31, 2014. If the Commencement Date occurs after December 31, 2014, the first Lease Year shall end on the succeeding June 30.

Along with each monthly payment made pursuant to this Section, Lessee shall provide to University a written report showing (i) the quantities of each type of Material Mined during the immediately preceding calendar month; (ii) the quantities of Precious Metals (as defined in Section 3.6) and Timber (as defined in Section 4.15) sold or removed from the Property during the immediately preceding calendar month; and (iii) the Production Royalty and other royalties and payments payable to University with respect to such Materials, Precious Metals and Timber. Notwithstanding anything to the contrary, if a tax is imposed on any Material under Minnesota Statutes, Section 298.75 (as amended, supplemented or replaced from time to time), prior to the time the Production Royalty would otherwise accrue with respect to such Material pursuant to this Section, then the Production Royalty shall accrue at the time the tax is imposed.

Section 3.2 Base Royalty; Imported Products.

(a) Base Royalty. During the first Lease Year, the “Base Royalty” for each type of Material shall mean the following rates per ton of 2,000 pounds (“Ton”):

<table>
<thead>
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<th>Type of Material</th>
<th>Base Royalty, per Ton</th>
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<tr>
<td>Gravel (Greater in size than 5/16th of an inch)</td>
<td>$1.50</td>
</tr>
<tr>
<td>Gravel (up to and including 5/16th of an inch)</td>
<td>$0.85</td>
</tr>
<tr>
<td>Washed Sand</td>
<td>$0.75</td>
</tr>
<tr>
<td>Washed Sand (shipped outside 40-mile radius)</td>
<td>$0.40</td>
</tr>
<tr>
<td>Dry Products</td>
<td>$0.85</td>
</tr>
<tr>
<td>Fill Sand</td>
<td>$0.35</td>
</tr>
<tr>
<td>Blue Clay</td>
<td>$0.75</td>
</tr>
<tr>
<td>Other Clay</td>
<td>$0.25</td>
</tr>
<tr>
<td>Black Dirt</td>
<td>$0.50</td>
</tr>
</tbody>
</table>

As used in the table above, (a) “Washed Sand” means all number 4 mesh Material that has passed through the washing process; (b) “Dry Products” means all processed Material, except Fill Sand, that will not be run through the washing process; and (c) “Fill Sand” means all
number 4 mesh Material which has not gone through the washing process. The Parties may negotiate different Base Royalties for blended products as contemplated in Section 4.1.

Lessee shall perform all Materials processing on the Premises (as defined in Section 4.3) so that Materials are in their final form before being removed from the Premises, and the Production Royalty for each type of Material shall be calculated based on the final form of the Material. Without limiting the foregoing, Lessee shall not take any action in connection with the processing of the Materials (including processing Materials off of the Property) that is intended to result in Lessee paying a lower Production Royalty for the Materials.

From and after the first day of the sixth (6th) Lease Year, the Base Royalty for each type of Material shall be adjusted as described in Exhibit C attached hereto; provided, however, that in no event shall the Base Royalty for any type of Material ever be adjusted to be less than the Base Royalty for such type of Material on the first day of the first (1st) Lease Year.

(b) Imported Products. Subject to the other terms and conditions of this Lease (including Sections 6.3 and 6.4), Lessee may import Materials, granite, hard rock, specialty aggregates, recyclable concrete and recyclable asphalt (collectively, “Imported Products”) onto the Property for the following purposes:

(i) Lessee may import Materials, granite, hard rock and specialty aggregates onto the Property for the purposes (A) of blending and mixing the imported Materials, granite, hard rock and specialty aggregates with the Materials on the Property to obtain a desired specification for resale, and (B) of blending and mixing the imported Materials, granite, hard rock and specialty aggregates with the Materials on the Property for use in the Plant in order to obtain a desired specification for the products manufactured in the Plant.

(ii) Lessee may import recyclable concrete and recyclable asphalt onto the Property for the purposes (A) of crushing such recyclable concrete and recyclable asphalt (any such crushed recyclable concrete and recyclable asphalt, if not blended or mixed with any Materials, is hereinafter referred to as “Recycled Products”) for resale, (B) of blending and mixing the imported crushed recyclable concrete and crushed recyclable asphalt with the Materials on the Property to obtain a desired specification for resale, (C) of blending and mixing the imported crushed recyclable concrete and crushed recyclable asphalt with the Materials on the Property for use in the Plant in order to obtain a desired specification for the products manufactured in the Plant and (D) of using the imported crushed recyclable concrete and crushed recyclable asphalt for reclamation.

(iii) Lessee may import Materials onto the Property for the purpose of using such imported Materials for reclamation on the Property.

Notwithstanding anything in this Lease to the contrary, Lessee shall not import any Imported Products onto the Property that contain any Hazardous Material (as defined in Section 6.3), that include waste or debris from the construction or demolition of any building or
other improvement, or that include waste shingles from municipal waste stream or tear-off shingles. Also, any black dirt imported onto the Property shall be of a comparable quality to the black dirt that exists on the Property on the Effective Date. University may impose reasonable testing requirements on Imported Products imported onto the Property to ensure compliance with this paragraph, and Lessee shall be responsible for the cost of such testing.

No Production Royalty is owed on Imported Products; provided, however, that, if the Imported Products (measured in Tons) used to produce ready mix concrete, asphalt, bagged products, and other products (including aggregate products and Materials processed in the crushing, washing, screening and heat-drying plants) at the Plant during any Lease Year is more than fifteen percent (15%) of the Materials from the Property (i.e., not including Imported Products) (measured in Tons) used to produce ready mix concrete, asphalt, bagged products, and other products (including aggregate products and Materials processed in the crushing, washing, screening and heat-drying plants) at the Plant during such Lease Year, then, for each Ton of Imported Products used in such production at the Plant in excess of such percentage, Lessee shall pay to University a Production Royalty just as if Lessee had Mined the Imported Products and their constituent components from the Property, except that (1) if the Imported Products or their constituent components are Materials, then the Base Royalty for the Imported Products shall be equal to twenty-five percent (25%) of the Base Royalty then in effect for the applicable Material; (2) if the Imported Products are concrete, then the Base Royalty for the Imported Products shall be equal to twenty-five percent (25%) of the Base Royalty for “Gravel (Greater in size than 5/16th of an inch)” then in effect; (3) if the Imported Products are asphalt, then the Base Royalty for the Imported Products shall be equal to twenty-five percent (25%) of the Base Royalty for “Dry Products” then in effect; and (4) if the Imported Products are granite, hard rock or a specialty aggregate, then the Base Royalty shall be equal to twenty-five percent (25%) of the Base Royalty for “Gravel (Greater in size than 5/16th of an inch)” then in effect. Lessee shall pay any Production Royalty owed pursuant to this paragraph within forty-five (45) days after the end of the applicable Lease Year. Notwithstanding the foregoing, (y) Imported Products shall not count against the 15% threshold described in this paragraph, and Lessee shall not owe a Production Royalty on such Imported Products, to the extent that such Imported Products are included in Lessee’s or its sublessees’ or licensees’ products solely because of specifications required by a third-party purchaser or user of such products in an arm’s-length transaction and that such specifications cannot be met by using Materials mined from the Premises, all as demonstrated by Lessee to University’s reasonable satisfaction at the time the applicable annual payment for Imported Products is due pursuant to this paragraph; and (z) Lessee shall not owe any Production Royalty on Recycled Products as long as the Recycled Products are not blended or mixed with any Materials on the Property, and such Recycled Products, to the extent not blended or mixed with any Materials on the Property, shall not count against the 15% threshold described in this paragraph.

Section 3.3 Initial Advanced Minimum Royalty; Annual Minimum Royalty. Regardless of whether Lessee has extracted any Materials from the Property, Lessee shall pay to University an Initial Advanced Minimum Royalty (the “Initial Advanced Minimum Royalty”) and an annual minimum royalty (the “Annual Minimum Royalty”) as provided in this Section.
(a) Initial Advanced Minimum Royalty. Lessee shall pay to University, by wire transfer of immediately available funds, an Initial Advanced Minimum Royalty of five million and no/100 dollars ($5,000,000.00), payable as follows:

(i) Lessee has paid fifty thousand and no/100 dollars ($50,000.00) to University prior to the Effective Date, receipt of which is acknowledged. This amount of $50,000.00 is non-refundable;

(ii) Lessee shall pay four hundred fifty thousand and no/100 dollars ($450,000.00) to University on the Effective Date. This amount of $450,000.00 is non-refundable;

(iii) Lessee shall pay five hundred thousand and no/100 dollars ($500,000.00) to University on or before the date that is thirty (30) days after the City of Rosemount has amended its zoning ordinances to permit or conditionally permit sand and gravel mining on the Rosemount Property. This amount of $500,000.00 is non-refundable;

(iv) Lessee shall pay five hundred thousand and no/100 dollars ($500,000.00) to University on or before the date that is thirty (30) days after Empire Township has amended its zoning ordinances to permit or conditionally permit sand and gravel mining on the Empire Township Property. If no such amendment by Empire Township is necessary, then the $500,000.00 payment due pursuant to this paragraph shall be due when the City of Rosemount amends its zoning ordinances to permit or conditionally permit sand and gravel mining on the Rosemount Property. This amount of $500,000.00 is non-refundable; and

(v) Lessee shall pay three million five hundred thousand and no/100 dollars ($3,500,000.00) to University as follows:

A. Lessee shall pay one million one hundred fifty thousand and no/100 dollars ($1,150,000.00) to University within thirty (30) days after the City of Rosemount has issued a Permit to allow Lessee to conduct mining, crushing and washing of aggregates within any portion of the Rosemount Property. This amount of $1,150,000.00 is non-refundable;

B. Lessee shall pay one million one hundred fifty thousand and no/100 dollars ($1,150,000.00) to University within thirty (30) days after Empire Township has issued a Permit to allow Lessee to conduct mining, crushing and washing of aggregates within any portion of the Empire Township Property. This amount of $1,150,000.00 is non-refundable; and

C. Lessee shall pay one million two hundred thousand and no/100 dollars ($1,200,000.00) to University on the Commencement Date; provided, however, that, if the Commencement Date occurs prior to April 15, 2012, then the $1,200,000 payment due pursuant to this
Section 3.3(a)(v)(C) shall be payable as follows: (y) $600,000.00 shall be due and payable on the Commencement Date; and (z) $600,000.00 shall be due and payable on the earlier to occur of April 15, 2012, and the first date that Lessee either begins its mining operations on any portion of the Property or begins to install or construct any Improvement (including any site preparation) on any portion of the Property. This amount of $1,200,000.00 is non-refundable.

(b) Annual Minimum Royalty. In addition to the Initial Advanced Minimum Royalty, Lessee shall pay to University annually an Annual Minimum Royalty for each Lease Year as set forth on Exhibit D attached hereto. Amounts paid as Annual Minimum Royalty are nonrefundable. The Annual Minimum Royalty for each Lease Year shall be payable as follows:

(i) If by September 30 of any Lease Year, Lessee has not paid at least twenty-five percent (25%) of the Annual Minimum Royalty due for such Lease Year (without application of the Floor Amount, as defined in Exhibit D), then Lessee shall pay to University within 45 days after such date (A) twenty-five percent (25%) of the Annual Minimum Royalty due for such Lease Year (without application of the Floor Amount), minus (B) any Annual Minimum Royalty payments that Lessee has actually paid for such Lease Year;

(ii) If by December 31 of any Lease Year, Lessee has not paid the entire amount of the Annual Minimum Royalty due for such Lease Year (without application of the Floor Amount), then Lessee shall pay to University within 45 days after such date (A) the entire amount of the Annual Minimum Royalty due for such Lease Year (without application of the Floor Amount), minus (B) any Annual Minimum Royalty payments that Lessee has actually paid for such Lease Year; and

(iii) If by June 30 of any Lease Year, the amount of Annual Minimum Royalty actually paid by Lessee during such Lease Year is less than the Floor Amount (if any) of the Annual Minimum Royalty for such Lease Year, then Lessee shall pay to University within 45 days after such date (A) the Floor Amount for such Lease Year, minus (B) any Annual Minimum Royalty payments that Lessee has actually paid for such Lease Year.

The amounts actually paid by Lessee as Production Royalty between July 1 of a Lease Year and the date that the September 30 payment of Annual Minimum Royalty is due for such Lease Year (not including any Production Royalty paid on Imported Products, Production Royalty owed but not paid because of an application of credits pursuant to the last grammatical paragraph of this Section 3.3(b), or Production Royalty paid for any prior Lease Year) shall be credits against and reduce the amount of the September 30 payment of Annual Minimum Royalty due for such Lease Year.

The amounts actually paid by Lessee as Production Royalty between July 1 of a Lease Year and the date the December 31 payment of Annual Minimum Royalty is due for such Lease Year (not including any Production Royalty paid on Imported Products, Production Royalty owed but not paid because of an application of credits pursuant to the last grammatical paragraph of
to this Section 3.3(b), Production Royalty payments that were applied as credits against and reduced the amount of the September 30 payment of Annual Minimum Royalty due for such Lease Year pursuant to the immediately preceding grammatical paragraph (in order to avoid double counting such payments), or Production Royalty paid for any prior Lease Year) shall be credits against and reduce the amount of the December 31 payment of Annual Minimum Royalty due for such Lease Year.

The amounts actually paid by Lessee as Production Royalty between July 1 of a Lease Year and the date the June 30 payment of Annual Minimum Royalty is due for such Lease Year (not including any Production Royalty paid on Imported Products, Production Royalty owed but not paid because of an application of credit pursuant to the last grammatical paragraph of this Section 3.3(b), Production Royalty payments that were applied as credits against and reduced the amount of the September 30 or December 31 payments of Annual Minimum Royalty due for such Lease Year pursuant to the two immediately preceding grammatical paragraphs (in order to avoid double counting such payments), or Production Royalty paid for any prior Lease Year) shall be credits against and reduce the amount of the June 30 payment of Annual Minimum Royalty due for such Lease Year.

If the Annual Minimum Royalty actually paid for a Lease Year exceeds the total Production Royalty owed for such Lease Year (including any Production Royalty owed but not paid because of an application of credits pursuant to Sections 3.3(b) and 3.3(c)), then the difference shall be a credit against future Production Royalty payments, but the difference shall not be a credit against future payments of Annual Minimum Royalty (including any Annual Minimum Royalty True-Up Payment, as defined in Exhibit D) or Initial Advanced Minimum Royalty. The credits against Production Royalty described in this Section 3.3(b) shall be applied after the application of the credits described in Section 3.3(c).

(c) Additional Credits against Production Royalty and Annual Minimum Royalty. Amounts actually paid by Lessee pursuant to Article II to postpone the start of the Termination Period (i.e., the $25,000 per month) and the amounts actually paid by Lessee pursuant to Section 3.4 and by Guarantors (as defined in Section 10.21) pursuant to Section 3.5 (up to a maximum amount of $400,000.00, as provided in Section 3.5) (all such amounts for which Lessee receives credit pursuant to this Section 3.3(c) are collectively referred to herein as the "Accrued Credits") shall be credited as an advance payment of future Production Royalty payments and Annual Minimum Royalty payments (but shall not be a credit against or reduce any future payment of Initial Advanced Minimum Royalty); application of the Accrued Credits shall be limited to twenty-five percent (25%) of the amount of the Production Royalty payments or Annual Minimum Royalty payments due from time to time until the available credits have been exhausted. For example, if a one hundred thousand and no/100 dollars ($100,000.00) Production Royalty payment or Annual Minimum Royalty payment is due and payable to University for any month, and Lessee has accumulated fifty thousand and no/100 dollars ($50,000.00) in Accrued Credits, then only twenty-five thousand and no/100 dollars ($25,000.00) of the available Accrued Credits may be applied to reduce the one hundred thousand and no/100 dollars ($100,000.00) Production Royalty payment or Annual Minimum Royalty payment, respectively, and the remaining Accrued Credits shall be carried forward to be applied to subsequent Production Royalty payments and Annual Minimum Royalty payments. Amounts for which credits are available under this paragraph shall not bear interest. The Initial
Advanced Minimum Royalty shall not be credited against or reduce any future payments of Production Royalty or Annual Minimum Royalty.

(d) Minimum Royalty Payments after Termination. Upon the termination of this Lease for any reason or upon termination of Lessee’s right to possession pursuant to Section 9.2(b), Lessee’s obligation to make Annual Minimum Royalty payments and Initial Advanced Minimum Royalty payments shall terminate, except (1) as to payments due for the period prior to such termination, (2) as to any Termination Fee (as defined in Section 9.6), and (3) as to any accelerated Annual Minimum Royalty under Section 9.2(c).

Section 3.4 Expense Reimbursement. Within thirty (30) days after the Effective Date, Lessee shall reimburse University for all of out-of-pocket costs and expenses (including all “development costs” within the meaning of Treas. Reg. § 1.512(b)-1(b)) for the period commencing May 1, 2009, and ending on the Effective Date, (a) paid or incurred by University in connection with completion and approval of the environmental impact statement (the “EIS”) prepared in relation to the proposed use of the Property for sand and gravel mining and processing, ancillary manufacturing and related general operations and facilities (collectively, the “Proposed Project”); and (b) paid or owed by University to its attorneys (excluding in-house legal counsel) and consultants or to the City of Rosemount, Empire Township and other governmental bodies having jurisdiction over the Property or the Proposed Project in connection with environmental, permit application and other reviews related to the Proposed Project. Such costs and expenses shall include costs and expenses for engineering, environmental, legal and other services and studies provided to University. For costs and expenses incurred prior to the Effective Date, University estimates that the amount of the reimbursement is $1,382,931.96.

After the Effective Date, University shall endeavor to inform Lessee prior to University incurring a material amount of such costs or expenses and, when practical, to confer with Lessee regarding such material costs and expenses (but University has no obligation to limit such costs and expenses based on any conference with Lessee). To the extent University incurs any such costs or expenses after the Effective Date, Lessee shall reimburse University for the same within thirty (30) days after University delivers to Lessee copies of invoices related thereto. Payments made under this Section are non-refundable, but shall be applied against future Production Royalty and Annual Minimum Royalty payments as provided in Section 3.3(c). Notwithstanding the foregoing, if it is practical and does not disadvantage University or the consideration of the Proposed Project, Lessee may make payments directly to the governmental bodies for costs and expenses covered by this Section and payable to such bodies.

Section 3.5 Survey and Plan Costs. Pursuant to that certain Letter of Interest dated May 14, 2009, between University and the Guarantors (as defined in Section 10.21), the Guarantors obtained and will obtain boundary and topographic surveys of the Property as required for the preparation of the Operations Plan and as required in connection with the completion of the EIS and with permit applications for the Proposed Project. The Guarantors also obtained and will obtain a survey of an area east of the Property that has been identified by University and the City of Rosemount as a potential site for recreational ball fields. The Guarantors also utilized and will utilize outside consultants to prepare a reclamation plan, reforestation plan, mining plan and Operations Plan. The out-of-pocket costs for the surveys and plans described in this Section is estimated to exceed $400,000.00, which shall be nonrefundable.
to the Guarantors; provided, however, up to $400,000.00 of such out-of-pocket costs shall be applied as a credit against future Production Royalty and Annual Minimum Royalty payments as provided in Section 3.3(c). To obtain the credit, Lessee shall show sufficient evidence to University that such costs have been incurred and paid.

Section 3.6 Precious Metals. The royalty rate for gold, silver or other precious metals, or the unrefined or partially refined ores thereof, extracted from the Property (collectively, the "Precious Metals"), if any, shall be seventy-five percent (75%) of the following: (a) gross proceeds received by Lessee for such Precious Metals less (b) the costs of on-site refining (but not mining costs) incurred by Lessee. The royalty shall be paid to University within twenty (20) days after the date Lessee receives such proceeds. Lessee shall use its best efforts to sell the Precious Metals at then-current market prices promptly after removing the Precious Metals from the Property. Lessee shall not sell any Precious Metals to any Person (as defined in Section 10.10) that owns more than ten percent (10%) of the voting interests in Lessee or any Guarantor, directly or indirectly controls Lessee, is under common control with Lessee or any Guarantor, or is controlled by Lessee or any Guarantor, unless such sale is at fair market value, as reasonably determined in advance by University.

Section 3.7 Contribution to Scholarship Fund. For each Ton of Materials Mined from the Property, Lessee shall pay to University of Minnesota Foundation two cents ($0.02) as an unrestricted contribution to fund scholarships for University students studying or researching geology, civil engineering, land-use planning and similar or related disciplines. Such payment shall be due and payable on a monthly basis at the same time the Production Royalty is paid pursuant to Section 3.1. On a periodic basis, University shall publicly acknowledge and recognize the contributions for the scholarships in the same manner that University recognizes similar scholarship contributions. Lessee may recommend what research projects and departments are funded by the scholarships. Lessee may identify the name by which the scholarship is identified, subject to University’s prior approval, which shall not be unreasonably withheld.

Section 3.8 Net Lease; Application of Payments. University and Lessee intend that the Production Royalty, Initial Advanced Minimum Royalty and Annual Minimum Royalty payable under this Lease shall be absolutely net to University, so that this Lease shall yield, net to University, the Production Royalty, the Initial Advanced Minimum Royalty and the Annual Minimum Royalty and that all costs, fees, expenses, taxes, charges, reimbursements and obligations of every kind and nature whatsoever relating to the Premises, which may arise or become due during the Lease Term as a result of or in connection with Lessee’s operations thereon, whether or not specifically designated as such, shall be paid or discharged by Lessee when due, except as otherwise expressly stated in Sections 3.5, 6.4 and 8.1; Lessee shall indemnify and hold harmless University and the LLC (as defined in Section 10.2) from and against such costs, fees, expenses, taxes, charges, reimbursements and obligations, except as otherwise expressly stated in Sections 3.5, 6.4 and 8.1; University may apply the payments received by Lessee pursuant to this Lease to any amounts then owing by Lessee under this Lease in the order that University deems appropriate. This Section shall survive the expiration or earlier termination of this Lease.
ARTICLE IV
CONDUCT OF OPERATIONS

Section 4.1 Use; Mining Practices; Operations Plan. Lessee shall use the Property for only the purposes specified in Article I and for no other purpose whatsoever without University’s prior written consent. Lessee shall conduct its operations on the Property in a prudent and workmanlike manner; in accordance with good and accepted mining and business practices; and in strict compliance with the phasing schedule and other provisions of that certain Operations Plan dated August 10, 2009 (last revised June 28, 2010), and prepared by James R. Hill, Inc. (Project No. 22632) (as amended from time to time with University’s prior written consent, the “Operations Plan”). With the University’s prior written consent, the Operations Plan was amended with respect to the portion of the Property located in the City of Rosemount on February 8, 2011. A copy of the title sheet of the Operations Plan, which includes the index, is set forth on the first page of Exhibit E attached hereto; a copy of the title sheet of the February 8, 2011 amendment to the Operations Plan, which includes the index for such amendment, is set forth on the second page of Exhibit E attached hereto. Notwithstanding the schedule in the Operations Plan, Lessee shall provide University with at least twenty-four (24) months’ and no more than thirty (30) months’ advance written notice prior to beginning a new Phase (as defined in Section 4.2); the form of the advanced written notice may be by Lessee providing to the LLC at the Annual Meeting (as defined below) the plans for the new Phase and the date when the new Phase will begin (which shall be the date set forth in the Operations Plan unless University agrees otherwise). Lessee shall not amend, modify or restate the Operations Plan without the prior written consent of University. University shall not unreasonably withhold consent to amendments and changes to the Operations Plan; provided, however, that, without limiting University’s right to withhold consent to any amendment or change, it shall not be deemed to be unreasonable for University to withhold consent to any proposed amendment or change that would adversely impact any then-existing University’s Use or, unless University had at least three years’ prior written notice of such proposed amendment, planned University’s Use. Lessee shall comply with all of the provisions of the Operations Plan as if such provisions were fully set forth in this Lease, and any failure by Lessee to comply with such provisions shall be a default by Lessee under this Lease. Notwithstanding anything in the Operations Plan to the contrary, Lessee shall not perform any blasting or use any explosives in its operations on the Property.

In March of each Lease Year, the LLC and Lessee shall meet and confer and review the Operations Plan in order to identify possible changes and amendments to the Operations Plan. At each such annual meeting (each, an “Annual Meeting”), Lessee and University shall endeavor to inform each other of their respective plans, if any, to use the portions of the Property adjacent to the then-current Active Mining and Reclamation Areas during the next three years. Also, Lessee and University shall discuss at each Annual Meeting the Base Royalty for any blended products that may be Mined during the following Lease Year. This Annual Meeting shall not prevent Lessee from suggesting changes and amendments to the Operations Plan at other times during any Lease Year. Within a reasonable time after submission of suggested changes and amendments, but no later than sixty (60) days after submission, the LLC shall make a decision whether to grant consent for any suggested change or amendment. If the LLC does not consent to the suggested change or amendment in writing during such 60-day period, the
LLC shall be deemed to have denied the suggested change or amendment. If Lessee desires to amend or modify the Operations Plan to enlarge or alter the succession of Sub-phases (as defined in Section 4.2) or Phases, then Lessee must request such amendment or modification in writing at least three (3) Lease Years before the applicable enlargement or alteration would take effect.

Section 4.2 Phases; Reservation of Rights. As shown in the Operations Plan, Lessee will engage in active mining and reclamation operations in phases (each, a “Phase”) and sub-phases (each a “Sub-Phase”) throughout the Lease Term. Each Sub-Phase shall last no longer than fifteen (15) years, unless extended with the consent of University. During each Phase or Sub-Phase, Lessee shall engage in active mining and reclamation operations in only the specific area of the Property designated for such in the Operations Plan (while such area is subject to active mining and reclamation operations pursuant to the Operations Plan, the “Active Mining and Reclamation Area”). Without University’s prior written consent, (i) the total Active Mining and Reclamation Areas in Dry Mining Phases and Floating Dredge Phases, both as further described in the Operations Plan, shall not exceed, in the aggregate, one hundred sixty (160) acres (excluding the surface area of the lake) or the acreage set by the Permits, whichever is less, and (ii) there may be no more than two (2) Active Mining and Reclamation Areas at any one time north of County Road 46.

Lessee shall not perform any mining or Plant operations within six hundred (600) feet of the turkey research facilities located in Dry Mining Phase 5, as further described in the Operations Plan, until Lessee is permitted to begin mining operations in such Phase under the Operations Plan.

Notwithstanding anything in this Lease to the contrary, (a) Lessee shall have exclusive possession of only the Plant Area and the Active Mining and Reclamation Area, as such area changes from time to time during the Lease Term pursuant to the Operations Plan; (b) Lessee may stockpile Materials in only the designated stockpiling area of the Plant Area, and Lessee shall not stockpile Precious Metals or Timber; (c) Lessee shall comply with all limits on stockpiling set forth in the Operations Plan and Permits; (d) throughout the Lease Term, University, and University’s employees, agents, contractors, licensees, tenants and invitees, may use the Property and the Improvements, other than the Plant Area and the Active Mining and Reclamation Area, for any purpose whatsoever (including for agricultural and research purposes and remediation of environmental conditions) (collectively, the “University’s Use”) without notice to or consent from Lessee, provided the University’s Use shall not (i) materially and adversely affect Lessee’s then-current operations within the Plant or the Active Mining and Reclamation Area, (ii) include mining of the Materials, (iii) materially and adversely affect the Operations Plan, or (iv) violate the Permits, to the extent that the Permits expressly apply to the University’s Use of the applicable portion of the Property; and (e) Lessee shall not interfere with the University’s Use.

On the date that all restoration and reclamation activities required by applicable Laws (as defined in Section 4.4), the Permits, the EIS, this Lease and the Operations Plan have been completed within an Active Mining and Reclamation Area, the Active Mining and Reclamation Area shall automatically cease to be part of the Property and shall no longer be subject to this Lease (provided that Lessee shall continue to be liable with respect to such area for any
obligations under this Lease that by the express terms of this Lease survive the expiration or earlier termination of this Lease).

Section 4.3 Improvements. Subject to the terms and conditions of this Section, Lessee may construct, install and operate on the Property the following (collectively, the “Improvements”):

(a) sand and gravel washing, crushing and processing plant(s), ready mix concrete production plants, asphalt production plants, bagging plants, production plants for pre-cast concrete products (excluding manufacturing of concrete pipes and blocks, which Lessee shall not manufacture on the Property), plants for crushing and processing of recyclable concrete and recyclable asphalt, black dirt processing, stockpiling areas, and such other equipment, buildings, truck maintenance facilities and site improvements as may be necessary and incidental thereto (collectively, the “Plant”), all on approximately 200 acres of land (the “Plant Area”), which Plant Area, subject to the Plant Permits, (i) may or may not be contiguous, (ii) may be located in either or both the City of Rosemount and Empire Township, and (iii) shall be located somewhere within the portion of the Property approved in writing by University or identified as the “Potential Plant Area” on the Site Plan (the exact location of the Plant Area shall be determined by Lessee with University’s prior written approval, which shall not be unreasonably withheld, conditioned or delayed); and

(b) roads, pipelines, power lines, telephone lines, utilities, ponding areas, rights-of-way, landscaping, screening, buffering, fixtures and other improvements (whether or not exclusively used by Lessee and its invitees) necessary for its mining or Plant operations on the Property under this Lease.

If any such pipelines, power lines, telephone lines or other utilities will be owned by a Person other than Lessee, then such Person must enter into a separate utility license agreement with University, in form and substance satisfactory to University, prior to installation or construction thereof. The Plant includes any plants, and any stockpiling areas, equipment, buildings, fixtures, facilities and other improvements necessary and incidental thereto, constructed, installed and/or operated by or for any sublessee or licensee. The Property and the Improvements are collectively referred to in this Lease as the “Premises.”

Lessee may not construct or install any buildings, structures, improvements, additions, fixtures or alterations on the Property, other than the Improvements, without University’s prior written consent. Lessee shall not construct or install any of the Improvements, or any addition, alteration or improvement to any of the Improvements, without first obtaining University’s written consent (which consent may be conditioned on Lessee complying with specific construction and installation standards and requirements, including commercially reasonable standards and requirements regarding location, preservation of roads and utility corridors, screening, landscaping, buffering, aesthetics, noise, dust and odor controls, etc.); provided that, to the extent the proposed Improvements are consistent with the improvements shown in the Operations Plan, the proposed Improvements shall be deemed approved. University will not unreasonably withhold, condition or delay consent with respect to the Improvements. With
respect to each of the Improvements, including any addition, alteration or improvement thereto: (i) not less than sixty (60) days prior to commencing the Improvements, Lessee shall deliver to University the plans, specifications and necessary Permits for the Improvements, together with certificates evidencing that Lessee’s contractors and subcontractors have adequate insurance coverage naming University as additional insured; (ii) Lessee shall obtain University’s prior written approval of any contractor or subcontractor; (iii) the Improvements shall be constructed and installed with new materials or with materials that have been recycled in compliance with applicable Laws, in a good and workmanlike manner, and in compliance with all Laws and the plans and specifications delivered to and approved by University; (iv) Lessee shall pay to University all reasonable costs and expenses (including architectural and engineering fees) in connection with University’s review of Lessee’s plans and specifications and with any supervision or inspection of the construction and installation University deems necessary; and (v) upon University’s request Lessee shall, prior to commencing any of the Improvements, provide University a reasonable security payment bond against liens arising out of such construction or installation. Each of the Improvements, unless dedicated or conveyed to the public with University’s prior consent, shall be the property of Lessee until the expiration or earlier termination of this Lease, at which time such Improvements shall be subject to Section 9.5.

Notwithstanding anything in this Lease to the contrary, without University’s prior written consent, (y) no more than three (3) asphalt plants may be installed, constructed and/or operated within the Plant Area at any given time during the Lease Term (collectively, the “Permitted Asphalt Plants”) and (z) no more than two (2) of the Permitted Asphalt Plants may be located on either the Rosemount Property or the Empire Township Property.

**Section 4.4 Compliance with Laws; Satisfaction of Mitigation Obligations.** Lessee shall, at its expense, promptly comply with all federal, state and local governmental laws, rules, regulations, ordinances, codes and orders now or subsequently pertaining to the Premises or to Lessee’s use or occupancy thereof (collectively, “Laws”). University makes no representation or warranty to Lessee regarding compliance with Laws. Lessee accepts the Property subject to any existing noncompliance; and Lessee shall be responsible for any present or future Improvements legally required as a condition of Lessee’s use and occupancy of the Premises or imposed as a condition of any Permits, except as stated in Sections 6.4(a) and 6.4(e). Lessee, at its expense, shall satisfy and comply with all requirements in the final EIS and in all Permits, and any contingency plan approved by the Minnesota Pollution Control Agency (the “Contingency Plan”); if any mitigation requirement is more stringent in the final EIS than in any Permit (or vice versa), Lessee shall satisfy the more stringent requirement.

**Section 4.5 Maintenance.** “Maintenance Items” means and includes the following:

(a) Improvements;

(b) The Active Mining and Reclamation Area;

(c) The Plant Area;

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(d) The following segments of the roads and streets owned by University:

(i) Any portion of Akron Avenue used by Lessee or its sublessees and located within Rosemount and/or Empire Township;

(ii) Any portion of Station Trail used by Lessee or its sublessees and located within Rosemount and/or Empire Township;

(iii) Any portion of 170th Street heading east from the Biscayne Avenue intersection (excluding the "notch" frontage) to the eastern boundary of UMore Park used by Lessee or its sublessees and located within Empire Township (including any portion of 170th Street that University maintains for Empire Township for consistency of road base);

(iv) Any existing gravel "field" road(s) used by Lessee or its sublessees and located within Rosemount and/or Empire Township.

(e) University Improvements (as defined in Section 4.16) in the Active Mining and Reclamation Areas and in the Plant Area.

(f) Other University Improvements that University, in writing, has allowed Lessee to use.

Lessee, at its expense, shall maintain, repair and, to the extent necessary or appropriate, replace the Maintenance Items, and each and every component thereof, and shall keep the Maintenance Items in good and safe condition and repair. In addition, within the earlier of the date required by the Permits or twelve (12) months after the Commencement Date, Lessee shall upgrade to a 10 ton design standard that portion of Akron Avenue from County Road 46 to the primary gravel mining access on Akron Avenue, including intersection improvements required for the primary gravel mining access at Akron Avenue. If Akron Avenue becomes a public road, such upgrade shall be deemed to be a Government Road Imposition and Lessee shall be responsible for repairs to Akron Avenue if and as required by Section 4.17.

On the date that all restoration and reclamation activities required by applicable Laws, the Permits, the EIS, this Lease and the Operations Plan have been completed within an Active Mining and Reclamation Area and such area has ceased to be part of the Property and is no longer subject to this Lease, Lessee shall have no further responsibility for the maintenance, repair or replacement of the Maintenance Items (including landscaping, stormwater ponds, screening, berms, buffering, and University Improvements) within the reclaimed area; provided, however, that Lessee shall continue to be responsible for maintaining, repairing and replacing any Maintenance Items that Lessee or its sublessees continue to use after the date such restoration and reclamation is complete. In addition, if a Maintenance Item is dedicated to a public road authority and becomes a public road, then Lessee shall have no further responsibility for the maintenance, repair or replacement of such Maintenance Item; provided, however, that Lessee shall continue to be responsible for the cost of such maintenance, repair and replacement after such dedication to the extent that the Permits or applicable Laws impose such responsibility.
on Lessee or University in connection with Lessee’s or any of Lessee’s Agent’s operations on any portion of the Premises.

All repairs and replacements by Lessee shall use materials and equipment which are comparable to or better than those originally used in constructing or installing the Maintenance Items. Without limiting the foregoing, Lessee shall not commit waste and, at Lessee’s expense, shall (a) provide all necessary and appropriate regularly scheduled routine maintenance to the Maintenance Items; (b) perform such maintenance, repair, restoration and replacement as is necessary to bring and keep the Maintenance Items in compliance with all Laws and Permits; and (c) keep the Maintenance Items, including all equipment, driveways, roadways, entrances and parking areas, in good, clean and orderly condition and substantially free of obstructions, debris, snow and ice; provided, however, Lessee has no obligation to remove snow and ice on roadways that are not being used during the winter.

Lessee shall provide all necessary and regularly scheduled maintenance to and replacements of Lessee’s mining and reclamation equipment to comply with Laws and to prevent the equipment from emanating excessive or objectionable noise, odors, dust or fumes contrary to the Laws or Permits to areas outside of the Active Mining and Reclamation Area.

Section 4.6 Utilities. Lessee shall obtain and pay for water, sewer, gas, electricity, heat, power, telephone and other communication services and any other utilities supplied to the Improvements and/or in connection with Lessee’s and Lessee’s Agents’ operations on the Property. Lessee shall obtain such service in its own name and shall timely pay all charges directly to the provider. University shall not be responsible or liable for any interruption in such services, nor shall such interruption affect the continuation or validity of this Lease. University shall have the exclusive right to select, and to change, the companies providing such services to the Property. All utility companies must enter into a separate utility license agreements with University, in form and substance satisfactory to University, prior to installation or construction of any utility lines or facilities. Prior to beginning each Phase, Lessee shall determine and inform University of the location of new proposed utility lines and all existing utility lines and facilities within the portion of the Property covered by the Phase and, at University’s request, shall re-route such utilities at Lessee’s expense pursuant to plans and specifications that have been pre-approved in writing by University. Except for wells shown on the Operations Plan, Lessee shall not drill wells on the Property without University’s prior written consent; if Lessee obtains such consent and drills one or more wells on the Property, Lessee shall remove the well(s) and restore the impacted Property to the condition it was in prior to drilling such well(s) before the expiration or earlier termination of this Lease with respect to the affected portion of the Property, unless University consents to Lessee leaving the well on the Property. The immediately preceding sentence shall survive the expiration or earlier termination of this Lease.

Section 4.7 Signs. Except for signs shown on the Operations Plan, Lessee shall not place any signs on the Property without the prior written consent of University; provided, however, Lessee, without the prior written consent of University, may place temporary signs on the Property that are required by Permits and Laws, including the regulations of the Mine Safety & Health Administration (“MSHA”).
Section 4.8  Zoning. Lessee acknowledges that University is working with the City of Rosemount and Empire Township to adopt amendments to their respective zoning ordinances that would permit Lessee's contemplated operations on the Property, but University makes no warranty to Lessee that such amendments will be adopted. Lessee shall, at Lessee's cost, cooperate with University's efforts and requests related to such amendments and, upon University's request, execute or join in applications and other documents required in connection with such efforts. This Section 4.8 is not intended to limit in any way Lessee's obligations under Section 4.9.

Section 4.9  Licenses and Permits. Lessee shall, at Lessee's expense, obtain all federal, state and local licenses, approvals, development agreements, certificates, permits and consents necessary and appropriate for its and Lessee's Agents' operations on the Property (collectively, together with all orders pursuant to the same, the "Permits"), including Permits for the Plant, mining, reclamation, energy usage, air emissions and quality, surface water and groundwater monitoring and impacts (including NPDES), wetland impacts and construction, installation and use of the Improvements, and University shall have no responsibility whatsoever in this regard. At least ten (10) days before applying for any Permit, Lessee must provide a copy of the relevant Permit application to University for University's review and comment. Without limiting the foregoing, Lessee must provide University with such notice before applying for any building permit to construct a building on the Property so that University may consult with and obtain advisory recommendations from the chair of the Minnesota Senate Finance Committee and the chair of the Minnesota House of Representatives Ways and Means Committee as required by Minnesota Statutes, section 137.02, subdivision 3a. Lessee shall use its best efforts to obtain all Permits prior to December 31, 2012. Lessee shall apply for all Permits (including all Plant Permits) for the Rosemount Property within sixty (60) days after the date the City of Rosemount has amended its zoning ordinances to permit or conditionally permit sand and gravel mining on the Rosemount Property. Lessee shall apply for all Permits (including all Plant Permits) for the Empire Township Property within sixty (60) days after the date Empire Township has amended its zoning ordinances to permit or conditionally permit sand and gravel mining on the Empire Township Property (or, if Empire Township's zoning ordinances already permit or conditionally permit sand and gravel mining on the Empire Township Property, Lessee shall apply for such Permits within one hundred fifty (150) days after the Effective Date [provided, however, that Lessee and University may, but shall have no obligations to, mutually agree in writing to extend such 150-day period for up to two (2) extension periods of forty-five (45) days each if Lessee experiences unexpected and material delays, not caused or contributed to in any material respect by Lessee, in amending the Rosemount zoning ordinances to permit or conditionally permit sand and gravel mining on the Rosemount Property]). Once Lessee has applied for any Permit, Lessee shall work with diligence to obtain the applicable Permit as soon as possible. University, at no out-of-pocket cost to University, shall cooperate with Lessee in its efforts to obtain the Permits.

Lessee shall perform sampling and file all reports or documents required by Laws or Permits. Promptly after obtaining each Permit, Lessee shall provide a copy of the Permit to University. Copies of all Permits, reports, studies and other documents related to Lessee's and Lessee's Agents' operations on the Premises shall be available at the Plant at all reasonable times during the Lease Term for review and copying by University. Lessee shall not begin mining or
other operations on the Property prior to obtaining all Permits necessary and appropriate for the contemplated operations and shall keep such Permits in full force and effect throughout the Lease Term. If, in connection with obtaining any Permits or otherwise operating on the Property, Lessee is required to provide to any governmental authority any bonds or other security to cover the Restoration Obligations (as defined in Section 9.5) within the Plant Area, then, if the governmental authority consents, Lessee shall cause University to be a co-obligee of such bonds or other security, with rights in such bonds or other security that are equal to the rights of the applicable governmental authority. If the governmental authority does not consent to University being a co-obligee of such bonds or other security, or if the governmental authority does not require bonds or other security that cover all Restoration Obligations within the Plant Area, then Lessee shall maintain additional security for the benefit of University with respect to the Restoration Obligations within the Plant Area as follows:

(A) With respect to Improvements to be constructed or installed by or for Lessee or any Affiliated Sublessee (as defined in Section 10.21) during the first five Lease Years (collectively, the “Initial Plant Improvements”), (i) on the first day of the sixth (6th) Lease Year, Lessee shall provide to University a bond or other security, payable to University and otherwise in form and substance acceptable to University, in an amount equal to ten percent (10%) of the cost of performing the Restoration Obligations with respect to the Initial Plant Improvements, as reasonably estimated by University (the “Estimated Initial Plant Improvement Removal Costs”), and (ii) on the first day of each of the nine (9) following Lease Years, Lessee shall increase the amount of such bond or other security by an additional ten percent (10%) of the Estimated Initial Plant Improvement Removal Costs, so that on the first day of the fifteenth (15th) Lease Year such bond or other security covers one hundred percent (100%) of the Estimated Initial Plant Improvement Removal Costs. If University reasonably determines from time to time after the sixth (6th) Lease Year that the Estimated Initial Plant Improvement Removal Costs have increased, then Lessee shall promptly increase the amount of such bond or other security to the increased amount (or, if University makes such determination prior to the fifteenth (15th) Lease Year, proportionately increase the amount of the bond or other security based on the percentage of the Estimated Initial Plant Improvement Removal Costs secured to date). Lessee shall continue to maintain the bond or other security required by this paragraph until the Restoration Obligations within the Plant Area have been fully performed. This paragraph shall survive the expiration or earlier termination of this Lease.

(B) With respect to any Improvements to be constructed or installed by or for any sublessee or licensee other than an Affiliated Sublessee or by or for Lessee or any Affiliated Sublessee after the first five Lease Years (each such Improvement being an “Additional Plant Improvement”), (i) prior to the date construction of the applicable Additional Plant Improvement commences (including any site preparation), Lessee shall provide (or shall cause the applicable sublessee or licensee to provide) to University a bond or other security, payable to University and otherwise in form and substance acceptable to University, in an amount equal to (a) the cost of performing the Restoration Obligations with respect to the applicable Additional Plant Improvement, as reasonably estimated by University (the “Estimated Additional Plant Improvement Removal Costs”), and (ii) on the first day of each of the nine (9) following Lease Years, Lessee shall increase the amount of such bond or other security by an additional ten percent (10%) of the Estimated Additional Plant Improvement Removal Costs, so that on the first day of the fifteenth (15th) Lease Year such bond or other security covers one hundred percent (100%) of the Estimated Additional Plant Improvement Removal Costs.
 Costs”), multiplied by (b) a fraction having a numerator equal to one (1) and a denominator equal to the lesser of ten (10) and the number of years in the initial term of the applicable sublease or license (or, in the case of Lessee’s Additional Plant Improvements, this Lease); and (ii) on each anniversary of such commencement date, Lessee shall increase the amount of such bond or other security by an amount equal to (a) the Estimated Additional Plant Improvement Removal Costs, multiplied by (b) a fraction having a numerator equal to one (1) and a denominator equal to the lesser of ten (10) and the number of years in the initial term of the applicable sublease or license (or, in the case of Lessee’s Additional Plant Improvements, this Lease) – so that, on the earlier of the last day of the initial term of the applicable sublease or license (or, in the case of Lessee’s Additional Plant Improvements, this Lease) and the tenth (10th) anniversary of the commencement date of construction of the applicable Additional Plant Improvement, such bond or other security covers one hundred percent (100%) of the applicable Estimated Additional Plant Improvement Removal Costs. If University reasonably determines from time to time that the Estimated Additional Plant Improvement Removal Costs have increased, then Lessee shall promptly increase (or cause the applicable sublessee or licensee to increase) the amount of such bond or other security to the increased amount (or, if University makes such determination prior to the date that such bond or other security has been fully funded, proportionately increase the amount of the bond or other security based on the percentage of the Estimated Additional Plant Improvement Removal Costs secured to date). Lessee shall continue to maintain (or cause the applicable sublessee or licensee to maintain) the bond or other security required by this paragraph until the Restoration Obligations with respect to the applicable Additional Plant Improvement have been fully performed. This paragraph shall survive the expiration or earlier termination of this Lease.

Section 4.10 Reclamation. Without in any way limiting Lessee’s obligations under Section 4.2 or 9.5, Lessee shall do the following (collectively, the “Reclamation Obligations”): (a) restore the Premises to the condition required by Laws and the Permits and (b) perform the restoration and reclamation obligations (including restoration as shown in the Operations Plan of any topsoil) in the Operations Plan, EIS and Permits on or before the dates set forth in the then current Operations Plan, EIS and Permits, respectively. Lessee shall give University written notice at least fourteen (14) days prior to beginning the Reclamation Obligations in any portion of the Property and shall allow University, at University’s option, to enter onto the applicable portion of the Property to test and inspect the Property for environmental contamination.

This Section 4.10 shall survive the expiration or earlier termination of this Lease.

Section 4.11 Inspection of Property and Lessee’s Operations. Upon at least twenty-four (24) hours’ prior notice, University or its representatives may enter on any portion of the Premises for the purposes of inspecting the Premises and the operations of Lessee and any sublessees and licensees. During any inspection of the Active Mining and Reclamation Area, University and its representatives will allow Lessee’s representative to accompany University and its representatives if Lessee makes a representative of Lessee available at the time of such inspection, and University and its representatives will comply with the regulations of the MSHA. University shall not be obligated to provide prior notice to Lessee if University or its
representatives need to enter the Premises in the case of an emergency or to investigate or respond to an environmental matter, and Lessee shall provide to a person designated by University copies of all keys and access cards necessary for such purposes. Nothing in this Section is intended to limit University’s rights under Section 4.2.

Section 4.12 Production Records. Lessee shall keep and maintain accurate and comprehensive books of account and records regarding its operations conducted on the Premises, including books and records showing the following: the quantities of each type of Materials and of Precious Metals and Timber mined or removed from the Property; the quantities of each type of Materials and Imported Products used on the Property for production in the Plant (whether by Lessee or any sublessee); all payments made to University during the Lease Term; and all payments made and reports submitted to applicable permitting, taxing and other governmental authorities, excluding payments and reports relating to income taxes. Said books and records shall be maintained for at least seven (7) years after the period for which they are relevant in accordance with generally accepted accounting principles and auditing standards (collectively, “GAAP”) and shall be made available at the Plant (or at Lessee’s primary business office in the Minneapolis/St. Paul area) for inspection, audit and copying by University or its agents, at University’s expense, at all reasonable times during the period for which such books and records must be maintained. Notwithstanding anything to the contrary, if any such audit reveals that Lessee has underpaid any Production Royalty for any Lease Year then Lessee shall immediately pay the underpaid amount to University, plus interest on such amount at the rate of twelve percent (12%) per annum from the last day of the Lease Year for which such underpayment was made through the date paid. If any such underpayment is more than two percent (2%), then, in addition to paying the underpaid amount, Lessee shall reimburse University for the cost of such audit immediately upon University’s request. This Section shall survive the expiration or earlier termination of this Lease.

Section 4.13 Weighing of Materials; Use of Scales; Scale Adjustments. All Materials shall be weighed on a State certified scale prior to being transported off of the Property or used in the Plant for production. The weight of the Materials shall be computed using methods accepted in the industry as “best practices” for such measurements. All scales shall be installed, serviced and calibrated in accordance with manufacturers’ recommendations, copies of which shall be provided to University, and all scales shall be cleaned, maintained and calibrated on a regular basis. Without limiting the foregoing, accuracy of the scales shall be checked and adjustments made upon University’s request and at least as often as required to continue to be State certified under all Laws. Records of the accuracy check and adjustments shall be preserved and made available to University in the same manner and for the same periods as the production records under Section 4.12.

Section 4.14 Liens.

(a) No Liens. Lessee shall keep the Premises free and clear of liens, charges, claims and demands arising from or in connection with Lessee’s and Lessee’s Agents’ operations under this Lease and shall promptly pay for all labor performed on the Property and for all supplies, materials, and equipment used or placed on the Property. If any lien for labor performed or supplies, materials or equipment used or placed on or supplied to the Premises is
filed against all or any portion of the Premises or University’s or Lessee’s interest therein or any public improvement bond, other than liens arising solely as a result of University’s acts, then Lessee shall cause the same to be discharged of record within ten (10) days after notice of such filing. Lessee, at its sole expense, shall defend the Premises and University against all suits for the enforcement of any such lien or any bond in lieu of such lien, and Lessee hereby indemnifies University against any and all loss, cost, damage, expense or liability resulting from any such lien or suit. Should Lessee fail to so discharge any such lien, University may do so by payment, bond or otherwise on ten (10) days’ written notice to Lessee, and the amount paid or incurred therefor by University shall be reimbursed to University by Lessee upon demand, with interest from the date of demand at the maximum rate of interest lawfully permitted to be collected (limited to the rate of twelve percent [12%] per annum).

(b) Right to Contest. Lessee shall have the right to contest any such mechanic’s or other lien claim filed against the Premises or any part thereof or any public improvement bond if Lessee notifies University in writing of its intention to do so, diligently prosecutes any such contest, at all times effectually stays or prevents any official or judicial sale of the Premises under execution or otherwise, or bond payment, and pays or otherwise satisfies any final judgment adjudicating or enforcing such contested mechanic’s or other lien and thereafter promptly procures and records a satisfaction and release of same, provided Lessee has deposited with University a sum sufficient to cover the lien so contested, plus interest, costs and attorneys’ fees which will accrue during the period of such contest.

(c) No Consent. Nothing in this Lease shall be deemed to constitute the consent or request of University to any contractor, subcontractor or material supplier for the performance of any labor or the furnishing of any supplies, materials or equipment for any specific improvement to the Premises. Notice is hereby given that University has assumed no obligation and shall not be liable or responsible for or in connection with any labor or supplies, materials or equipment hereafter furnished to Lessee, or to any other party, whether on credit, or otherwise, and that no mechanic’s or other lien for any such labor or supplies, materials or equipment shall attach to or affect the Premises or University’s interest and estate therein. University shall have the right to post and maintain on the Premises, notice(s) of nonresponsibility under the laws of the State of Minnesota. This Section 4.14 shall survive the expiration or earlier termination of this Lease.

Section 4.15 Timber; Planting of Trees. All Timber (as defined below) on the Property shall belong to University. University, at its option, may sell the Timber or require Lessee to dispose of the Timber at Lessee’s cost. Lessee shall chip or remove from the Property (a) the branches and limbs of any Timber, (b) any trees removed by Lessee that are not Timber, and (c) any Timber that University decides not to sell. Lessee shall not burn any branches, limbs, trees or Timber on the Property. The location and timing of the planting of any trees that Lessee is required to plant pursuant to the ordinances or permits of the City of Rosemount or Empire Township shall be subject to Permits and Laws. “Timber” means the trees within the Plant Area that University has marked as Timber prior to the date that Lessee commences construction within the Plant Area.
Section 4.16  University Improvements. “University Improvements” means and includes the following:

(a) All streets and roads owned by University on the Property, excluding any streets or roads dedicated to the public.

(b) Other improvements inside or outside the Property, constructed, installed or owned by University.

Except for normal wear and tear (which does not include deterioration attributable to gravel trucks or other heavy equipment), if Lessee or one of its sublessees damages any University Improvements, Lessee shall repair the damage in a timely manner. If a University Improvement is dedicated to a public road authority and becomes a public road, then Lessee shall have no further responsibility for the repair of such University Improvement; provided, however, that Lessee shall continue to be responsible for the cost of such repair after such dedication to the extent that the Permits or applicable Laws impose such responsibility on Lessee or University in connection with Lessee’s or any of Lessee’s Agent’s operations on any portion of the Premises.

Lessee may use the following University Improvements:

(a) The following roads and streets owned by University:

(i) Any portion of Akron Avenue used by Lessee or its sublessees and located within Rosemount and/or Empire Township;

(ii) Any portion of Station Trail used by Lessee or its sublessees and located within Rosemount and/or Empire Township;

(iii) Any portion of 170th Street heading east from the Biscayne Avenue intersection (excluding the “notch” frontage) to the eastern boundary of UMore Park used by Lessee or its sublessees and located within Empire Township; and

(iv) Any existing gravel “field” road(s) used by Lessee or its sublessees and located within Rosemount and/or Empire Township.

(b) Any other University Improvements which University, in writing, has allowed Lessee to use.

Section 4.17  Public Roadway Improvements. Lessee shall be responsible for and pay the costs of all improvements and upgrades to public streets, roads and highways within or in the vicinity of the Property, including paving, construction of additional through lanes or turn lanes, traffic signals, and improvements to intersections and access points, required by any governmental authority in the Permits or Laws in connection with Lessee’s or any of Lessee’s Agents’ operations on the Premises and/or the transportation of Materials, equipment and other items to, from or within the Premises (collectively “Government Road Impositions”). Such improvements and upgrades shall be made as and when required by the Permits and Laws.
Lessee shall pay for, or at its own expense construct, such Government Road Impositions prior to the governmental authorities levying any special assessments against the Property for the Government Road Impositions.

Other than requests for repairs, University shall not request that the governmental authorities require Government Road Impositions, except for the following:

- Intersection improvements at County Road 42 and Biscayne Avenue.
- Intersection improvements at any direct accesses to the gravel mining area from Country Road 46.
- Intersection improvements at County Road 42 and Auburn Avenue.
- Intersection improvements at County Road 46 and Akron Avenue.
- Upgrading to a 10 ton design standard that portion of Biscayne Avenue from County Road 42 to Boulder Trail, including intersection improvements required for the gravel mining access at Biscayne Avenue and Boulder Trail.
- If and to the extent that any portion of 170th Street becomes a public road, upgrading to a 10 ton design standard that portion of 170th Street from Biscayne Avenue to the secondary gravel mining access on 170th Street, including intersection improvements required for the secondary gravel mining access on 170th Street.
- Intersection lighting at all intersections as required by Dakota County.

University may request from governmental authorities other public improvements benefiting the Property, but, except as provided in Section 4.5, such other public improvements shall not be deemed to be Government Road Impositions.

Section 4.18 Community Relations: Transportation. If University receives comments, complaints, suggestions, inquiries or other feedback relating to Lessee's or Lessee's Agents' operations on the Premises (including the transportation of Materials, equipment and other items to, from and within the Premises) from residents or other members of the communities in the vicinity of the Premises, University may direct the same to a person designated by Lessee. Lessee shall not change such contact information without providing University with prior written notice of the new contact information. Lessee shall give due regard to such feedback and use good faith efforts to address the same in a manner that is reasonably satisfactory to University; provided, however, nothing in this Section requires Lessee to change its Operations Plan in any material respect, to reduce hours of operation, to meet standards more demanding than those imposed by Laws or Permits, or to materially restrict its rights under this Lease. Without limiting the foregoing, Lessee shall use commercially reasonable efforts to ensure that trucks and other vehicles transporting Materials, equipment and other items to, from or within the Premises in connection with Lessee's or Lessee's Agents' operations thereon are operated in compliance with applicable Laws (including compliance with posted speed limits and other traffic ordinances) and in a manner that does not result in spillage on public streets, roads or highways and is otherwise safe and respectful of the interests of residents and other members of surrounding communities.
Section 4.19 Site Security. Lessee shall monitor and secure the Plant, Plant Area and the Active Mining and Reclamation Areas and use commercially reasonable efforts to prevent trespassing and illegal dumping on the same. Promptly after becoming aware of an incident of trespassing or illegal dumping on the Plant Area or the Active Mining and Reclamation Areas, Lessee shall inform University of the incident. Except as required by any Laws or Permits, Lessee is not required to fence any ponds, open water areas or the Active Mining and Reclamation Areas.

Section 4.20 Sustainability. Lessee shall use its commercially reasonable efforts to cost-effectively minimize the amount and effect of carbon dioxide produced as a result of Lessee’s and Lessee’s Agents’ operations on the Premises through measures such as use of renewable energy sources, renewable fuels, recycled materials, carbon offsets (e.g., tree planting), on-Premises recycling programs, on-grid electricity (rather than portable generators) and use of such other measures as may prove to be feasible during the Lease Term. Nothing in this paragraph requires Lessee to change its Operations Plan in any material respect, to reduce hours of operation, to meet standards more demanding than those imposed by Laws or Permits, or to materially restrict its rights under this Lease.

ARTICLE V
REPRESENTATIONS AND WARRANTIES; QUIET ENJOYMENT

Section 5.1 University’s Representations and Warranties. University represents and warrants that (a) University is duly formed, validly existing and in good standing under the laws of the State of Minnesota and is qualified to do business in the State of Minnesota and (b) the person signing this Lease is duly authorized to execute and deliver this Lease on behalf of University.

Section 5.2 Lessee’s Representations and Warranties. Lessee represents and warrants that (a) Lessee is duly formed, validly existing and in good standing under the laws of the State of Minnesota and is qualified to do business in the State of Minnesota and (b) the person signing this Lease is duly authorized to execute and deliver this Lease on behalf of Lessee.

Section 5.3 Quiet Enjoyment. So long as this Lease is in full force and effect and Lessee complies with all of its covenants, agreements and obligations under this Lease, Lessee shall lawfully and quietly hold, occupy and enjoy the Property and the Materials within the Property during the Lease Term without disturbance by University or by any Person claiming through or under University, subject, however, to the terms of this Lease and to all easements, covenants, conditions, restrictions and other matters of public record or in use affecting the Premises. Lessee acknowledges that University may develop the Property for urban residential, commercial and industrial uses as Lessee completes the various Phases of its mining and reclamation operations and that University intends to develop certain adjacent property for similar uses during the Lease Term. Notwithstanding anything in this Lease to the contrary, University may relocate streets, roads and utilities on the Property, and may grant and reserve easements for and construct and install new streets, roads and utilities on the Property, in connection with University’s potential development of the Property and adjacent property; provided that, if such relocation, grant, reservation, construction or installation would materially
and adversely affect Lessee’s then-current mining and reclamation operations on the Property or the amount of Material that can be mined from the Property at a later date, University shall obtain Lessee’s prior written consent, which Lessee shall not unreasonably withhold, condition or delay.

ARTICLE VI
INDEMNIFICATION; ENVIRONMENTAL LIABILITIES

Section 6.1 University’s Indemnification. Subject to applicable Laws (including Minnesota Statutes, Section 3.736), University shall defend, indemnify and hold harmless Lessee and its members, managers, officers, agents and employees from and against any and all claims, demands, costs, losses, penalties, expenses, judgments and liability, including reasonable attorneys’ fees and expert fees, by or to any third party (collectively, “Liabilities”) solely and directly attributable to University’s operations on the Property while this Lease is in effect.

Section 6.2 Lessee’s Indemnification. Lessee shall defend, indemnify and hold harmless University and the LLC, and their respective regents, directors, officers, members, governors, managers, agents and employees, from and against all Liabilities arising from or in any way related to or connected with Lessee’s and its sublessees’ and licensees’ use of or operations on the Premises, and shall further indemnify and hold harmless University and the LLC, and their respective regents, directors, officers, members, governors, managers, agents and employees, against and from all Liabilities arising from any breach or default in the performance of Lessee’s obligations under this Lease, or arising from any act or negligence of Lessee, its officers, agents, contractors, guests, sublessees, licensees, employees or invitees (collectively, “Lessee’s Agents”). Lessee shall, upon notice from University, defend the same at Lessee’s expense by counsel reasonably satisfactory to University.

Section 6.3 Disclaimer of Warranties; Environmental Conditions and Liabilities.

(a) University makes no representation or warranty as to the environmental or other condition of the Property. Lessee has independently performed all environmental inspections, reviews, investigations and audits as it deemed necessary, appropriate and consistent with good commercial practice, and is fully aware of and accepts the environmental and other condition of the Property, including all utilities and improvements located on or beneath the Property. Subject to Section 6.4, Lessee acknowledges and agrees that University is leasing the Property to Lessee in its “AS IS, WHERE-IS, WITH ALL FAULTS” condition. Lessee acknowledges that it has received and reviewed copies of the environmental reports described on Exhibit F attached hereto. Nothing contained herein nor any information furnished by University to Lessee shall be construed as a warranty as to the environmental or any other condition of the Property.

(b) Lessee shall provide to University electronic copies of any environmental test results and reports it or its contractors or consultants obtain pertaining to the Property. All test results and reports shall be sent to University prior to submission to any regulatory agency. University may comment separately on said results and reports to any regulatory agency, but shall not have the right to alter any submission from Lessee to any regulatory agency.
(c) Lessee shall conduct all of its operations hereunder, including mining, accessory uses, reclamation, rehabilitation and restoration of the Property affected by its operations, and all its obligations under the Permits, in compliance with all Laws applicable to such operations, including all rules, regulations and orders promulgated by any federal, state and local governmental authority having jurisdiction over Lessee or its operations, and all applicable Environmental Laws (hereinafter defined), and in compliance with the Contingency Plan. Lessee shall cause its sublessees and licensees to conduct all of their operations and activities on the Property in compliance with all Laws and Permits applicable thereto.

(d) In addition to, and without limiting the provisions of Section 6.2, Lessee shall defend, indemnify and hold harmless University and the LLC, and their respective regents, directors, officers, members, governors, managers, agents and employees, from and against all Liabilities pursuant to the Environmental Laws resulting from Lessee’s and Lessee’s Agents’ operations hereunder (regardless of whether such Liabilities are discovered before or after the expiration or earlier termination of this Lease), except to the extent such Liabilities result from University’s actions under Sections 6.4(a) and 6.4(e) or failure to act when required to act under Sections 6.4(a) and 6.4(e).

As used in this Lease, (i) “Environmental Laws” means any and all present and future federal, state and local laws (whether common law or statutory), and all rules, regulations, orders, decrees, judgments and injunctions promulgated or entered under such laws by any federal, state, or local governmental entity, relating to public or employee health and safety, pollution or protection of the environment, including common law claims and theories of liability in negligence, trespass, nuisance, strict liability or any other common law theory, the Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery Act, the Federal Safe Drinking Water Act, the Federal Pollution Control Water Act, the Emergency Planning and Right-to-Know Act, the Clean Air Act, the Oil Pollution Act, the Toxic Substances Control Act, the Minnesota Environmental Response and Liability Act, the Minnesota Wetland Conservation Act, the Minnesota Environmental Rights Act, and any other federal, state and local laws, statutes, codes, ordinances, rules, regulations and orders relating to reclamation of land, wetlands and waterways or relating to use, storage, emissions, discharges, cleanup, releases or threatened releases of pollutants on or into the workplace or environment (including ambient air, waterways, wetlands, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of Hazardous Material, as all of the foregoing may be amended, supplemented and reauthorized from time to time; and (ii) “Hazardous Material” means (A) any substance defined as a “hazardous substance,” “hazardous waste,” “toxic substance” or the like under any Environmental Laws, (B) petroleum, petroleum products and by-products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas, and (C) any other substance or material that is now or in the future deemed to be hazardous, dangerous, toxic, or a pollutant or contaminant or is otherwise regulated under any Environmental Laws.
Section 6.4 Conduct of Operations with respect to Environmental Matters.

(a) The parties acknowledge that, as provided in the reports attached to the EIS, the environmental conditions described on Exhibit G attached hereto currently exist on the Property (each being an “Identified Environmental Condition”). University shall, at its expense, perform such remediation obligations with respect to each Identified Environmental Condition as are required by the final EIS prior to the date that Lessee commences its mining operations in the portion of the Property affected by the applicable Identified Environmental Condition. Notwithstanding anything in this Lease to the contrary:

i. With respect to the Metropolitan Council sanitary sewer interceptor pipeline located in Dry Mining Phases 1 and 2 (the “Pipeline”): (A) upon University’s request, at the time mutually determined by University and Lessee (but in no event later than the date Lessee completes mining operations in the Phase in which the Pipeline or portion thereof is located pursuant to the Operations Plan), Lessee shall remove and properly dispose of the Pipeline and remediate any Hazardous Material located within the Pipeline (to the extent such remediation is required by applicable Laws), all in accordance with applicable Laws; (B) University and Lessee shall each pay one-half (1/2) of the cost of removing and disposing of the Pipeline and performing any necessary remediation of Hazardous Material located within the Pipeline (University’s payment being due to Lessee within thirty (30) days after University receives an invoice and appropriate supporting documentation from Lessee, but in no event prior to the date Lessee has removed and properly disposed of the Pipeline and remediated any Hazardous Material located within the Pipeline, to the extent such remediation is required by applicable Law); (C) University, at its cost, will remediate any Hazardous Material and other waste released from the Pipeline into the soils surrounding the Pipeline (unless such release was caused by the negligent or intentional acts or omissions of Lessee or Lessee’s Agents, in which case Lessee shall, at its cost, remediate such surrounding soils), but only to the extent such remediation is required by applicable Laws; and (D) University shall use commercially reasonable, good faith efforts to require Metropolitan Council to pay or reimburse University and Lessee for their proportionate shares of the costs of remediating any Hazardous Material located within or released from the Pipeline (but University shall have no obligation to commence a lawsuit or other legal proceedings against Metropolitan Council); and

ii. If University determines that the cost of remediating an Identified Environmental Condition is not cost effective, and if failure to remediate the Identified Environmental Condition would not materially and adversely affect Lessee’s mining and reclamation on a substantial portion of the remainder of the Property, University may terminate this Lease with respect to the portion of the Property impacted by the Identified Environmental Condition; provided, however, that University may terminate this Lease with respect to the portion of the Property impacted by the Pipeline if University determines that the cost of removing and disposing of the Pipeline and of remediating any Hazardous Material in connection therewith is not cost effective (regardless of whether failure to remove and dispose of the Pipeline and remediate any Hazardous Material in connection therewith would materially and adversely affect Lessee’s mining and reclamation on a substantial portion of the remainder of the Property).
(b) Without in any way limiting any other provision of this Lease, Lessee, at its sole cost and expense, shall:

i. Notify University prior to any activity on the Premises that involves the use, storage, generation, treatment, transportation, release, disposal, or handling of any Hazardous Material;

ii. Comply with all Environmental Laws and Permits governing the use, storage, generation, treatment, transportation, release, disposal, or handling of Hazardous Material and with the Contingency Plan, including all reporting and monitoring requirements therein;

iii. Provide University with copies of all reports and data from the monitoring systems that Lessee maintains and the testing that Lessee performs on the Property pursuant to the Permits and Environmental Laws, and copies of all compliance reports and other notifications that Lessee is required to provide to any governmental authority pursuant to the Permits and Environmental Laws, all as and when Lessee provides the same to any federal, state or local governmental authority (but in no event shall Lessee provide such reports, data and notifications to University less frequently than annually, on or prior to January 30 of each year).

iv. Immediately stop mining operations, construction, installation or any other activity if Lessee encounters a Hazardous Material in the vicinity of such operations, construction, installation or activities;

v. Give immediate notice to University’s Department of Environmental Health and Safety at 612-626-6002 or, after normal business hours, the Police Department dispatch at 612-624-2677 (A) if Lessee encounters a Hazardous Material; (B) if five (5) or more gallons of a Hazardous Material are spilled or released on or from the Premises (and Lessee shall provide University with a written report on or prior to January 30 of each year describing in detail all such spills or releases during the prior calendar year); (C) of a violation or suspected violation of any Environmental Laws; (D) of an inspection or inquiry by any governmental agency with respect to Lessee’s use of the Premises; or (E) if Lessee receives any notice from any governmental agency alleging that any Environmental Laws have been violated or may have been violated by Lessee with respect to Lessee’s use of the Premises;

vi. Except as provided in to Section 6.4(e), promptly perform any investigative, remedial or other activities necessary to avoid or minimize injury or liability to any Person, or to prevent the spread of a Hazardous Material; and

vii. Promptly respond to and comply with any notice, order, request, or demand relating to a potential or actual release of Hazardous Material on the Premises.

(c) Except with respect to the Identified Environmental Conditions, if University has reason to believe that a Hazardous Material has been discharged, spilled, or
released on the Premises by Lessee or its contractors or consultants, then University has the
right, but not the obligation, to require Lessee, at Lessee’s sole cost and expense, to perform an
environmental audit having scope and by an environmental consultant satisfactory to University.
Such an investigation shall be commenced within ten (10) days after University’s request, and
thereafter be diligently prosecuted to completion. Lessee shall provide to University an
electronic copy of the environmental audit immediately after it is completed.

(d) Upon University’s request, Lessee, at its expense, shall have available an
environmental engineer or consultant (the “Consultant”) who is properly trained and qualified to
monitor air quality for Hazardous Material and to identify Hazardous Material that may be
exposed or disturbed in the soil or otherwise in connection with Lessee’s and Lessee’s Agents’
operations on the Premises. The Consultant shall be pre-approved by University and shall
monitor Lessee’s activities on the Premises for compliance with the Contingency Plan and the
terms and conditions of this Section 6.4 (which monitoring shall include without limitation such
visits to the Premises as may be necessary or appropriate to ensure such compliance but shall not
include an obligation for the Consultant to be on the Premises every day of mining operations).
In addition, prior to allowing its employees to mine Materials from the Property, Lessee shall
instruct its employees regarding basic skills for identifying Hazardous Material.

(e) If during Lessee’s construction or installation of Improvements or other
operations on the Premises the Consultant, Lessee, University or any governmental authority
determines that soils or other materials exposed or disturbed by such operations are impacted by
Hazardous Material, then (i) Lessee shall immediately stop operations and notify University as
provided in Section 6.4(b)(iv) and (v); and (ii) University, after considering any comments
received from Lessee in a timely manner, shall determine whether it is cost effective to remove
and safely dispose of the impacted soils and materials. If University determines that such
removal and disposal is not cost effective, and if failure to remediate would not materially and
adversely affect Lessee’s mining and reclamation on a substantial portion of the remainder of the
Property, University may terminate this Lease with respect to the impacted area of the Premises
(as such area is reasonably determined by University). If University determines that such
removal and disposal is cost effective, then University, at its expense, shall remove and dispose
of the impacted soils and materials to the extent such remediation is required by applicable
Environmental Laws; provided that, if University and Lessee agree, Lessee may remove and
dispose of the impacted soils and materials pursuant to a removal and disposal plan and using
contractors that have been pre-approved in writing by University, and University shall reimburse
Lessee for all reasonable, documented out-of-pocket costs incurred by Lessee in connection with
such removal and disposal. If Lessee performs such removal and disposal, Lessee shall (A) seek
and receive from a government-approved disposal facility(ies) written pre-approval for receipt of
impacted materials and provide such pre-approval to University; and (B) provide to University
without charge copies of all test results and documentation regarding analysis and disposal of
impacted soil and materials removed from the Premises, including waste manifests, bills of
lading, chain of custody documents and landfill/disposal facility receipt records.
Notwithstanding anything in this paragraph to the contrary, if such soils or other materials have
been impacted by Hazardous Material as a result of the negligence or misconduct of Lessee or
Lessee’s Agents, or by Hazardous Material that Lessee or Lessee’s Agents have brought on to
the Property, then Lessee shall be responsible for the entire cost of removing and disposing of such soils and otherwise remediating the site to University’s reasonable satisfaction.

(f) If Lessee fails to perform its obligations under this Section 6.4, University shall have the right, but not the obligation, to perform Lessee’s obligations and charge Lessee for the costs and expenses reasonably incurred by University in doing so (plus a fifteen percent [15%] administrative fee). Lessee shall reimburse University for all such costs and expenses within ten (10) days after receipt of an invoice therefor accompanied by supporting data in a form to reasonably evidence the costs in question.

(g) In connection with the construction or installation of any Improvements on the Premises, Lessee shall provide to University all documents evidencing Lessee’s compliance with National Pollution Discharge Elimination System (NPDES) and/or State Disposal System Stormwater Permit for Construction Activity requirements, including the Stormwater Pollution Prevention Plan (SWPPP) and associated maintenance records at a pre-construction meeting and during the course of construction, on a weekly basis (or on a less frequent basis, at University’s option), as maintenance and inspection records become available. A final summary report on all the above activities shall be submitted to University within thirty (30) days after substantial completion of construction of the Plant.

Section 6.5 Survival. This Article VI shall survive the expiration of the Lease Term or earlier termination of this Lease. The indemnity provisions set forth in this Lease shall apply to amounts paid in settlement of a claim by an indemnified party only if such settlement is approved by the indemnifying party, which approval shall not be unreasonably withheld.

ARTICLE VII
INSURANCE

Section 7.1 Lessee’s Insurance Requirements. Lessee, at its sole cost and expense, shall obtain and keep in force throughout the Lease Term the following insurance:

(a) Property Insurance. Insurance against loss or damage to the Plant with coverage for perils as set forth under the “Causes of Loss-Special Form” or equivalent property insurance policy in an amount equal to the full insurable replacement cost of the Plant. In the event of an insured loss, Lessee shall be solely responsible for the amount of any deductible or co-insurance.

(b) Commercial General Liability Insurance. Occurrence based general liability insurance using ISO form CG 00 01 covering claims arising from operations under this Lease, with minimum limits of $5 million per occurrence and $5 million annual aggregate. Regents of the University of Minnesota shall be named as Additional Insureds by endorsement on ISO form CG 20 11 (or equivalent as approved by University).

(c) Business Automobile Liability Insurance. Business Automobile Liability Insurance using ISO form CA 00 01 with a minimum limit of $5 million each accident for bodily injury and property damage. Coverage shall apply to all owned, hired, and non-owned
automobiles. Regents of the University of Minnesota shall be named as Additional Insureds by endorsement on ISO forms CA 2048 (or its equivalent as approved by University). Pollution liability coverage equivalent to that provided by ISO pollution liability-broadened coverage for autos endorsement CA 99 48 and the Motor Carrier Act endorsement MCS90 shall be included.

(d) **Workers Compensation Insurance.** Workers' compensation insurance in compliance with all statutory requirements of the State of Minnesota.

(e) **Employer’s Liability Insurance.** Employer’s Liability Insurance with minimum limits of $1 million bodily injury by disease per employee; $1 million bodily injury by disease aggregate; and $1 million bodily injury by accident.

(f) **Pollution Liability Insurance.** Pollution Liability Insurance in the amount of $5 million per occurrence or claim and annual aggregate including coverage for bodily injury, property damage, environmental damage, loss of use of property, governmental ordered cleanup costs, completed operations and defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for damages, as a result of pollution conditions (including mold and fungi) arising from Lessee’s operations under this Lease, (a) at the Premises, (b) in the course of transporting materials to or from the Premises, or (c) at or emanating from disposal sites to which Lessee transported materials. Coverage for mold and fungi and for disposal sites may be on a claims made basis. Claims-made provisions, if any, must have a retroactive date of policy inception and must include an extended reporting period of five (5) years after the end of the Lease Term. Regents of the University of Minnesota shall be named as an Additional Insured for claims arising out of the acts or omissions of Lessee, its contractors or consultants, or anyone else for whom Lessee is responsible.

(g) **Certificates; Copies of Policies.** Lessee shall provide to University prior to the Commencement Date fully executed Certificates of Insurance evidencing that it has the required coverage and shall provide to University upon University’s request copies of all insurance policies described in this Section.

**Section 7.2 Contractors’ and Consultants’ Insurance Requirements.** Lessee shall require its contractors, consultants, sublessees and licensees entering onto the Property to obtain and keep in force the insurance as follows:

(a) **Commercial General Liability Insurance.** Occurrence based general liability insurance using ISO form CG 00 01 covering claims arising from operations under this Lease, with minimum limits of $1 million per occurrence and $1 million annual aggregate. Regents of the University of Minnesota shall be named as Additional Insureds by endorsement on ISO form CG 20 11 (or equivalent as approved by University).

(b) **Business Automobile Liability Insurance.** Business Automobile Liability Insurance using ISO form CA 00 01 with a minimum limit of $1 million each accident for bodily injury and property damage. Coverage shall apply to all owned, hired, and non-owned automobiles. Regents of the University of Minnesota shall be named as Additional Insureds by endorsement on ISO forms CA 2048 (or its equivalent as approved by University). Pollution
liability coverage equivalent to that provided by ISO pollution liability-broadened coverage for autos endorsement CA 99 48 and the Motor Carrier Act endorsement MCS90 shall be included.

(c) **Workers Compensation Insurance.** Workers’ compensation insurance in compliance with all statutory requirements of the State of Minnesota.

(d) **Employer’s Liability Insurance.** Employer’s Liability Insurance with minimum limits of $1 million bodily injury by disease per employee; $1 million bodily injury by disease aggregate; and $1 million bodily injury by accident.

University shall be named as an additional insured on all general liability policies, using ISO Endorsements CG 20 10 07 04 and CG 20 37 07 04 or equivalent, and automobile liability policies. In addition, Lessee shall require that its contractors and consultants waive all subrogation and recovery rights against University. The waiver shall be provided on the commercial general liability policy using a Waiver of Transfer of Rights of Recovery Against Others to Us endorsement on ISO form CG 29 88 10 93 (or its equivalent as approved by University) and on the workers’ compensation policy using a Waiver Of Our Rights To Recover From Others Endorsement on NCCI form WC 00 03 13 (or its equivalent as approved by University) in favor of Regents of the University of Minnesota. Prior to allowing any of its contractors or consultants to enter onto the Property, Lessee shall provide to University fully executed Certificates of Insurance evidencing that each such contractor and consultant has obtained the required coverage and endorsements.

**Section 7.3 General Insurance Requirements.** The following applies to all policies described in **Sections 7.1 and 7.2:** (a) all policies, through endorsement (including self-insurance programs if applicable), must state that the policy is primary and any insurance maintained by University is excess and non-contributory (the certificates of insurance must reflect that this wording is included in the required policies); (b) all policies required shall provide that the policy will not be canceled, materially changed, or non-renewed without at least thirty (30) days’ prior written notice to University (provided, however, in the event Lessee, without lapse in coverage, obtains a substitute insurance policy providing coverage terms equivalent or superior to those required under this Lease and provides evidence of the substitute policy to University promptly after such substitution, this requirement of thirty (30) days’ prior written notice to University shall not apply for such substitution); (c) all policies shall be written by a reputable insurance company with a current AM Best Rating of A-VII or better, and authorized to do business in Minnesota; and (d) all policies shall include a Waiver of Subrogation in favor of Regents of the University of Minnesota; and (e) limit requirements may be met through a combination of Primary and Umbrella policy limits. Lessee agrees that it shall review the above-referenced amounts with University every five (5) years during the Lease Term and shall increase the coverage amounts provided for in this Article as reasonably recommended by University’s risk management department or consultant.

**Section 7.4 Waiver and Release.** University and Lessee each waive, and release each other and the LLC from and against, all claims for recovery against the other and the LLC for any loss or damage to the property of such releasing party arising out of fire or other casualty coverable by a standard “Causes of Loss-Special Form” property insurance policy with, in the
case of Lessee, such endorsements and additional coverages as are considered good business practice in Lessee’s business, even if such loss or damage shall be brought about by the fault or negligence of the other party (or the LLC) or its employees, contractors or agents; provided, however, such waiver by University shall not be effective with respect to Lessee’s liability under Sections 6.3 and 6.4. This waiver and release is effective regardless of whether the releasing party actually maintains the insurance described in Section 7.1(a) and is not limited to the amount of insurance actually carried, or, except as expressly provided to the contrary in this Lease, to the actual proceeds received after a loss. Each party shall have its insurance company that issues its property coverage waive any rights of subrogation, and shall have the insurance company include an endorsement acknowledging this waiver, if necessary. The foregoing notwithstanding, University’s waiver shall not be effective with respect to any deductible or co-insurance amount relating to the insurance Lessee is required to carry under Section 7.1(a); moreover, Lessee shall remain liable to University as provided herein for any loss or damage resulting from any failure on the part of Lessee to maintain the insurance required under Section 7.1(a). Lessee assumes all risk of damage of Lessee’s property within the Premises, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, act of any other Person, or other cause.

This Section 7.4 shall survive the expiration or earlier termination of this Lease.

ARTICLE VIII

TAXES

Section 8.1 Taxes Generally. Lessee shall timely pay Real Estate Tax Costs (as defined below) to the appropriate taxing authority. In addition, Lessee shall pay before delinquent all taxes levied upon, measured by, or arising from (a) the conduct of Lessee’s business; (b) Lessee’s leasehold estate; and (c) all machinery, tools, equipment, supplies, buildings, improvements, pipelines, stockpiles of Materials, Precious Metals, Timber, and other property and fixtures that Lessee places on or removes or extracts from the Property, including any severance or production taxes pursuant to Minnesota Statutes, Section 298.75. If Lessee provides University a fully completed Minnesota Department of Revenue Form ST3, Certificate of Exemption, no sales tax shall be due to University. Unless Lessee provides an ST3, Lessee shall pay to University all Minnesota sales tax that may at any time be levied or imposed upon, or measured by, any amount payable by Lessee under this Lease. As used in this Lease, “Real Estate Tax Costs” means all levies, ad valorem real property taxes, personal property taxes in lieu of real property taxes, taxes imposed under Minnesota Statutes, Section 272.01, subdivision 2, aggregate host fees, special assessments, liens, license and permit fees, and annual charges, together with the reasonable cost of contesting any of the foregoing, which are applicable to or due and payable during the Lease Term, and which are imposed by any authority or under any Laws, or pursuant to any recorded covenants or agreements, upon or with respect to the Improvements, acreage within the Active Mining and Reclamation Areas, the Plant, acreage within the Plant Area, and the University Improvements used by Lessee, or directly upon this Lease or the amounts payable by Lessee under this Lease, or against University or the Property because of Lessee’s estate or interest in the Premises or because of use of the Premises by Lessee or Lessee’s Agents.
Notwithstanding anything to the contrary contained in this Section 8.1, Real Estate Tax Costs do not include special assessments against the Property under Chapter 429 of the Minnesota Statutes except to the extent that such special assessments are levied because of Lessee’s estate or interest in the Premises or in connection with the use of the Premises by Lessee or Lessee’s Agents. Notwithstanding anything to the contrary contained in this Section 8.1, as between Lessee and University, University is responsible for paying special assessments levied under Chapter 429 of the Minnesota Statutes to the extent that such special assessments are not levied because of Lessee’s estate or interest in the Premises or in connection with the use of the Premises by Lessee or Lessee’s Agents.

Section 8.2 Unrelated Business Income Tax.

(a) Characterization of Payments. Notwithstanding any other provision of this Lease, this Lease shall not be interpreted or construed in any manner under which University is treated as owning a “working interest” in the Property within the meaning of Treas. Reg. § 1.512(b)-1(b). The parties intend the Production Royalty payments paid by Lessee under this Lease, the Precious Metals payments described in Section 3.6, and the Annual Minimum Royalty and Initial Advanced Minimum Royalty payments described in Section 3.3 to be characterized as “royalties” within the meaning of Section 512(b)(2) of the Internal Revenue Code of 1986, as amended (the “Code”). As such, the parties do not intend the payments to be subject to the “unrelated business income tax” (“UBIT”) within the meaning of Section 511 of the Code.

(b) Modification if Law Change or IRS Challenge Results in Unrelated Business Income Tax. If, after the date hereof, University reasonably determines that the adoption of any applicable Law regarding UBIT or any change therein or in the interpretation or administration thereof by the Internal Revenue Service (the “IRS”) or comparable agency charged with the interpretation or administration thereof, or any audit or challenge by the IRS regarding the taxation of the payments made under this Lease, has or would have the effect of reducing the rate of return or increasing the costs incurred by University or any entity controlled by University as a consequence of University’s obligations hereunder to a level below that which University or such entity could have achieved but for such adoption, change, request, or audit, then the parties agree in good faith to renegotiate this Lease to the extent possible without materially changing the economics as existed for the parties immediately prior thereto in order to reduce or eliminate the UBIT paid by University.

(c) Private Letter Ruling. Lessee agrees to cooperate with University if University decides to request a “private letter ruling” from the IRS regarding the taxation of the payments made under this Lease. As part of that process, the parties agree to modify this Lease to the extent necessary so that the payments are treated as “royalties” not subject to UBIT. This Section 8.2 shall survive the expiration or earlier termination of this Lease.
ARTICLE IX
DEFAULT; REMEDIES; TERMINATION

Section 9.1 Events of Default. It shall be an "Event of Default":

(a) If Lessee does not pay in full when due any and all payments of Production Royalty, Annual Minimum Royalty, Initial Advanced Minimum Royalty and other amounts due from Lessee under this Lease;

(b) If Lessee enters into or permits any Transfer in violation of Section 10.1;

(c) If audits performed by University pursuant to Section 4.12, or any other information, reveals that Lessee has underpaid any Production Royalty by five percent (5%) or more for three (3) or more Lease Years (whether consecutive or not) within any period of ten (10) Lease Years;

(d) If Lessee fails to observe and perform or otherwise breaches any other provision of this Lease, and, except as provided in Section 9.3, Lessee fails to cure the default on or before the date that is thirty (30) days after University gives Lessee notice of default; provided, however, if the default cannot reasonably be cured within thirty (30) days following University’s giving of notice, Lessee shall be afforded additional reasonable time (not to exceed one hundred eighty [180] days following University’s original notice of default) to cure the default if Lessee begins to cure the default within thirty (30) days following University’s notice and continues diligently in good faith to completely cure the default;

(e) If Lessee or any Guarantor becomes insolvent or make a general assignment for the benefit of creditors, or if a petition in bankruptcy or for reorganization or for an arrangement with creditors under any federal or state law is filed by or against Lessee or any Guarantor, or a bill in equity or other proceeding for the appointment of a receiver for any of Lessee’s or any Guarantor’s assets is commenced, or if any of the real or personal property of Lessee or any Guarantor shall be levied upon; provided that (i) any proceeding brought by anyone other than University, Lessee or any Guarantor under any bankruptcy, insolvency, receivership or similar law shall not constitute an Event of Default until such proceeding has continued unstayed for more than sixty (60) consecutive days and (ii) if any of the events described in this paragraph (e) happen to only one of the Guarantors, then Lessee may allow University to review such financial information for the other Guarantor (prepared in accordance with GAAP) as University may require and if such information demonstrates to University’s satisfaction that the net worth of the other Guarantor at the time of such event is equal to at least $7,500,000 (the “Minimum Net Worth”), then such event shall not be an Event of Default so long as the other Guarantor maintains the Minimum Net Worth throughout the remainder of the Lease Term and demonstrates the same by allowing University to review such financial information (prepared in accordance with GAAP) as University may require from time to time. The Minimum Net Worth shall increase on each anniversary of the Effective Date by the percentage increase in the CPI (as defined below) over the immediately preceding twelve-month period (provided, however, in no event shall the Minimum Net Worth ever decrease on any anniversary of the Effective Date). As used in this Lease, “CPI” means the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items (Not Seasonally Adjusted) (1982-
Section 9.2 Remedies. If an Event of Default occurs, University shall have the following rights and remedies:

(a) University, without any obligation to do so, may elect to cure the default on behalf of Lessee, in which event Lessee shall reimburse University upon demand for any sums paid or costs incurred by University (together with an administrative fee of fifteen percent [15%] thereof) in curing the default, plus interest at the rate of twelve percent (12%) per annum from a date ten days after the demand of University for payment;

(b) In the event of a Material Default (as defined below), to enter and repossess the Premises and remove all Persons and all or any property, by action at law or otherwise, without being liable for prosecution or damages, without relieving Lessee or Guarantors from their liability for payment and performance when due of Lessee’s obligations hereunder. Nothing in this paragraph is intended to or shall be deemed to (i) limit Lessee’s right to remove the Plant and stockpiles as described in Section 9.5 or (ii) give University the right to use or relet the buildings or equipment within the Plant Area;

(c) In the event of a Material Default, to (i) accelerate two (2) Lease Years, and only two Lease Years, of Annual Minimum Royalty (and the Annual Minimum Royalty during each accelerated Lease Year shall be deemed to be equal to the Annual Minimum Royalty due in the Lease Year in which the acceleration occurs, without any reduction in such Annual Minimum Royalty because of a termination of this Lease) and (ii) declare the same to be immediately due and payable. If at the time the accelerated Annual Minimum Royalty is due from Lessee there are outstanding Accrued Credits that have not been applied to reduce Production Royalty or Annual Minimum Royalty payments pursuant to Section 3.3(c), then, as provided in Section 9.4, such outstanding Accrued Credits shall be applied against and reduce the amount of the accelerated Annual Minimum Royalty payment due pursuant to this paragraph (but the accelerated Annual Minimum Royalty payment shall never be less than zero);

(d) To seek judgment for monetary damages resulting from the Event of Default;

(e) To seek injunctive relief and/or specific performance of Lessee’s obligations under this Lease that are necessary to cure the Event of Default;

(f) In the event of a Material Default, to terminate this Lease and the Lease Term without any right on the part of Lessee to save the forfeiture by payment of any sum due or by other performance of any condition, term or covenant broken; upon termination pursuant to this paragraph (f), the obligations of Lessee that arose prior to the date of termination, or University’s remedies with respect thereto, shall continue in full force and effect and survive such termination (including Lessee’s obligations to pay any accelerated Annual Minimum Royalty and any delinquent Production Royalty, Annual Minimum Royalty, Initial Advanced Minimum Royalty and other amounts due from Lessee under this Lease); and
(g) To exercise all other rights and remedies available to University at law or in equity; provided, however, that University may not accelerate the Annual Minimum Royalty for any subsequent Lease Year except as provided in Section 9.2(c).

Notwithstanding anything to the contrary contained in this Lease, University does not have any right or remedy to accelerate the whole or any part of the Annual Minimum Royalty for the balance of the Lease Term after an Event of Default except as to any accelerated Annual Minimum Royalty under Section 9.2(c).

Notwithstanding anything to the contrary contained in this Lease, University does not have any right or remedy to be paid or to recover or to accelerate the whole or any part of the Annual Minimum Royalty for the balance of the Lease Term after termination or expiration of the Lease or after termination of Lessee’s right to possession pursuant to Section 9.2(b), except (1) as to payments due for the period prior to such termination or expiration, (2) as to any Termination Fee, and (3) as to any accelerated Annual Minimum Royalty under Section 9.2(c).

Once Lessee terminates the Lease pursuant to Section 9.6, the obligation of Lessee to pay the Annual Minimum Royalty also terminates except (1) as to payments due for the period prior to such termination and (2) as to any Termination Fee.

Once University terminates the Lease or terminates Lessee’s right of possession pursuant to Section 9.2(b), the obligation of Lessee to pay the Annual Minimum Royalty also terminates except (1) as to payments due for the period prior to such termination and (2) as to any accelerated Annual Minimum Royalty under Section 9.2(c).

As used in this Section, a “Material Default” shall include any one of the following Events of Default: (i) an Event of Default under Section 9.1(a) that is not cured within sixty (60) days after the date that the delinquent payment was due; (ii) an Event of Default under Section 9.1(b); (iii) an Event of Default under Section 9.1(d) that arises from (A) use of the Property by Lessee or Lessee’s Agents for a purpose other than those specified in Article 1, (B) construction of a material Improvement without University’s consent, or (C) Lessee’s default under Section 4.4, 4.10, 4.14, 5.2, 6.2, 6.3, 6.4, 8.1, 9.5, 10.20 or 10.21; or (iv) an Event of Default under Section 9.1(e). All of University’s remedies under this Section 9.2 shall survive the expiration or earlier termination of this Lease. The Parties agree that any Event of Default under this Lease is material and that the use of the defined term “Material Default” is not intended to imply that any Event of Default that is not a Material Default is not material.

This Section 9.2 shall survive the expiration or earlier termination of this Lease.

Section 9.3 Additional Default Provisions.

(a) Any provision in this Article IX to the contrary notwithstanding, University shall not be required to give any notice prior to exercising its rights under Section 9.2(a) in an emergency.

(b) No waiver by University of any breach by Lessee shall be a waiver of any subsequent breach, nor shall any forbearance by University to seek a remedy for any breach by
Lessee be a waiver by University of any rights and remedies with respect to such or any subsequent breach. Efforts by University to mitigate the damages caused by Lessee’s default shall not constitute a waiver of University’s right to recover damages hereunder. No right or remedy herein conferred upon or reserved to University is intended to be exclusive of any other right or remedy provided herein or by law, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity. No payment by Lessee or receipt or acceptance by University of a lesser amount than the total amount due University under this Lease shall be deemed to be other than on account, nor shall any endorsement or statement on any check or payment be deemed an accord and satisfaction, and University may accept such check or payment without prejudice to University’s right to recover the balance due, or University’s right to pursue any other available remedy.

(c) If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys’ fees, costs of suit, investigation expenses and discovery costs.

(d) University and Lessee waive the right to a trial by jury in any action or proceeding based upon or related to, the subject matter of this Lease. As a material inducement to University agreeing to enter into this Lease, Lessee hereby permanently waives any and all rights it may have under Minnesota Statutes, Section 504B.291, subdivision 2, in connection with this Lease.

This Section 9.3 shall survive the expiration or earlier termination of this Lease.

Section 9.4 Lessee Remains Liable. Upon expiration or earlier termination of this Lease for any reason, Lessee and the Guarantors shall continue to be liable for (a) the performance of all obligations and the satisfaction of all liabilities to University accruing prior to expiration or earlier termination and for all obligations and liabilities that expressly survive termination of this Lease, including the payment of Annual Minimum Royalty, Initial Advanced Minimum Royalty, Production Royalty, and amounts described in Sections 3.4-3.7 and 8.1 that have accrued prior to the date of expiration or earlier termination (excluding those that would have first accrued after the date of termination, except as provided in Section 9.5) and including the payment of any Termination Fee due under Section 9.6 and accelerated Annual Minimum Royalty due under Section 9.2(c), and (b) the compliance with all Laws and Permits that apply to the Premises and Lessee’s operations on the Premises. If there are outstanding Accrued Credits that have not been applied to reduce Production Royalty or Annual Minimum Royalty payments pursuant to Section 3.3(c) at the time this Lease expires or is terminated, then such outstanding Accrued Credits shall be applied against and reduce the payments due from Lessee and the Guarantors pursuant to clause (a) of the immediately preceding sentence (but Lessee shall not be entitled to any refund of Accrued Credits that exceed the payments due from Lessee). Upon expiration or earlier termination of this Lease with respect to all or any part of the Premises, Lessee agrees to furnish University with a recordable document reasonably satisfactory to University verifying such termination and release (or partial release) of this Lease.

This Section 9.4 shall survive the expiration or earlier termination of this Lease.
Section 9.5 Removal of Improvements; Transfer of Permits and Improvements. Prior to the expiration or earlier termination of this Lease, except to the extent University provides Lessee with written notice otherwise directing Lessee and except as otherwise provided in this Section 9.5, Lessee shall do the following (collectively, the “Restoration Obligations”):
(a) remove from the Property all of the Plant, buildings, structures, fixtures, facilities, machinery and equipment and other property of every nature and description erected, placed or situated thereon (including foundations and footings, and including plants, fixtures, additions, improvements and other property installed or constructed by or for any sublessee or licensee),
(b) repair any resulting damage, and (c) restore the Property to the condition existing prior to the construction or installation of the applicable Plant, buildings, structures, facilities, fixtures, machinery, equipment and other property (which restoration obligations shall include removing all debris from the Property, filling any holes with clean fill, properly compacting all impacted soil, grading the land to a smooth surface, and leaving the Land in the condition required by the Restoration Plans). Prior to beginning the Restoration Obligations, Lessee shall provide to University written plans detailing Lessee’s proposed removal, repair and restoration activities for University’s review and approval (the “Restoration Plans”). University may inspect the Premises from time to time during Lessee’s performance of the Restoration Obligations to confirm that Lessee is complying with the Restoration Plans and with the terms and conditions of this Lease; Lessee shall reimburse University for all out-of-pocket costs incurred by University in performing such inspections, including costs of University’s consultants and engineers. Promptly after completing the Restoration Obligations, Lessee shall provide to University a written certification from Lessee’s engineer certifying that the Restoration Obligations have been completed in accordance with the Restoration Plans. Lessee shall otherwise comply with all provisions of this Lease, including those relating to reclamation.

Except for the Plant, University may direct Lessee in writing not to remove some or all of the items subject to Restoration Obligations, in which case, such identified items subject to Restoration Obligations shall remain on the Property and become the property of University upon the expiration or earlier termination of this Lease, without payment by University. Without in any way limiting the immediately preceding sentence, upon University’s request and without further consideration, Lessee shall execute such deeds, bills of sale and other documents requested by University to assign, convey and transfer to University all of Lessee’s right, title and interest in and to the Permits and those items subject to Restoration Obligations that University decides may remain on the Property.

Notwithstanding anything to the contrary in this Section 9.5, Lessee has the right and obligation to remove the Plant from the Property. Lessee shall remove the Plant from the Property and perform all related Restoration Obligations (collectively, “Plant Removal”) within eighteen (18) months after expiration or earlier termination of this Lease (the last day of such 18-month period being the “Plant Removal Deadline”); provided, however, that, if this Lease is terminated because of a Material Default, then Lessee shall complete Plant Removal within six (6) months (not including December, January or February) after the date of termination of this Lease and the Plant Removal Deadline shall be the last day of such six-month period.
Notwithstanding anything to the contrary in this Section 9.5, Lessee has the right to remove any stockpiles of mined Materials that are located on the Property at the time this Lease is terminated or expires if (i) Lessee removes the stockpiles within eighteen (18) months after the date of expiration or earlier termination of the Lease and (ii) Lessee pays University the Production Royalty (at the Base Royalty in effect immediately prior to expiration or earlier termination) for the Materials in the stockpiles prior to removal. Promptly after the date of expiration or earlier termination of this Lease, Lessee shall provide University with a written estimate of the amount in Tons of each type of Material then stockpiled on the Property.

At University’s option, in its sole discretion, and without any payment to Lessee, any portion of the Plant and any stockpiled Materials that are not removed by Lessee within the time periods described above in this Section 9.5 shall be deemed to be abandoned by Lessee and to be the property of University.

Notwithstanding anything in this Lease to the contrary, if this Lease expires or is terminated prior to the date that Lessee has completed the Plant Removal and removal of any remaining stockpiles of mined Material as permitted by this Section 9.5, then, during the period that Lessee is completing the Plant Removal and/or removing such stockpiles, (1) Lessee shall continue to comply with all of its obligations under this Lease that existed immediately prior to the date of such expiration or earlier termination (except for the obligation to continue paying Annual Minimum Royalty and Initial Advanced Minimum Royalty that first accrue after the date of expiration or earlier termination of this Lease), and all such obligations shall survive the expiration or earlier termination of this Lease and be binding on Lessee during such period (and for such longer periods as otherwise provided in this Lease), and (2) in consideration of Lessee’s use of the Plant Area for Plant Removal and stockpile removal as permitted by this Section 9.5, Lessee shall pay to University the Plant Removal Rent (as defined below) in effect on the date that this Lease expires or is terminated (provided, however, that the Plant Removal Rent shall be abated and shall not be due from Lessee unless Lessee fails to complete the Plant Removal on or before the Plant Removal Deadline; if Lessee fails to complete the Plant Removal on or before the Plant Removal Deadline, then the Plant Removal Rent shall be immediately due and payable on the date of the Plant Removal Deadline). For example, but without intending to limit Lessee’s obligations, Lessee shall continue to maintain the insurance required by this Lease, to pay for utilities and Real Estate Tax Costs, to comply with Laws and Permits, to keep the Property free of liens, to keep the Plant Area secure, and to indemnify University as provided in this Lease. The Plant Removal Rent owed by Lessee pursuant to this paragraph for the period after this Lease expires or is terminated shall be in addition to any Annual Minimum Royalty that is accelerated under Section 9.2(c) and any Production Royalty due from Lessee upon removal of its stockpiles pursuant to this Section 9.5. The “Plant Removal Rent” shall be Five Hundred Thousand and No/100 Dollars ($500,000.00) during the first twelve (12) months after the Effective Date and shall increase on each anniversary of the Effective Date by the percentage increase in the CPI over the immediately preceding twelve-month period; in no event shall the Plant Removal Rent ever decrease on any anniversary of the Effective Date, even if there is a decrease in the CPI.

Upon termination of Lessee’s right of possession pursuant to Section 9.2(b), Lessee shall have the same rights to remove its Plant and its stockpiles as Lessee has such rights upon
termination or expiration of the Lease (and the Plant Removal Deadline shall be the date that is six (6) months (not including December, January or February) after the date of termination of Lessee’s right of possession).

This Section 9.5 shall survive the expiration or earlier termination of this Lease.

Section 9.6 Termination of Lease by Lessee. If Lessee has completed all of the Reclamation Obligations and Restoration Obligations (subject to Lessee’s right to remove the Plant following termination pursuant to Section 9.5) and is not in default under this Lease at the time of delivering any notice of termination or at the time of termination, then Lessee may terminate this Lease upon any of the following events:

(a) A Permit is not renewed and Lessee gives written notice to University of the termination within sixty (60) days after the date of nonrenewal and at least sixty (60) days in advance of the termination;

(b) A Permit is suspended for more than ninety (90) days and Lessee gives written notice to University of the termination prior to the end of such 90-day period and at least sixty (60) days in advance of the termination;

(c) A Permit is revoked and Lessee gives written notice to University of the termination within sixty (60) days after the date of revocation and at least sixty (60) days in advance of the termination;

(d) Lessee determines within thirty (30) days after issuance of renewal of a Permit that the conditions imposed by the governmental authority or by the EIS as part of the Permit, are not reasonable, or are impracticable; and Lessee gives written notice to University of the termination prior to the end of such 30-day period and at least sixty (60) days in advance of the termination; or

(e) Upon at least eighteen (18) months’ prior written notice to University, if Lessee has provided evidence to University demonstrating to University’s reasonable satisfaction that, as of the proposed termination date, Lessee will have Mined all or substantially all of the Materials that can commercially and reasonably be Mined from the Property. Notwithstanding the foregoing, if University, by mutually agreed upon amendment to the Lease, provides to Lessee other University owned land in the City of Rosemount or in Empire Township for Mining and if Permits are obtained for such other land at least one (1) Lease Year prior to Lessee Mining all or substantially all of the Materials that can be commercially and reasonably Mined from the Property and if the Materials on the other land is of sufficient quality and quantity to allow Lessee to at least meet its Annual Minimum Royalty for the duration of the Lease Term, then Lessee shall not terminate the Lease and, instead thereof, Lessee and University shall amend the Lease to include the other University owned land; in such instance, the cost of applying for the Permits for such other land shall be paid for by Lessee.

Notwithstanding anything in this Section 9.6 to the contrary, if Lessee desires to terminate this Lease pursuant to Sections 9.6(a), (b), (c) or (d) during the fifteenth (15th) Lease Year or at any time thereafter, then, as a condition precedent to the effectiveness of such
termination, Lessee shall pay to University on or prior to the date of such termination a termination fee (the "Termination Fee") in an amount equal to the Annual Minimum Royalty payments due for the eighteen (18) months following the date that this Lease is terminated pursuant to this Section (acting as if this Lease was not being terminated and such Annual Minimum Royalty payment were still due, and prorating the Annual Minimum Royalty for any partial Lease Year); provided, however, that, if Lessee completes Plant Removal prior to the Plant Removal Deadline, then University will refund to Lessee a prorated portion of the Termination Fee (up to a maximum refund of one-third \(\frac{1}{3}\) of the Termination Fee) based on the number of days prior to the Plant Removal Deadline that Lessee has completed Plant Removal (for example, if Lessee completes Plant Removal within 12 months after the date this Lease is terminated pursuant to this Section, then University will refund to Lessee 1/3rd of the Termination Fee, but University will never be required to refund more than 1/3rd of the Termination Fee even if Lessee completes Plant Removal sooner than 12 months after the date this Lease is terminated pursuant to this Section).

This Section 9.6 shall survive the expiration or earlier termination of this Lease.

Section 9.7 Use of Accrued Credits upon Termination of Possession. If Lessee’s right of possession is terminated pursuant to Section 9.2(b) and there are outstanding Accrued Credits that have not been applied to reduce Production Royalty payments or Annual Minimum Royalty payments pursuant to Section 3.3, then Lessee may apply such outstanding Accrued Credits against any payments due from Lessee at the time of such termination of possession (but Lessee shall not be entitled to any refund of Accrued Credits that exceed the payments due from Lessee).

ARTICLE X
GENERAL PROVISIONS

Section 10.1 Assignment and Subleasing.

(a) The provisions of this Lease shall extend to and be binding upon the heirs, personal representatives, successors, assigns and sublessees of the parties. Lessee shall not enter into nor permit any Transfer (as defined below) voluntarily or by operation of law, without the prior consent of University. Without in any way limiting University’s right to grant or withhold its consent to a Transfer, University may condition its consent to any sublease or license on a requirement that University receive a portion of the rents or license fees payable under such sublease or license. Consent to one Transfer shall not be deemed to be consent to any subsequent Transfer. In no event shall any Transfer relieve Lessee or any Guarantor from any obligation under this Lease or the Guaranty, as applicable. University’s acceptance of Production Royalty, Annual Minimum Royalty or any other amounts from any Person shall not be deemed to be a waiver by University of any provision of this Lease or to be a consent to any Transfer. Any Transfer not in conformity with this Section shall be void at the option of University. As used in this Section, “Transfer” means (a) any assignment, transfer, pledge, mortgage or other encumbrance of all or a portion of Lessee’s interest in this Lease or the Premises (including any assignment, transfer, pledge, mortgage or other encumbrance of all or any portion of any sublease or license), (b) any sublease, license or concession of all or a portion
of Lessee’s interest in the Premises (including any sub-sublease, sub-license or sub-concession); (c) any direct or indirect transfer of a controlling interest in Lessee or any Guarantor or of, in the aggregate, more than twenty-five percent (25%) of the ownership interests in Lessee or any Guarantor; or (d) any sale or other transfer of all or substantially all of the assets of Lessee or any Guarantor. Upon University’s request, Lessee shall deliver to University a certificate signed by its Secretary and certifying that, from the Effective Date through the date of the certificate, no Transfer has occurred in violation of the terms of this Lease.

(b) The provisions of Section 10.1(a) notwithstanding:

i. Lessee may sublease or license areas within the Plant Area to one or more sublessee or licensees, and University shall be deemed to have consented to the same, so long as (A) Lessee is not in default under this Lease at the time Lessee enters into the sublease or license; (B) Lessee provides written notice and a copy of the proposed sublease or license to University at least thirty (30) days before entering into the sublease or license and provides a copy of the fully executed sublease or license to University promptly after the date signed; (C) Lessee and the sublessee or licensee execute and deliver to University prior to entering into the applicable sublease or license a Consent to Sublease in the form of Exhibit H attached hereto (with all blanks appropriately completed and with appropriate conforming changes if the transaction is a license rather than a sublease) (each a “Consent to Sublease”); (D) the sublessee or licensee complies with all of its obligations under its respective Consent to Sublease entered into with University and Lessee; (E) the sublessee’s or licensee’s use complies with all Laws and Permits and with the uses permitted under Article I, and the sublease or license (1) does not include any terms or conditions that violate the terms and conditions of this Lease, (2) includes a continuing obligation on Lessee and the sublessee or licensee not to violate any of the terms or conditions of this Lease, and (3) requires the sublessee or licensee to maintain the insurance described in Section 7.2 (naming University as additional insured) and to comply with Section 7.3; (F) the term of the sublease or license is at least one day shorter than the Lease Term; (G) the sublessee or licensee will be a user of the Materials, directly or indirectly, throughout the term of the sublease or license, and Lessee can demonstrate the same to University upon its request; (H) the sublessee or licensee is not charged rent or other fees or charges under the sublease or license; and (I) the bond or other security required by Section 4.9 with respect to the Improvements to be constructed or installed by or for the applicable sublessee or licensee has been provided and maintained as required by Section 4.9. A sublessee may assign (but not collaterally assign) its sublease so long as all of the requirements of this paragraph continue to be satisfied before and after the assignment, with the assignee satisfying the obligations and requirements of the sublessee (including the obligation that the assignee execute and deliver a new Consent to Sublease with conforming changes acceptable to University prior to the applicable assignment and that University receive copies of all assignment documents).

ii. Each sublessee or licensee, by entering into a sublease or license as permitted by this Lease, or by otherwise using any portion of the Premises, shall be deemed to have agreed as follows (and each sublease or license shall expressly provide as such): (A) to waive any present or future claims against University for loss, damages, or
liability arising in connection with the condition of the Premises, matters relating to the security of the Premises or the lack thereof, interruption of utilities to the Premises, injury to any person, and loss or damage to any equipment, facilities, fixtures, goods, supplies or other personal property of said sublessee or licensee, even if attributable to the negligence or wrongful act of University; (B) to waive any right to recover from University any consequential damages, incidental damages, damages for loss of revenue, special damages, indirect damages, or damages of any similar kind or nature; (C) to the extent, if any, University has any liability to such sublessee or licensee, the sublessee or licensee may look solely to University’s equity in the Property in satisfying any claim against University; and (D) to indemnify, defend and hold harmless University from any loss, damage or liability caused or incurred by such sublessee or licensee or by University in connection with such sublessee’s or licensee’s use of the Premises.

iii. For each Transfer that requires University’s prior written consent (except subleases or licenses consented to pursuant to Section 10.1(b)(i)), all Transfer documents shall be pre-approved by University.

iv. Lessee shall reimburse University for all reasonable attorneys’ fees and costs incurred by University in connection with any Transfer or proposed Transfer, including any sublease, license, Leasehold Mortgage (as defined in Section 10.20) or other mortgage, pledge, assignment or encumbrance.

v. With respect to transfers of ownership interests in, or the sale of all or substantially all of the assets of, Lessee or either Guarantor:

(A) The following transfers of ownership interests in either Guarantor will not require University’s consent, will not violate the restriction in Section 10.1(a) relating to direct or indirect transfer of a controlling interest in either Guarantor, will not count against the 25% cap on transfers described in Section 10.1(a), and will not result in an Event of Default under this Lease: (1) transfers between existing owners of the same entity; (2) transfers from existing owners to their respective family members; and (3) transfers from existing owners for usual and customary estate-planning purposes;

(B) Transfers of ownership interests in Lessee between Guarantors will not require University’s consent, will not violate the restriction in Section 10.1(a) relating to direct or indirect transfer of a controlling interest in Lessee, will not count against the 25% cap on transfers described in Section 10.1(a), and will not result in an Event of Default under this Lease; if a Guarantor (“Acquiring Guarantor”) acquires all of the ownership interests in Lessee held by another Guarantor (“Selling Guarantor”), then University will agree to release Selling Guarantor from its obligations under the Guaranty (to the extent such obligations first arise after the date Selling Guarantor transfers all of its ownership interests in Lessee.
to Acquiring Guarantor) if Acquiring Guarantor demonstrates to University’s satisfaction, based on University’s review of such financial information of Acquiring Guarantor (prepared in accordance with GAAP) as University may require, that the net worth of Acquiring Guarantor is at least equal to the Transfer Net Worth (as defined below); and

(C) Subject to Sections 10.1(b)(iii) and (iv), University will not withhold its consent to the transfer of ownership interests in Lessee or either Guarantor to an unrelated third party, or to the sale or other transfer of all or substantially all of the assets of Lessee or either Guarantor to an unrelated third party (not including an assignment of this Lease), if Lessee is not in default under this Lease at the time of such transfer or sale and if the unrelated third party satisfies the following criteria, as determined by University in its sole but reasonable discretion: (1) the unrelated third party demonstrates its commitment to continue the mining and reclamation activities on the Property for the remaining term of the Lease; (2) the unrelated third party, at the time of the proposed transfer, (y) has a net worth at least equal to the Transfer Net Worth, as demonstrated to University’s satisfaction based on University’s review such financial information of the unrelated third party (prepared in accordance with GAAP) as University may require, or (z) has sufficient net worth, as demonstrated by an opinion from an auditor reasonably acceptable to University stating that, immediately after such transfer and throughout the following five Lease Years, Lessee and the Guarantors are and can reasonably be expected to remain solvent, will be able to operate their respective businesses in the ordinary course, and will have sufficient assets to perform their respective obligations under this Lease and the Guaranty (as defined in Section 10.21) as and when such obligations become due hereunder and thereunder; and (3) the unrelated third party has sufficient experience in the gravel mining industry or will retain or put in place a management team with such experience. If University consents to a transfer of ownership interests in, or all or substantially all of the assets of, Lessee pursuant to this paragraph (C), then (i) the unrelated third party shall execute and deliver to University a guaranty agreement in the form of the Guaranty (with any non-substantive conforming changes University deems necessary) prior to the date of the transfer, (ii) the unrelated third party shall be deemed to be a “Guarantor” as defined in this Lease, and (iii) if the transfer involves the transfer of all of the transferring Guarantor’s ownership interests in Lessee, the transferring Guarantor shall be released from its obligations under the Guaranty to the extent such obligations first arise after the date of the transfer.
(D) So long as Cemstone Products Company ("Cemstone") and Ames Construction, Inc. ("Ames") continue to collectively own 50% or more of the ownership interests (both voting and financial rights) in Lessee and continue to be Guarantors (or so long as either Cemstone or Ames continues to own such ownership interests and to be a Guarantor, if the entity that continues to own such ownership interests and be a Guarantor demonstrates to University's satisfaction, based on University's review of such financial information prepared in accordance with GAAP as University may require, that the net worth of such entity that continues to own such ownership interests and be a Guarantor is at least equal to the Transfer Net Worth), Cemstone and Ames may Transfer up to 50% of the ownership interests in Lessee to a third party without University's consent; provided, however, that any Person acquiring twenty-five percent (25%) or more of the ownership interests (either voting or financial rights) in Lessee shall execute and deliver to University a guaranty agreement in the form of the Guaranty (with any conforming changes University deems necessary) prior to the date of the Transfer, at which point such Person(s) shall be deemed to be additional Guarantor(s) under this Lease.

vi. Subject to Sections 10.1(b)(iii) and (iv), University will not withhold its consent to Lessee's assignment of the Lease (not including a mortgage or collateral assignment of Lessee's leasehold interest), if Lessee is not in default under this Lease at the time of the assignment and if the assignee satisfies the following criteria, as determined by University in its sole but reasonable discretion: (1) the assignee demonstrates its commitment to continue the mining and reclamation activities on the Property during the remaining term of the Lease; (2) the assignee, at the time of the proposed assignment, (y) has a net worth at least equal to the Transfer Net Worth, as demonstrated to University's satisfaction based on University's review of such financial information of the assignee (prepared in accordance with GAAP) as University may require, or (z) has sufficient net worth, as demonstrated by an opinion from an auditor reasonably acceptable to University stating that, immediately after such transfer and throughout the following five Lease Years, assignee and the Guarantors are and can reasonably be expected to remain solvent, will be able to operate their respective businesses in the ordinary course, and will have sufficient assets to perform their respective obligations under this Lease and the Guaranty as and when such obligations become due hereunder and thereunder; (3) the assignee has sufficient experience in the gravel mining industry or will retain or put in place a management team with such experience; (4) the assignee assumes in writing all of Lessee's obligations under the Lease that arise from and after the date of assignment; (5) if the assignee is a Guarantor, the remaining Guarantor(s) have a net worth at least equal to the Minimum Net Worth; and (6) if the assignee is not a Guarantor, such direct or indirect principal(s) of the assignee as University may desire execute and deliver to University a guaranty agreement in the form of the Guaranty (with any non-substantive conforming changes University deems necessary) prior to the date of the assignment, at which point such principal(s)
shall be deemed to be additional Guarantors under this Lease. Upon University’s consent to an assignment of the Lease pursuant to this paragraph to a non-Guarantor assignee that has a net worth equal to at least the Transfer Net Worth (as demonstrated to University’s satisfaction based on University’s review of such financial information, prepared in accordance with GAAP, as University may require), University will agree to release Dakota Aggregates, LLC, Cemstone, and Ames from their obligations under this Lease and the Guaranty, respectively, to the extent such obligations first arise after the date of such assignment.

vii. As used in this Lease, the term “Transfer Net Worth” means, on the Effective Date, Fifteen Million and No/100 Dollars ($15,000,000); the Transfer Net Worth shall increase on each anniversary of the Effective Date by the percentage increase in the CPI over the immediately preceding twelve-month period (provided, however, in no event shall the Transfer Net Worth ever decrease on any anniversary of the Effective Date, even if there is a decrease in the CPI).

Section 10.2 Agency; Third-Party Beneficiary. UMore Development LLC, a Minnesota limited liability company (the “LLC”), is a wholly owned subsidiary of University. The LLC shall be deemed to be University’s agent solely for purposes of giving notices, approvals, consents and, subject to Sections 9.3(b) and 10.12, written waivers to Lessee, and receiving notices, approvals, consents and, subject to Section 10.12, written waivers from Lessee, as required or permitted by this Lease; provided, however, that the LLC may not issue building permits or other licenses or permits issued by University in its capacity as a governmental entity. Lessee may rely on any such notice, approval, consent or written waiver that Lessee receives from the LLC as if the same came directly from University, and Lessee may satisfy any requirement to give notice under this Lease by delivering the notice to the LLC as provided in Section 10.3. Notwithstanding anything to the contrary, (a) the LLC does not assume any of University’s obligations or liabilities under this Lease and shall not be responsible for the same; (b) at any time during the Lease Term, University may unilaterally terminate the agency of the LLC described in this Section by providing written notice to Lessee, provided that such termination shall apply only with respect to notices, approvals and consents given after the date of such termination; (c) all Production Royalty, Initial Advanced Minimum Royalty, Annual Minimum Royalty and other payments made by Lessee under this Lease shall be paid to the order of University; and (d) the LLC shall be entitled to the benefits of Sections 3.8, 6.2, 6.3, 7.4, 10.2 and 10.3 of this Lease as a third-party beneficiary and shall have the right to enforce Lessee’s obligations thereunder.

Section 10.3 Notice; Contact People. Any notices required or authorized to be given by this Lease shall be in written form, addressed to the proper party at the following address or such address as the party shall have designated to the other party in accordance with this Section:

If to University: UMore Development LLC
Attn: Chief Manager
230 McNamara Alumni Center
200 Oak Street S.E.
Minneapolis, MN 55455
With a copy to: University of Minnesota
Office of the General Counsel
Attn: Transactional Law Services Group
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006

If to Lessee: Dakota Aggregates, LLC
c/o Tim Becken
2025 Centre Pointe Blvd., Suite 300
Mendota Heights, MN 55120

With a copy to: Cemstone Products Company
c/o Tim Becken
2025 Centre Pointe Blvd., Suite 300
Mendota Heights, MN 55120

With a copy to: Ames Construction Inc.
c/o Shawn Dahl
2000 Ames Drive
Burnsville, MN 55306

All notices shall be given by (a) personal delivery, (b) electronic communication, capable of producing a printed proof of transmission, (c) registered or certified mail return receipt requested, or (d) overnight or other express courier service. All notices shall be deemed given on the date of receipt at the principal address if received during normal business hours, and, if not received during normal business hours, on the next business day following receipt, or if by electronic communication, on the date of such communication. Either party may change its address for notice purposes by notice properly given.

Without limiting the requirements with respect to notices set forth above in this Section or limiting the notice requirements in Section 6.4 or elsewhere in this Lease, day-to-day communications between the parties may be directed to Tim Becken at (651) 688-9292 or to Shawn Dahl at (952) 435-7106, in the case of communication to Lessee, and to Chuck Muscoplat at (612) 624-5387 or to Steven Lott at (651) 423-2455, in the case of communication to University. Either party may change either or both of its contact people by providing written notice to the other party as provided in this Section.

Section 10.4 Casualty. If the Premises are damaged or destroyed by fire or other casualty, Lessee shall promptly notify University. University shall not be obligated to repair or restore any portion of the Premises. Unless University and Lessee otherwise agree, Lessee shall repair and restore the Premises to substantially the same condition in which they were immediately prior to such damage or destruction. Such repair and restoration shall be accomplished in compliance with all Laws and pursuant to plans approved by University. Lessee will not receive an abatement of amounts due under this Lease. Following damage by
Section 10.5 Condemnation. If all of the Premises are Taken (as defined below) or if a material part of the Premises is Taken and the remainder is insufficient for the reasonable operation of Lessee's business, then this Lease shall terminate as of the date the condemning authority takes possession. If a Taking (as defined below) occurs and this Lease is not terminated, Lessee shall restore the Premises to a condition as near as reasonably possible to the condition prior to the Taking (provided, to the extent necessary for such restoration, University shall make available to Lessee any portion of University's condemnation award that is attributable to Lessee's Improvements) and this Lease shall be amended appropriately. If this Lease is terminated pursuant to this section, Lessee, upon University's request, shall demolish the remaining Improvements, remove all debris from the Property, and restore the Property to the condition that it was in prior to the construction or installation of the Improvements (provided, to the extent necessary for such demolition and restoration, University shall make available to Lessee any portion of University's condemnation award that is attributable to Lessee's Improvements). The compensation awarded for a Taking shall belong to University. Except for any relocation benefits to which Lessee may be entitled, Lessee hereby assigns all claims against the condemning authority to University, including any claim relating to Lessee's leasehold estate. University and Lessee shall cooperate in any condemnation hearing so as to achieve the maximum possible settlement for both parties. This section shall survive the expiration or termination of this Lease. As used in this Section, the terms "Taken" and "Taking" mean acquisition by a public authority (other than University) having the power of eminent domain by condemnation or conveyance in lieu of condemnation.

Notwithstanding anything to the contrary contained in this Section 10.5, with respect to any taking of the Plant, Lessee, not University, shall be entitled to the compensation awarded for the Plant and any Improvements constructed by Lessee as part of the Plant (but not for any of the land within the Plant Area).

Notwithstanding anything to the contrary contained in this Section 10.5, if the Lease is terminated as a result of this Section, and if the Plant and stockpiles of Materials have not been Taken by the condemning authority, then Lessee shall have the right to remove the Plant and stockpiles as provided and subject to the terms and conditions in Section 9.5.

This Section 10.5 shall survive the expiration or earlier termination of this Lease.

Section 10.6 Lessee's Certificate. Within ten (10) days after University's request from time to time, Lessee shall execute, acknowledge and deliver to University, for the benefit of University, any third party(ies) named by University, or both University and such third party(ies), an estoppel certificate certifying (i) that this Lease is in full force and effect and has not been modified (or, if modified, setting forth all modifications), (ii) the Commencement Date, (iii) the date to which the Production Royalty, Initial Advanced Minimum Royalty and Annual Minimum Royalty have been paid under this Lease and the amount thereof then payable, (iv) whether there are then any existing defaults by University in the performance of its obligations under this Lease, and, if there are any such defaults, specifying the nature thereof,
(v) that no notice has been received by Lessee of any default under this Lease which has not been cured, except as to defaults specified in the certificate, (vi) whether Lessee has any options with respect to all or any portion of the Premises, (vii) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Lessee, and (viii) any other information reasonably requested by University and/or such third party(ies), except for financial information regarding Lessee and Guarantors.

Section 10.7 Non-Business Day Deadlines. If a date for notice, performance or payment falls on a holiday or weekend, the time for performance or payment shall be extended to the next business day, and if notice, performance or payment has occurred on such weekend or holiday or after 5:00 p.m. Central Time on any business day, it shall be deemed to have occurred on the next business day.

Section 10.8 Memorandum of Lease. On the Commencement Date, University and Lessee shall execute, acknowledge and deliver a Memorandum of Lease in the form of Exhibit I attached hereto (the “Memorandum”). Lessee, at its cost, shall record the Memorandum in the appropriate Dakota County real estate records promptly after the Commencement Date and shall provide a copy of the recorded Memorandum to University. Upon the expiration or earlier termination of this Lease, University and Lessee shall execute, acknowledge and deliver a termination of the Memorandum, which shall be in recordable form, shall promptly be recorded in the appropriate Dakota County real estate records, and shall otherwise be reasonably satisfactory to University. This Section shall survive the expiration or earlier termination of this Lease.

Section 10.9 Headings; Exhibits. The headings of the Sections of this Lease are for convenience of reference only and are not a part of the substantive provisions of this Lease. All exhibits attached to this Lease are incorporated into this Lease in their entirety.

Section 10.10 Interpretation. As used in this Lease, (a) the masculine (or neuter) pronoun and the singular number shall include the masculine, feminine and neuter genders and the singular and plural number; (b) references to Articles and Sections refer to the Articles and Sections, respectively, of this Lease; (c) the words “include,” “including” and the like mean “including without limitation” and, when followed by any specific item(s), are deemed to refer to examples rather than to be words of limitation; and (d) the word “Person” includes a natural person, a partnership, a corporation, a limited liability company, an association and any other form of business association or entity. This Section shall survive the expiration or earlier termination of this Lease.

Section 10.11 Further Instruments. Each party shall from time to time execute and deliver such further instruments as the other party or its counsel may reasonably request to effectuate the intent of this Lease.

Section 10.12 Entire Agreement; Amendments; Waiver. This Lease constitutes the entire agreement and supersedes all prior agreements between the parties relating to the Premises. No amendment or modification of this Lease shall be binding on either party unless made in writing and executed by both parties. Failure of either party to insist in any one or more
instances on the strict performance of any term, covenant, condition or obligation of this Lease, or to exercise any right, remedy or election contained in this Lease, shall not be construed as a waiver or relinquishment for the future of the performance of such term, covenant, condition or obligation or of the right to exercise such right, remedy or election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

This Section 10.12 shall survive the expiration or earlier termination of this Lease.

Section 10.13 Choice of Law; Construction. This Lease was drafted jointly by the parties, and no provision of this Lease shall be interpreted for or against any party on the basis that such party drafted such provision. This Lease shall be construed and enforced in accordance with the laws of the State of Minnesota. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either party.

This Section 10.13 shall survive the expiration or earlier termination of this Lease.

Section 10.14 Counterparts; Electronic Signatures. This Lease may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Lease. This Lease may be executed by facsimile or electronic signatures.

Section 10.15 Brokers. Each party represents and warrants to the other that it has not dealt with any commissioned broker or finder in connection with this Lease. Each party hereby agrees to indemnify, defend, and hold the other party harmless from any and all claims or liability for the commissions or fees payable to any broker or finder with which it has dealt in connection with this Lease and for any and all other loss or damage resulting from the falsity of the representation made by it in the first sentence of this Section.

This Section 10.15 shall survive the expiration or earlier termination of this Lease.

Section 10.16 Independent Covenants. Each covenant, agreement, obligation, term, condition or other provision contained in this Lease shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, not dependent on any other provision of this Lease unless otherwise expressly provided. All of the terms and conditions set forth in this Lease shall apply throughout the Lease Term unless otherwise expressly set forth herein.

Section 10.17 Severability. In the event that any part of this Lease shall be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be reformed, and enforced to the maximum extent permitted by law. If such provision cannot be reformed, it shall be severed from this Lease and the remaining portions of this Lease shall be valid and enforceable.

Section 10.18 Relationship of Parties. This Lease does not create the relationship of principal and agent, partnership, joint venture or other association between University and Lessee, the sole relationship between University and Lessee being that of lessor and lessee.
Section 10.19 Liability of University. University shall not be deemed to be in default of this Lease unless Lessee gives University written notice specifying the default and University fails to cure the default within a reasonable period following University’s receipt of Lessee’s notice. University shall not have any personal liability with respect to any of the provisions of this Lease, and Lessee, in obtaining any judgment for monetary damages against University, shall look solely to the equity of University in the Property for the satisfaction of any claim by Lessee against University. If University has defaulted under this Lease and has failed to cure such default within the time period described above, then Lessee may seek injunctive relief and/or specific performance of University’s obligations under this Lease that are necessary to cure the breach. IN NO EVENT WILL UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THIS LEASE.

This Section 10.19 shall survive the expiration or earlier termination of this Lease.

Section 10.20 Encumbrances and Leasehold Mortgages.

(a) General Restriction. Except as provided in this Section or except with University’s express prior written consent as provided in Section 10.1, neither Lessee nor any sublessee or licensee shall mortgage, pledge, collaterally assign, collaterally transfer, or otherwise encumber any interest it may have in this Lease or the Premises.

(b) Rights of Lessee, Affiliated Sublessees and Asphalt Plant Sublessees. Notwithstanding anything to the contrary in this Section or in Section 10.1, Lessee, the sublessees named on Exhibit J (each an “Affiliated Sublessee”), and the sublessees that own and operate the three (3) Permitted Asphalt Plants (the “Asphalt Plant Sublessees”), so long as such Affiliated Sublessees and Asphalt Plant Sublessees are actually subleasing a portion of the Premises in accordance with the terms and conditions of this Lease, may, without the consent or approval of University, mortgage, pledge and encumber the following:

(a) their respective buildings, equipment, machinery, furnishings, trade fixtures, other fixtures and leasehold improvements (excluding physical site improvements such as roads, utilities, water wells and landscaping) that constitute and form their respective portion of the Plant (i.e., their respective plant) in the Plant Area; and

(b) their machinery (including loaders and backhoes), equipment (including mining equipment) and vehicles on the Property;

provided, however, that a copy of any document that is recorded against all or any portion of the Property in connection with such financing must be provided to University promptly after recording of the same and that any holder of such mortgage, pledge or encumbrance will be subject to all Lessee’s removal obligations under Section 9.5 with respect to any such buildings, machinery, equipment, furnishings, trade fixtures, other fixtures, leasehold improvements and vehicles (and, at University’s option, in its sole discretion and without any payment to Lessee, any sublessee, or any such holder, any such buildings, machinery, equipment, furnishings, trade fixtures, other fixtures, leasehold improvements and/or vehicles that are not removed within the time periods described in Section 9.5 shall be deemed to be abandoned and to be the property of
University). Notwithstanding the foregoing, the Asphalt Plant Sublessees, except those who are Affiliated Sublessees, may not mortgage, pledge and encumber any of their plants on the Property except for their Permitted Asphalt Plants.

(c) Rights of Other Sublessees. Notwithstanding anything to the contrary in this Section or in Section 10.1, any sublessee other than the Affiliated Sublessees and the Asphalt Plant Sublessees may grant a security interest in the following without the consent or approval of University:

(a) its vehicles;
(b) its machinery, equipment and trade fixtures located in its respective portion of the Plant (i.e., in its respective plant) or otherwise on the Property if such machinery and equipment are not fixtures (as defined by Minnesota Statutes § 336.9-102(a)(41)) and if no fixture filing (as defined by Minnesota Statutes § 336.9-102(a)(40)) or other document or financing statement will be recorded against the Property in connection with such security interest.

Nothing contained in this Section 10.20(c) shall be deemed to limit the rights of the Affiliated Sublessees and Asphalt Plant Sublessees under Section 10.20(b).

(d) Leasehold Mortgage. In addition and notwithstanding anything to the contrary in this Section or in Section 10.1, Lessee may mortgage its interest in this Lease as security for indebtedness obtained to finance Lessee’s operations and Improvements on the Property (“Leasehold Mortgage”) if Lessee obtains University’s prior written consent, which shall not be unreasonably withheld. At least thirty (30) days before Lessee proposes to enter into any Leasehold Mortgage, Lessee shall provide University with written notice requesting University’s consent, which notice shall include a copy of the Leasehold Mortgage and the name and address for notice purposes of the mortgagor thereunder (the “Leasehold Mortgagee”). Also, within thirty (30) days after recording a Leasehold Mortgage, Lessee shall deliver to University a final recorded copy of the Leasehold Mortgage. In no event will University subordinate or subject any of its right, title or interest in or to the Property or this Lease to any Leasehold Mortgage, and no Leasehold Mortgage shall be deemed to encumber University’s right, title or interest in or to the Property or any improvements thereon. No Leasehold Mortgage shall be deemed to amend or modify any of the terms or conditions of this Lease or to restrict University’s rights under this Lease; in the event of any conflict between the terms and conditions of a Leasehold Mortgage and the terms and conditions of this Lease, the terms and conditions of this Lease shall control. Without limiting the foregoing, upon the occurrence of any default or Event of Default under this Lease, University shall have the right to exercise all rights and remedies available to University under this Lease without any obligation to provide notice of such default or Event of Default to any Leasehold Mortgagee. If Lessee has notified University of the name and address of a Leasehold Mortgagee, then University will use good faith efforts to provide such Leasehold Mortgagee notice of any Material Default; provided, however, that University’s failure to provide such notice to any Leasehold Mortgagee shall not result in any liability to Lessee or any Leasehold Mortgagee or limit or minimize any of University’s rights or remedies under this Lease. No Leasehold Mortgage shall have a term longer than the remaining portion of the Lease Term.
(e) **Restriction on Mortgage, Assignment or Encumbrance of Sublease.** Except with University’s express prior written consent as provided in Section 10.1, no sublessee may mortgage, collaterally assign or otherwise encumber its interest in any sublease of all or any portion of the Premises.

(f) **Restriction on Mortgage of Improvements Outside of Plant Area.** Except with University’s express prior written consent as provided in Section 10.1, neither Lessee nor any sublessee has the right to create or grant any mortgage, pledge, security interest or lien on Improvements located outside of the Plant Area.

(g) **No Subordination.** In no event shall University be deemed to have agreed to subordinate or subject any of its right, title or interest in or to the Property or this Lease to any mortgage, pledge, collateral assignment, security interest, or encumbrance described in this Section 10.20.

**Section 10.21 Guaranty.** As additional consideration for University’s agreement to enter into this Lease, Lessee shall cause Cemstone and Ames (collectively, the “Guarantors”), to execute and deliver to University a guaranty agreement in the form of Exhibit K attached hereto (the “Guaranty”) contemporaneously with Lessee’s execution and delivery of this Lease. If Lessee fails to deliver the fully executed Guaranties on or before the Effective Date, it shall be an automatic Event of Default under this Lease and, in addition to all other remedies available to University, University may terminate this Lease upon written notice to Lessee.

**Section 10.22 Right of First Refusal.** During the Lease Term, University grants to Lessee a right of first refusal with respect to any lease for mining sand and gravel on any land in the remaining approximately 3,250 acres of University’s “UMore Park” property (or on the Carroll-Heinen land if University subsequently purchases the Carroll-Heinen land). University shall not lease such land to a third party for the purpose of mining sand and gravel until University first offers the lease to Lessee as described in this Section. The offer of lease shall contain an outline of all of the relevant terms and conditions of the lease, including the royalty payments, duration and description of the land to be leased. After receipt of the offer, Lessee shall have up to thirty (30) days to accept or reject the outline of lease. If Lessee accepts the outline in writing within the 30-day period, the parties shall thereafter attempt in good faith to negotiate a definitive lease agreement. If Lessee does not accept the outline within the 30-day period, or if Lessee and University are unable to agree to the terms and conditions of a definitive lease agreement within ninety (90) days after the date that University first provided the offer to lease to Lessee, then (i) during the following twelve-month period, University may enter into a lease with a third party for the land that was subject to the offer on conditions (including duration and royalty amount) that are not materially more favorable to the third party than those expressed in the written offer to lease initially provided to Lessee; and (ii) after the end of such 12-month period, the land that was subject to the offer shall be free of the right of first refusal described in this Section and University may lease the land to any party, for any purpose and under any conditions without notice to Lessee. No document memorializing the rights granted in this Section shall be recorded against any property owned by University. The rights granted to Lessee in this Section (a) are personal to Lessee and shall not benefit any third party (including any Guarantor and any assignee, sublessee or successor of Lessee) and (b) shall not apply or have any further force or effect with respect to the land that was subject to the offer if Lessee is
in default under this Lease at the time University submits the offer to lease to Lessee or at any
time thereafter until the date that Lessee and University enter into the definitive lease agreement
for such land.

The thirty-day periods and ninety-day periods referenced in this Section 10.22 may be
extended by University at University’s option.

Section 10.23 Security Interest. To secure the payment and performance of each and all
of Lessee’s liabilities and obligations under this Lease, Lessee hereby grants to University a lien
and security interest under the Uniform Commercial Code in effect in the State of Minnesota, as
amended (the “UCC”), in the following (the “Collateral”):

(a) the buildings, equipment, machinery, furnishings, trade fixtures, other fixtures and
leasehold improvements that constitute and form Lessee’s sand, gravel and aggregate,
washing, crushing and processing Plant in the Plant Area;
(b) the buildings, equipment, machinery, furnishings, trade fixtures, other fixtures and
leasehold improvements that constitute and form Lessee’s Plant in the Plant Area for
crushing and processing of recyclable concrete and recyclable asphalt; and
(c) the stationary or semi-stationary dredge owned by Lessee generally located in or around
the lake as shown on the Operations Plan.

Nothing contained in this Section 10.23 grants University a lien or security interest in
Lessee’s (a) vehicles, loaders, backhoes, mining equipment (except the dredge identified above
wherever located), or (b) in any machinery and equipment outside the Plant Area (except the
dredge identified above). Except in connection with the replacement of obsolete Collateral or
the substitution of Collateral of similar function and quality, Lessee shall not remove from the
Property the dredge described above or any Collateral that is a building attached to a foundation,
footing or concrete slab or that is a fixture (not including trade fixtures, unless an Event of
Default exists) without University’s prior written consent.

Lessee agrees to execute such financing statements and furnish such information as
University may from time to time request in order to perfect this security interest and agrees that
University may file such financing statements as University may desire, with or without Lessee’s
signature. University, as secured party, shall be entitled to all of the rights and remedies
available to a secured party under the UCC.

University agrees that its lien and security interest under this Section 10.23 is and shall be
subordinate to any lien and security interest granted by Lessee, from time to time, for the
Collateral to any of the following entities:

(a) an entity providing purchase money to Lessee for the machinery, equipment or Plant
with financing provided by a purchase-money security interest pursuant to Minnesota
Statutes § 336.9-103, but only for the specific items of the Collateral purchased with
such purchase money;
(b) the bank or other financial institution or lending entity (not including any entity that
controls, is controlled by or is under common control with Lessee or any Guarantor)
that substantially provides the overall senior financing for Lessee’s business; and

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(c) any Leasehold Mortgagee.

University’s subordination described in this Section with respect to the Collateral shall be automatic without any obligation for University to execute and deliver a separate subordination agreement. Notwithstanding the foregoing, from time to time, upon the written request of any lender described in this Section, University will execute and deliver to such lender an agreement in form and substance reasonably acceptable to University acknowledging University’s subordinate position with respect to the Collateral as described in this Section. Lessee shall promptly reimburse University for all reasonable attorney fees (not including in-house counsel) incurred by University in connection with any such agreement.

Notwithstanding anything in this Lease to the contrary, (i) no secured party or lender may remove any stockpiled or mined Materials from the Property unless such secured party or lender has paid to University the Production Royalty due for such Materials prior to their removal from the Property; and (ii) Lessee shall not grant a security interest, pledge or other lien in any stockpiled or mined Materials on the Property unless the secured party or lender agrees in writing, for the benefit of University, that it cannot remove such Materials from the Property until the Production Royalty for such Materials has been paid to University.

This Section 10.23 shall survive the expiration or earlier termination of this Lease.

Section 10.24 Amendment to Change Legal Description. University may enter onto the Property from time to time during the Lease Term to survey all or any portion of the Property in connection with the platting, subdivision or development of property located adjacent to the Property. If after obtaining any such survey University determines, in its reasonable discretion, that it is necessary to revise the legal description of the Property, then University may from time to time unilaterally amend this Lease and the Memorandum to replace Exhibit A attached to this Lease and Exhibit 1 attached to the Memorandum with a new legal description and/or depiction of the Property, so long as (a) the portion of the Property available for Lessee’s mining and production activities is not reduced or reconfigured in any material respect and access is not materially changed and (b) the revision in the legal description does not require a change to any Permit. The University shall pay the costs to make the revisions.

[Signature page follows]
IN WITNESS WHEREOF, University and Lessee have executed and delivered this Lease effective as of the Effective Date.

Regents of the University of Minnesota

By: ____________________________
    Name: Richard H. Pfunznerer III
    Title: Vice President & Chief Financial Officer
    Date: May 25, 2011

Dakota Aggregates, LLC

By: ____________________________
    Name: ____________________________
    Title: ____________________________
    Date: ____________________________

By: ____________________________
    Name: ____________________________
    Title: ____________________________
    Date: ____________________________

Consent of Agent

The undersigned is executing this Lease for the sole purposes of acknowledging and consenting to Section 10.2 of this Lease.

UMore Development LLC

By: ____________________________
    Name: Charles Muscogly
    Title: President LLC
    Date: 5/15/11

[SIGNATURE PAGE TO MINING LEASE AGREEMENT]

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IN WITNESS WHEREOF, University and Lessee have executed and delivered this Lease effective as of the Effective Date.

Regents of the University of Minnesota

By: ________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________

Dakota Aggregates, LLC

By: ________________________________
Name: Timothy Becken
Title: Chief Manager and President
Date: June 8, 2011

By: ________________________________
Name: Shawn Dahl
Title: Chief Financial Manager and Treasurer
Date: June 8, 2011

Consent of Agent

The undersigned is executing this Lease for the sole purposes of acknowledging and consenting to Section 10.2 of this Lease.

UMore Development LLC

By: ________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________

[SIGNATURE PAGE TO MINING LEASE AGREEMENT]

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EXHIBIT A
TO
MINING LEASE AGREEMENT

PROPERTY DESCRIPTION

(Rosemount Property)

That part South Half of Section 28, Township 115, Range 19, Dakota County, Minnesota, lying westerly of the following described line:

Commencing at the northeast corner of the Southeast Quarter of said Section 28; thence South 89 degrees 48 minutes 43 seconds West, assumed bearing along the north line of said Southeast Quarter, a distance of 1058.90 feet to the point of beginning of the line to be described; thence South 18 degrees 23 minutes 48 seconds West a distance of 1211.64 feet; thence South 07 degrees 11 minutes 26 seconds East a distance of 1472.46 feet; thence South 75 degrees 07 minutes 52 seconds East a distance of 126.03 feet to the south line of said Southeast Quarter and there terminating.

EXCEPT the plat of UNIVERSITY ADDITION, said Dakota County.

AND

Section 33, Township 115, Range 19, Dakota County, Minnesota; EXCEPT the East 133.00 feet of the North 549.43 feet of the Southeast Quarter of said Section 33; EXCEPT the East 133.00 feet of the South 930.25 feet of the Northeast Quarter of said Section 33; also EXCEPT that part of said Northeast Quarter described as follows:

Beginning at the northeast corner of said Northeast Quarter; thence South 00 degrees 11 minutes 58 seconds West, assumed bearing along the East line of said Northwest Quarter, a distance of 800.63 feet; thence North 81 degrees 23 minutes 25 seconds West a distance of 40.76 feet; thence North 38 degrees 17 minutes 54 seconds West a distance of 819.06 feet; thence North 75 degrees 07 minutes 52 seconds West a distance of 580.25 feet to the north line of said Northwest Quarter; thence North 89 degrees 51 seconds 14 seconds East, along said north line, a distance of 1111.53 feet to the point of beginning.

AND

That part of the Northwest Quarter of Section 34, Township 115, Range 19, Dakota County, Minnesota, described as follows:

Commencing at the northwest corner of said Northwest Quarter; thence South 00 degrees 11 minutes 58 seconds West, assumed bearing along the west line of said Northwest Quarter, a distance of 800.63 feet to the point of beginning of the land to be described; thence continuing South 00 degrees 11 minutes 58 seconds West, along said west line, a distance of 912.75 feet; thence North 89 degrees 51 minutes 14 seconds East a distance of 647.18 feet; thence North 00 degrees 11 minutes 58 seconds East a distance of 813.16 feet; thence North 81 degrees 23 minutes 25 seconds West a distance of 654.21 feet to the point of beginning.

AND

That part of the Southwest Quarter of Section 34, Township 115, Range 19, Dakota County, Minnesota, lying southerly of the following described line:

Commencing at the northwest corner of said Southwest Quarter; thence South 00 degrees 11 minutes 58 seconds West, assumed bearing along the west line of said Southwest Quarter, a distance of 549.45 feet
to the point of beginning of the line to be described; thence South 89 degrees 28 minutes 53 seconds East a distance of 2646.92 feet to the east line of said Southwest Quarter and there terminating.

And lying westerly, northwesterly and northerly of the following described line:

Commencing at the southwest corner of said Southwest Quarter; thence South 89 degrees 42 minutes 10 seconds East, along the south line of said Southwest Quarter, a distance of 2192.17 feet to the point of beginning of the line to be described; thence North 04 degrees 21 seconds 18 seconds East a distance of 142.12 feet; thence North 01 degrees 12 minutes 32 seconds West a distance of 368.88 feet; thence North 01 degrees 58 minutes 09 seconds West a distance of 266.72 feet; thence northeasterly 194.60 feet, along tangential curve, concave to the southeast, having a central angle of 96 degrees 57 minutes 13 seconds and a radius of 115.00 feet; thence South 85 degrees 00 minutes 56 seconds East, tangent to last described curve, a distance of 157.25 feet; thence easterly 99.70 feet, along a tangential curve, concave to the north, having a central angle of 09 degrees 25 minutes 45 seconds and a radius of 605.84 feet; thence northeasterly 100.73 feet, along a reverse curve, concave to the northwest, having a central angle of 56 degrees 01 minutes 30 seconds and a radius of 103.00 feet to the west line of said Southwest Quarter and said line there terminating.

AND

(Empire Township Property)

Section 4, Township 114, Range 19, Dakota County, Minnesota.

AND

That part of Northwest Quarter of Section 3, Township 114, Range 19, Dakota County, Minnesota, lying westerly of the following described line:

Commencing at the northwest corner of said Northwest Quarter; thence South 89 degrees 42 minutes 10 seconds East, assumed bearing along the north line of said Northwest Quarter, a distance of 2192.17 feet to the point of beginning of the line to be described; thence South 00 degrees 01 minute 44 seconds West a distance of 2660.58 feet to the south line of said Northwest Quarter and said line there terminating.
EXHIBIT B
TO
MINING LEASE AGREEMENT

SITE PLAN
EXHIBIT C
TO
MINING LEASE AGREEMENT

ADJUSTMENTS TO BASE ROYALTY

The Base Royalty for each type of Material shall be subject to increases and adjustments as described in this exhibit.

1. Lease Years 1 Through 5

The Base Royalty for Lease Years 1 through 5 shall be the Base Royalty stated in Section 3.2(a). For Lease Years 1 through 5, there shall be no adjustment to the Base Royalty.

2. Lease Years 6 Through 10

Beginning on the first day of Lease Year 6, the Base Royalty for each type of Material shall be adjusted and increased 3% above the previous Base Royalty. The Base Royalty as adjusted on the first day of the 6th Lease Year shall remain in effect through Lease Year 10. No other adjustments shall be made to the Base Royalty for Lease Year 6 through 10.

3. Lease Years 11 Through 40

A. Types of Adjustment; Adjustment Years; Change Dates.

For the time period from Lease Year 11 through Lease Year 40, adjustments shall be made every five years in Lease Years 11, 16, 21, 26, 31 and 36 (the “Adjustment Years”). Once the adjustment is made, the adjustment remains in effect for the following five (5) year period until the next Adjustment Year. For example, the adjustments made in Lease Year 11 remain in effect until the adjustments are made in Lease Year 16.

Adjustments shall be made by one of the following three (3) methods:

1. By Escalator.
2. By agreement.
3. By arbitration.

If no adjustment is made by agreement or arbitration, then adjustments shall be made by Escalator.

The adjustments shall become effective upon the Change Date. A Change Date can only occur in Lease Years 11, 16, 21, 26, 31 and 36. The Change Dates are as follows:

a. If the adjustment is by Escalator, the Change Date is the first day of the Lease Year in which the adjustment takes place.
b. If the adjustment is by agreement, the Change Date is the date agreed upon by the
University and the Lessee; in such a situation, if the University and Lessee have not otherwise agreed to a Change Date, the Change Date is the first day of the Lease Year in which the adjustment occurs.

c. If the adjustment is by arbitration, the Change Date is the first day of the calendar month following the arbitration panel’s decision.

B. **Adjustment by Escalator – Automatic Increases.**

If no adjustment is made by agreement or arbitration, then adjustments shall be made automatically by Escalator. The Escalator is a percentage increase above the previous Base Royalty in effect. The Escalator in Lease Year 11 is 3%. The Escalator in Lease Year 16 is 4%. The Escalator in Lease Year 21 is 4%. The Escalator in Lease Year 26 is 5%. The Escalator in Lease Year 31 is 5%. The Escalator in Lease Year 36 is 6%.

C. **Adjustments by Agreement or Arbitration.**

In the Adjustment Years, adjustments may be made by agreement or arbitration in the following manner:

If adjustments to the Base Royalty for certain types of Materials are made by agreement or arbitration in a particular Adjustment Year, then adjustments to the Base Royalty for those certain Materials shall not be made by Escalator in that particular Adjustment Year. For those Materials in an Adjustment Year where the adjustment is not made by agreement or arbitration, the adjustment shall be made by Escalator.

At the Annual Meeting in the Lease Year immediately before the Adjustment Year, either party may dispute the Base Royalty for any or all types of Material by providing written notice (the “**Request for Base Royalty Negotiation**”) to the other party if the disputing party believes in good faith that the Disputed Base Royalty, after taking into account any increase by the Escalator that is scheduled to occur in the following twelve months, does not reflect the Market Price (as defined below).

If the party receiving the Request for Base Royalty Negotiation desires to dispute any Base Royalty for any type of Material that is not listed in the Request for Base Royalty Negotiation, such party must provide written notice (the “**Response Notice**”) listing each additional Disputed Base Royalty to the other party within twenty days after receiving the Request for Base Royalty Negotiation. Each disputed Base Royalty listed in the Request for Base Royalty Negotiation and in the Response Notice is referred to herein as a “**Disputed Base Royalty**.”

During the sixty days following the later of (1) the delivery of the Request for Base Royalty Negotiation or (2) the delivery of the Response Notice, if any (the “**Negotiation Period**”), the parties shall negotiate in good faith and attempt to agree on a new amount for each Disputed Base Royalty that reflects the Market Price.
If the parties agree on an adjustment for any Disputed Base Royalty during the Negotiation Period, they shall promptly enter into an amendment to this Lease setting forth each agreed-upon Base Royalty. Each agreed-upon Base Royalty shall become effective as of the Change Date.

If the parties cannot agree on an adjustment for any Disputed Base Royalty during the Negotiation Period, then either party may elect either to have the adjusted Base Royalty of each remaining Disputed Base Royalty established by the arbitration process described below or to not proceed by arbitration and to allow the adjustment to occur by Escalator. If any party elects arbitration, then such party shall provide written notice of such election, setting forth each remaining Disputed Base Royalty that such party desires to submit to arbitration (a “Request for Arbitration”), to the other party within thirty (30) days after the end of the Negotiation Period. If the party that receives the Request for Arbitration desires to submit to arbitration any remaining Disputed Base Royalty not listed in the Request for Arbitration, then such party shall provide the other party with written notice listing each such additional remaining Disputed Base Royalty within ten (10) days after receiving the Request for Arbitration (the “Reply Period”). After the end of such 10-day period, the parties shall proceed by arbitration with regard to each remaining Disputed Base Royalty that is identified as part of the arbitration. If a Disputed Base Royalty is not identified by any party as part of the arbitration, that particular Disputed Base Royalty shall not be part of the arbitration and shall instead be adjusted by the Escalator.

If no Request for Arbitration is delivered within such 30-day period, then each remaining Disputed Base Royalty shall be adjusted by the Escalator.

If any party has elected arbitration, the arbitration process shall be conducted as follows with respect to each Disputed Base Royalty that is still subject to arbitration:

a. Selection of Arbitrators.

The arbitration shall be conducted and determined by a panel of three arbitrators. Within thirty days after the end of the Reply Period, the parties shall endeavor to agree upon a panel of three individuals to serve as the arbitrators of the dispute. The arbitrators shall have no prejudicial interest in the dispute or the parties and shall be either (i) a retired state district court judge, state appellate court judge, state supreme court judge, federal district court judge, or federal magistrate judge; or (ii) a neutral from the American Arbitration Association (“AAA”) National Roster of Arbitrators who has at least ten (10) years of experience serving as an arbitrator of complex commercial disputes in the Minneapolis-St. Paul seven-county metropolitan area (i.e., Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties) (the “Metro Area”). If the parties cannot agree on a panel of three arbitrators within said 30-day period, the panel shall consist of those arbitrators upon whom the parties have agreed and the remaining positions on the panel shall be filled by an arbitrator(s) meeting the qualifications described above and appointed by the AAA.

Notwithstanding the above, the parties may mutually agree that only one arbitrator, instead of three arbitrators, will conduct and determine the arbitration. In such case, the single arbitrator will be selected pursuant to the same process and must meet the same eligibility
requirements.

b. *Arbitration Hearings.*

The arbitration shall be conducted at University’s offices in accordance with such rules as may be agreed upon by the parties, or failing agreement within thirty days after appointment of the arbitration panel, in accordance with the Commercial Arbitration Rules of the AAA in effect on the date of this Lease, subject to any modifications contained herein. The arbitration hearing shall occur within ninety days after appointment of the arbitration panel.

c. *Determination of Market Price.*

The decision for the arbitration panel shall be to determine the Market Price of each Disputed Base Royalty that has been made the subject of arbitration. The parties shall inform the arbitration panel that the adjusted Base Royalty for each Disputed Base Royalty subject to arbitration shall be the Market Price but that no adjusted Base Royalty may ever be less than the amount of such Base Royalty during Lease Year Number 1. The “**Market Price**” of each Disputed Base Royalty (a) shall be consistent with the then-current price per Ton being paid as of the date of the beginning of the arbitration hearing by aggregate producers to landowners for the applicable type of Material in the Metro Area, Goodhue County and Rice County, assuming both parties to the transaction to be prudent and knowledgeable persons willing to engage in the transaction but being under no compulsion to do so, and (b) shall reflect all relevant factors, including without limitation (i) the size and location of the Property; (ii) the amount and type of Materials available at the Property; (iii) the improvements and operations on the Property; (iv) the terms and conditions of the Lease (except the Base Royalty amount), including without limitation the length of the remaining Lease Term; and (v) the existing and projected availability of and demand for the applicable Material. The Market Price for the Disputed Base Royalty shall not be less than the Base Royalty for that particular Material in effect during Lease Year Number 1.

d. *Arbitration Decision.*

The decision of the arbitration panel shall be by majority vote of the panel members. The decision of the arbitration panel with respect to the adjusted Base Royalty for each Disputed Base Royalty subject to arbitration will be final and non-appealable. Each party shall bear its own expenses in connection with the arbitration. The arbitrators’ fees shall be shared equally by the parties.

The adjusted Base Royalty as determined by arbitration will become effective as of the Change Date. Materials mined prior to the Change Date are subject to the Base Royalty in effect prior to the Change Date.
EXHIBIT D  
TO  
MINING LEASE AGREEMENT  

ANNUAL MINIMUM ROYALTY

<table>
<thead>
<tr>
<th>Lease Year No.</th>
<th>Annual Minimum Royalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>$425,000</td>
</tr>
<tr>
<td>3</td>
<td>$600,000</td>
</tr>
<tr>
<td>4</td>
<td>$700,000</td>
</tr>
<tr>
<td>5</td>
<td>$800,000</td>
</tr>
<tr>
<td>6 through 40</td>
<td></td>
</tr>
</tbody>
</table>

(a) For each such Lease Year (the “Applicable Lease Year”), the Annual Minimum Royalty shall be equal to the greater of (i) the Floor Amount (as defined below) or (ii) 55% of the average annual Production Royalty for Materials from the Property (i.e., not including Imported Products) paid during the five (5) Lease Years immediately preceding the Applicable Lease Year; provided, however, that, if the Applicable Lease Year is Lease Year No. 6, then the Annual Minimum Royalty shall be equal to the greater of the (A) the Floor Amount or (B) 55% of the average annual Production Royalty for Materials from the Property paid during all Lease Years preceding the Applicable Lease Year, except Lease Year No. 1, which shall not be included in any calculation made pursuant to this paragraph. When determining the annual Production Royalty for Materials from the Property paid during any Lease Year for purposes of making the calculation described in the preceding sentence, in addition to Production Royalty that was actually paid by Lessee to University during such Lease Year, (1) any Production Royalty that is due and payable by Lessee for such Lease Year but is unpaid shall be deemed to be “paid” (solely for purposes of making this calculation) and (2) credits applied against Production Royalty during such Lease Year pursuant to Sections 3.3(b) and 3.3(c) of the Lease shall be deemed to be payments of Production Royalty.

(b) During the last three (3) Lease Years prior to the expiration of the Lease Term (but not prior to any earlier termination of the Lease Term), the Annual Minimum Royalty as calculated using the formulas set forth in clause (a) of this Exhibit D shall be reduced by thirty percent (30%).

(c) After the sixth (6th) Lease Year, if the market for the sale of sand and gravel in Dakota County, Minnesota, declines by more than fifty percent (50%) from one Lease Year to the next Lease Year as evidenced by a fifty percent (50%) or greater reduction in the aggregate tonnage of sand and gravel subject to aggregate production
taxes in Dakota County (or, if such information is not available, as evidenced by another reasonably objective measure selected by University in its reasonable discretion), then Lessee and University shall meet and discuss whether there should be an adjustment in the Annual Minimum Royalty.

As used in this Exhibit D, the “Floor Amount” shall be equal to the following:

<table>
<thead>
<tr>
<th>Lease Years</th>
<th>Floor Amount (each Lease Year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 through 10</td>
<td>$660,000 per Lease Year</td>
</tr>
<tr>
<td>11 through 15</td>
<td>$750,000 per Lease Year</td>
</tr>
<tr>
<td>16 through 20</td>
<td>$850,000 per Lease Year</td>
</tr>
<tr>
<td>21 through 25</td>
<td>$950,000 per Lease Year</td>
</tr>
<tr>
<td>26 through 30</td>
<td>$1,100,000 per Lease Year</td>
</tr>
<tr>
<td>31 through 35</td>
<td>$1,200,000 per Lease Year</td>
</tr>
<tr>
<td>36 through 40</td>
<td>Zero</td>
</tr>
</tbody>
</table>

Notwithstanding the foregoing, if in any Lease Year (a “Comparison Year”) the total tonnage of sand, gravel and aggregate subject to production taxes in the seven (7) county metropolitan area (i.e., Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties) (as and only to the extent that public data confirms that it reflects the best available evidence of actual demand) (such total tonnage being “Metropolitan Aggregate Production”) drops by fifteen percent (15%) or more from Metropolitan Aggregate Production during the reporting year immediately preceding the Comparison Year (such immediately preceding year being the “Base Year”) (i.e., a year-to-year drop), then (i) the Floor Amount for the Comparison Year shall be zero dollars ($0.00); and (ii) if Metropolitan Aggregate Production in one or more consecutive Lease Years after the Comparison Year remains at least 10% below Metropolitan Aggregate Production in the Base Year, then the Floor Amount during each such consecutive Lease Year shall be reduced by the same percentage that Metropolitan Aggregate Production in the applicable consecutive Lease Year is below Metropolitan Aggregate Production in the Base Year; provided, however, that, if Metropolitan Aggregate Production in any Lease Year ever becomes less than 10% below Metropolitan Aggregate Production in the Base Year, then the Floor Amount during such Lease Year and all subsequent Lease Years (except to the extent that there is a future year-to-year drop of Metropolitan Aggregate Production by 15% or more) shall return to the full Floor Amount stated in the table above.

Example: If the Base Year is Lease Year No. 6 and Metropolitan Aggregate Production in the Base Year equals 100, Metropolitan Aggregate Production in the Comparison Year (Lease Year No. 7) equals 80, Metropolitan Aggregate Production in Lease Year No. 8 equals 90, and Metropolitan Aggregate Production in Lease Year No. 9 equals 91, then:
- Floor Amount in Base Year (Lease Year 6) = $660,000 (per table above)
- Floor Amount in Comparison Year (Lease Year 7) = zero
- Floor Amount in Lease Year 8 = $594,000 (i.e., $660,000 reduced by 10%)
- Floor Amount in Lease Year 9 = $660,000 (per table above)
The Floor Amount shall not factor into the calculations of Annual Minimum Royalty made for purposes of determining the payments due under Sections 3.3(b)(i) and (ii) of the Lease. Instead, such calculations shall be made using the “55% of average annual Production Royalty” formulas set forth above in this Exhibit D. If at the end of any Lease Year, however, the aggregate amount of Annual Minimum Royalty payments made by Lessee during such Lease Year is less than the Floor Amount for such Lease Year, then Lessee shall pay to University within 45 days after the last day of such Lease Year the following amount (the “Annual Minimum Royalty True-Up Payment”): (a) the Floor Amount for such Lease Year, minus (b) the aggregate amount of Annual Minimum Royalty payments made by Lessee during such Lease Year. To the extent that the amounts actually paid by Lessee as Production Royalty for the applicable Lease Year (not including any Production Royalty paid on Imported Products, Production Royalty owed but not paid because of an application of credit pursuant to the last grammatical paragraph of Section 3.3(b) of the Lease, Production Royalty payments that were applied as credits against and reduced the amount of the September 30 or December 31 payments of Annual Minimum Royalty due for such Lease Year (in order to avoid double counting such payments), or Production Royalty paid for any prior Lease Year) exceed the aggregate amount of Annual Minimum Royalty payments due for such Lease Year pursuant to Sections 3.3(b) of the Lease, such excess shall be credits against and reduce the amount of the Annual Minimum Royalty True-Up Payment due for such Lease Year pursuant to this paragraph. If the Annual Minimum Royalty True-Up Payment exceeds the credits, then, as described in Section 3.3(b) of the Lease, the difference shall be a credit against the Production Royalty owed in future Lease Years (without double counting for any credits against such Production Royalty received by Lessee under Sections 3.3(b) and 3.3(c) of the Lease), but the difference shall not be a credit against the Annual Minimum Royalty (or Annual Minimum Royalty True-Up Payment) owed in the next Lease Year.
EXHIBIT E
TO
MINING LEASE AGREEMENT
INDEX OF OPERATIONS PLAN
EXHIBIT F
TO
MINING LEASE AGREEMENT

ENVIRONMENTAL REPORTS


- Phase II Site of Concern (SOC) Investigation Report; Sites 1-3 and 6-8 dated November 12, 2009, prepared by Barr Engineering (#91609).

- Supplemental Site Inspection (SOC 4) and Remedial Investigation (SOC 5) Report dated January 12, 2010, prepared by Barr Engineering (#91608).

- Ancillary Use Facility Area Subsurface Investigation, Technical Memorandum


- Noise Impact Study Report dated October 2010, prepared by SEH.

- Air Quality Impact Study Report dated October 2010 prepared by SEH.

- 2008 Comparative Appraisal Study for Kelly Aggregate

- Draft UMA Mining Plan

- Final Environmental Impact Statement (FEIS) dated October 2010, prepared by SEH.
EXHIBIT G TO MINING LEASE AGREEMENT

IDENTIFIED ENVIRONMENTAL CONDITIONS

1. The Pipeline.
2. The sites described in the following table, each of which is shown on the map on the following page:

Table 7—Summary of Investigated Sites of Concern (Barr 2009b)

<table>
<thead>
<tr>
<th>SOC</th>
<th>Name</th>
<th>Description</th>
<th>Previously Identified Site</th>
<th>Potentially Affected Media</th>
<th>Constituents of Concern</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOC 1</td>
<td>Former Railroad “y”</td>
<td>Heavy gauge railroad junction was a gateway for delivery of construction and raw material supplies for manufacture of smokeless gunpowder and outbound shipments of manufactured gunpowder, alum, and nitric acid. During GOW decomposition, salvaged materials would have been shipped out along the railroad.</td>
<td>Barr Site ID# 6001 was visited by USACE but not included in scope of Focused Site Investigation. No further investigations.</td>
<td>Soil &amp; Groundwater</td>
<td>SVOC/PAH from railroad. Possible spills from railcars including SVOCs (DNT, DBP, and DPA). Possible use of arsines-bromides along tracks</td>
</tr>
<tr>
<td>SOC 2</td>
<td>Forestry Research Former GOW Construction Materials Storage and Shipping</td>
<td>Wooded area transected by the railroad south of SOC 1. GOW era loading platform/warehouse located south of the GOW lumber yard. The area appears to have disturbed ground on the 1945 aerial photo and scattered concrete/brick fragments were observed at the surface during 2009 field visit. Railroad ties in woods.</td>
<td>Barr Site ID# 6004 and ID# 6005, Dakota County Site ID# 5262 and ID# 5263. Storage buildings 126-T, 127-T1, T2, and 5-7-1. No other investigations.</td>
<td>Soil</td>
<td>ACM, SVOCs, metals</td>
</tr>
<tr>
<td>SOC 3</td>
<td>Ag Engineering/ GOW Era Suspected &quot;K&quot; Street Dump</td>
<td>Former Kase farmstead. West and central side of site is the Ag Engineering Complex. University staff indicated the well in building 1010 is non-operational. East central portion included a former animal waste lagoon and associated outlet structures and east side is suspected former dump. Dump area is currently wooded with irregular surface. Was borrow area for GOW and site of proposed DNT Screening House (never built). Debris encountered during construction of CR 46.</td>
<td>Barr Site ID# 6014, Dakota County Site ID# 5225. Possibly associated with LEAK 7564, no known previous investigations.</td>
<td>Soil &amp; Groundwater</td>
<td>ACM, pesticides, herbicides, metals, SVOCs (including DNT, DBP, DPA)</td>
</tr>
<tr>
<td>SOC 4</td>
<td>Former DNT Loading Platform and Drainage Ditch</td>
<td>Loading platform received bales of DNT by rail, transferred to trucks, then housed to storage bunkers. Drainage to south flows to large ditch, which travels field to southwest and meets with drainage from SOC 3.</td>
<td>GOW Bldg 266, drainage south (AOCC 3DA-1) was sampled in 2008 by USACE and was non-detect for explosives. No other parameters analyzed.</td>
<td>Soil &amp; Groundwater</td>
<td>NC, metals, SVOCs (including DNT, DBP, DPA)</td>
</tr>
<tr>
<td>SOC 5</td>
<td>Central Services Former DNT Storage Bunkers and Dye Wells</td>
<td>Release of DNT noted by USACE in drains that lead to dry wells made buildings 263-A, E, and F. Previous investigation in 2008 detected DNT, PAHs, dieldrin, metals, and petroleum in soils. Petroleum and low level PAHs detected in groundwater. Previous pesticide and petroleum releases cleaned up and closed, but residual soil or groundwater impacts may be present.</td>
<td>Dakota Co. Site ID# 5705, ID# 5012 DNT storage bunkers are 106gts 263-A-1; PAH concentrations appear limited to surface soil (&lt;6ppm).</td>
<td>Soil &amp; Groundwater</td>
<td>Nitrocarbenes, herbicides, pesticides, metals, SVOCs (including DNT, DBP, DPA), VOCs</td>
</tr>
<tr>
<td>SOC 6</td>
<td>Southern Complex Storage Buildings and Wash Pads</td>
<td>Pesticide release sites closed (2002).</td>
<td>Barr Site ID# 6006, Dakota County Site ID# 5374</td>
<td>Soil &amp; Groundwater</td>
<td>Pesticides, herbicides</td>
</tr>
<tr>
<td>SOC 7</td>
<td>Former Dairy Complex Suspended Dump Area</td>
<td>Suspected dump area. Some evidence of concrete and plastic in surface soils.</td>
<td>Dakota County Site ID# 5152 (in 2006 Pre Phase 1)</td>
<td>Soil</td>
<td>ACM, metals, SVOCs</td>
</tr>
<tr>
<td>SOC 8</td>
<td>Unknown Use Area Near SOC 5</td>
<td>An agricultural field with evidence of numerous semi-circular piles noted in 1945 aerial photos.</td>
<td>None</td>
<td>Soil</td>
<td>Surface debris to be characterized by visual examination</td>
</tr>
<tr>
<td>AUF</td>
<td>Prepreted Ancillary Use Facility (AUF)</td>
<td>An agricultural field. Historical air photos do not indicate any sites of concern, but additional investigation was conducted to assess areas of past land use and evaluate potential for past release.</td>
<td>5000 Former borrow area Railroad grade, Construction laidown area</td>
<td>Soil</td>
<td>PAHs, metals (arsenic lead, and mercury)</td>
</tr>
</tbody>
</table>
EXHIBIT H
TO
MINING LEASE AGREEMENT

FORM OF CONSENT TO SUBLEASE

CONSENT TO SUBLEASE

REGENTS OF THE UNIVERSITY OF MINNESOTA, a Minnesota constitutional corporation ("University"), the landlord under that certain Mining Lease Agreement dated June 8, 2011 (the "Lease"), by and between University and DAKOTA AGGREGATES, LLC, a Minnesota limited liability company ("Lessee"), as lessee, subject to and specifically conditioned upon the following terms and conditions, hereby grants its consent to the subletting by Lessee, as sublessor, to ____________________________ ("Sublessee"), as sublessee, of the portion of the Premises generally depicted by cross hatching on Exhibit 1 attached hereto (the "Subleased Premises") in consideration of Lessee’s and Sublessee’s acknowledgment and acceptance of the following terms and conditions:

1. **No Release.** This Consent to Sublease (this "Consent"), consenting to a sublease of the Subleased Premises from Lessee to Sublessee (the "Sublease"), shall in no way release Lessee or any person or entity claiming by, through or under Lessee, including Sublessee, from any of its covenants, agreements, liabilities and duties under the Lease (including without limitation all duties to cause and keep University and others named or referred to in the Lease fully insured and indemnified with respect to any acts or omissions of Sublessee or its officers, agents, contractors, guests, employees or invitees, or other matters arising by reason of the Sublease or Sublessee’s use or occupancy of the Premises), as the same may be amended from time to time, without respect to any provision to the contrary in the Sublease.

2. **Lessee’s Continuing Liability.** Lessee shall be liable to University for any default under the Lease, whether such default is caused by Lessee or Sublessee or anyone claiming by or through either Lessee or Sublessee, but the foregoing shall not be deemed to restrict or diminish any right which University may have against Sublessee pursuant to the Lease, in law or in equity for violation of the Lease or otherwise, including, without limitation, the right to enjoin or otherwise restrain any violation of the Lease by Sublessee.

3. **Specific Provisions of Lease and Sublease.**

   (a) This Consent does not constitute approval by University of any of the provisions of the Sublease or any related instrument; nor shall the Sublease or any related instrument be construed to amend the Lease in any respect, any purported modifications being solely for the purpose of setting forth the rights and obligations as between Lessee and Sublessee, but not binding University.

   (b) Sublessee shall comply with all provisions of the Lease relating to use and occupancy of the Subleased Premises and all improvements thereon (whether such provisions impose obligations on Lessee alone or on any sublessee or licensee), and
Sublessee agrees to indemnify University pursuant to the same indemnification of University by Lessee as set forth in the Lease.

(c) In the event of any default under the Lease related to the Subleased Premises, the Sublessee or the Sublease, which is not cured within any applicable grace period, University shall have the right of direct action against Sublessee pursuant to the same remedies as are available to University against Lessee (other than acceleration of Annual Minimum Royalty) and University shall have the right to terminate the Sublease.

(d) Without limiting any other provision of this Consent, Sublessee acknowledges and agrees that (i) it has received and reviewed a fully executed copy of the Lease and all exhibits thereto (with material financial terms redacted); (ii) there is and will be no other written or oral agreement between Lessee and Sublessee with respect to the use or occupancy of the Subleased Premises or any other portion of the Premises, other than the Sublease; (iii) Sublessee shall provide a copy of the fully executed Sublease to University promptly after executing and delivering the same; (iv) Sublessee’s use of the Subleased Premises will comply with all Laws and Permits and with the uses permitted under Article I of the Lease; (v) the Sublease will not include any term or condition that violates any term or condition of the Lease, will include a continuing obligation on Lessee and Sublessee not to violate any term or condition of the Lease, and will require Sublessee to maintain the insurance described in Section 7.2 of the Lease (naming University as additional insured) and to comply with Section 7.3 of the Lease; (vi) Sublessee will be a user of the Materials, directly or indirectly, throughout the term of the Sublease; (vii) the term of the Sublease will be at least one day shorter than the remaining Lease Term; and (viii) Sublessee will not pay rent or other fees or charges under the Sublease.

(e) Sublessee, by entering into the Sublease, or by otherwise using any portion of the Premises, shall be deemed to have agreed as follows: (A) to waive any present or future claims against University for loss, damages, or liability arising in connection with the condition of the Premises, matters relating to the security of the Premises or the lack thereof, interruption of utilities to the Premises, injury to any person, and loss or damage to any equipment, facilities, fixtures, goods, supplies or other personal property of Sublessee, even if attributable to the negligence or wrongful act of University; (B) to waive any right to recover from University any consequential damages, incidental damages, damages for loss of revenue, special damages, indirect damages, or damages of any similar kind or nature; (C) to the extent, if any, University has any liability to Sublessee, Sublessee may look solely to University’s equity in the Property in satisfying any claim against University; and (D) to indemnify, defend and hold harmless University from any loss, damage or liability caused or incurred by Sublessee or by University in connection with such Sublessee’s use of the Premises.

4. Limited Consent. This Consent shall be deemed limited solely to the Sublease, and University reserves all other rights and remedies under the Lease with respect to any other matters, including without limitation the right to consent or to withhold consent to any proposed alteration, mortgage, lien, pledge, collateral assignment, collateral transfer, or encumbrance, except as stated in the Lease.
5. **Subordination.** The Sublease is, in all respects, subject and subordinate to the Lease, as the same may be amended. Furthermore, in the case of any conflict between the provisions of this Consent or the Lease and the provisions of the Sublease, the provisions of this Consent or the Lease, as the case may be, shall prevail unaffected by the Sublease.

6. **Termination of Lease.** If, at any time prior to the expiration of the term of the Sublease, the Lease shall expire or be terminated for any reason (or Lessee's right to possession shall terminate without termination of the Lease), the Sublease shall terminate simultaneously; provided, however, that all of University's rights and remedies under this Consent shall survive such expiration or termination. Nothing contained in this paragraph shall be construed to impair or modify any right otherwise exercisable by University, whether under the Lease, any other agreement or in law.

7. **No Waiver; No Privity.** Nothing herein contained shall be deemed a waiver of any of University's rights under the Lease. In no event shall University be deemed to be in privity of contract with Sublessee or owe any obligation or duty to Sublessee under the Lease or the Sublease, any duties of University under the Lease being in favor of, for the benefit of and enforceable solely by Lessee.

8. **Notices.** Sublessee agrees promptly to deliver a copy to University of all notices of default and all other notices sent to Lessee under the Sublease, and Lessee agrees promptly to deliver a copy to University of all such notices sent to Sublessee under the Sublease. All copies of any such notices shall be delivered to University in accordance with the notice provisions set forth in the Lease.

9. **Parties Bound.** By executing this Consent, Lessee and Sublessee acknowledge and agree (a) to be bound by all of the terms and conditions of this Consent and (b) that University shall not be bound by this Consent unless University receives a fully executed original copy of this Consent.

10. **Defined Terms; Severability; Governing Law.** All terms defined in the Lease shall have the same meaning in this Consent unless otherwise expressly set forth herein. If any provisions of this Consent shall be declared unenforceable in any respect, such unenforceability shall not affect any other provision of this Consent, and each such provision shall be deemed to be modified, if possible, in such a manner as to render it enforceable and to preserve to the extent possible that the intent of the parties as set forth herein. This Consent shall be construed and enforced in accordance with the laws of the State of Minnesota.

[Signature page follows]
IN WITNESS WHEREOF and intending to be legally bound and to bind their respective successors and assigns, University, Lessee and Sublessee have executed this Consent to Sublease as of the ____ day of __________, 20__. 

UNIVERSITY:

REGENTS OF THE UNIVERSITY OF MINNESOTA

By: ____________________________
Print Name: ______________________
Print Title: ______________________

LESSEE:

DAKOTA AGGREGATES, LLC

By: ____________________________
Print Name: ______________________
Print Title: ______________________

By: ____________________________
Print Name: ______________________
Print Title: ______________________

SUBLESSEE:

By: ____________________________
Print Name: ______________________
Print Title: ______________________
EXHIBIT 1
TO
CONSENT TO SUBLEASE

Depiction of the Subleased Premises

[Insert site plan showing the Subleased Premises by cross hatching.]
EXHIBIT I
TO
MINING LEASE AGREEMENT
FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this “Memorandum”) is made effective as of ____________, 201__, by and between REGENTS OF THE UNIVERSITY OF MINNESOTA, a Minnesota constitutional corporation (“University”), and DAKOTA AGGREGATES, LLC, a Minnesota limited liability company (“Lessee”).

WITNESSETH:

A. University, as lessor, and Lessee, as lessee, have entered into that certain Mining Lease Agreement dated June 8, 2011 (the “Lease”), relating to certain real property located in Dakota County, Minnesota, and legally described on Exhibit I attached hereto (the “Premises”).

B. University and Lessee desire to memorialize the existence of the Lease.

NOW THEREFORE, in consideration of the Lease and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, University and Lessee agree as follows:

1. University and Lessee have entered into the Lease to demise and lease the Premises upon the terms and conditions set forth in the Lease.

2. Subject to the terms and conditions of the Lease, the term of the Lease is for approximately forty (40) years, commencing on ____________, 20__ and ending on ____________, 20__.

3. Except as otherwise defined in this Memorandum, capitalized terms used in this Memorandum have the meanings assigned to them in the Lease.

4. The sole purpose of this Memorandum is to give notice of the Lease and all of its terms, covenants and conditions, to the same extent as if the Lease were set forth herein.

5. The terms, covenants and conditions in this Memorandum shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, personal representatives, successors and assigns. In the event of any conflict between the terms, covenants and conditions of this Memorandum and the terms, covenants and conditions of the Lease, the terms, covenants and conditions of the Lease shall control.
6. Pursuant to the terms of the Lease, University may unilaterally amend this Memorandum from time to time to revise the legal description of the Premises by replacing Exhibit 1 attached hereto with a new exhibit setting forth the new legal description.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the day and year first above written.

Regents of the University of Minnesota

By: ____________________________
Name: __________________________
Title: ___________________________
Date: __________________________

Dakota Aggregates, LLC

By: ____________________________
Name: __________________________
Title: ___________________________
Date: __________________________
STATE OF MINNESOTA   )
                     ) SS:
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this ___ day of __________, 201___, by __________________, the ___________________ of Regents of the University of Minnesota, a Minnesota constitutional corporation, on behalf of the corporation.

__________________________
Notary Public

[Notary Seal]
My commission expires:__________________________

STATE OF ____________)
                     ) SS:
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ___ day of __________, 201___, by __________________, the ___________________ of Dakota Aggregates, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

__________________________
Notary Public

[Notary Seal]
My commission expires:__________________________

STATE OF ____________)
                     ) SS:
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ___ day of __________, 201___, by __________________, the ___________________ of Dakota Aggregates, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

__________________________
Notary Public

[Notary Seal]
My commission expires:__________________________

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This instrument was drafted by:

Office of the General Counsel
University of Minnesota
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN  55455
(612) 624-4100
EXHIBIT 1
TO
MEMORANDUM OF LEASE

Legal Description

(Rosemount Property)

That part South Half of Section 28, Township 115, Range 19, Dakota County, Minnesota, lying westerly of the following described line:

Commencing at the northeast corner of the Southeast Quarter of said Section 28; thence South 89 degrees 48 minutes 43 seconds West, assumed bearing along the north line of said Southeast Quarter, a distance of 1058.90 feet to the point of beginning of the line to be described; thence South 18 degrees 25 minutes 48 seconds West a distance 1211.64 feet; thence South 07 degrees 11 minutes 26 seconds East a distance of 1472.46 feet; thence South 75 degrees 07 minutes 52 seconds East a distance of 126.03 feet to the south line of said Southeast Quarter and there terminating.

EXCEPT the plat of UNIVERSITY ADDITION, said Dakota County.

AND

Section 33, Township 115, Range 19, Dakota County, Minnesota; EXCEPT the East 133.00 feet of the North 549.43 feet of the Southeast Quarter of said Section 33; EXCEPT the East 133.00 feet of the South 930.25 feet of the Northeast Quarter of said Section 33; also EXCEPT that part of said Northeast Quarter described as follows:

Beginning at the northeast corner of said Northeast Quarter; thence South 00 degrees 11 minutes 58 seconds West, assumed bearing along the East line of said Northeast Quarter, a distance of 800.63 feet; thence North 81 degrees 23 minutes 25 seconds West a distance of 40.76 feet; thence North 38 degrees 17 minutes 54 seconds West a distance of 819.06 feet; thence North 75 degrees 07 minutes 52 seconds West a distance of 589.25 feet to the north line of said Northeast Quarter; thence North 80 degrees 51 seconds 14 seconds East, along said north line, a distance of 1111.53 feet to the point of beginning.

AND

That part of the Northwest Quarter of Section 34, Township 115, Range 19, Dakota County, Minnesota, described as follows:

Commencing at the northwest corner of said Northwest Quarter; thence South 00 degrees 11 minutes 58 seconds West, assumed bearing along the west line of said Northwest Quarter, a distance of 800.63 feet to the point of beginning of the land to be described; thence continuing South 00 degrees 11 minutes 58 seconds West, along said west line, a distance of 912.75 feet; thence North 89 degrees 51 minutes 14 seconds East a distance of 647.18 feet; thence North 00 degrees 11 minutes 58 seconds East a distance of 813.16 feet; thence North 81 degrees 23 minutes 25 seconds West a distance of 654.21 feet to the point of beginning.

AND

That part of the Southwest Quarter of Section 34, Township 115, Range 19, Dakota County, Minnesota, lying southerly of the following described line:

Commencing at the northwest corner of said Southwest Quarter; thence South 00 degrees 11 minutes 58 seconds West, assumed bearing along the west line of said Southwest Quarter, a distance of 549.45 feet
to the point of beginning of the line to be described; thence South 89 degrees 28 minutes 53 seconds East a distance of 2646.92 feet to the east line of said Southwest Quarter and there terminating.

And lying westerly, northwesterly and northerly of the following described line:

Commencing at the southwest corner of said Southwest Quarter; thence South 89 degrees 42 minutes 10 seconds East, along the south line of said Southwest Quarter, a distance of 2192.17 feet to the point of beginning of the line to be described; thence North 04 degrees 21 seconds 18 seconds East a distance of 142.12 feet; thence North 01 degrees 12 minutes 32 seconds West a distance of 368.88 feet; thence North 01 degrees 58 minutes 09 seconds West a distance of 266.72 feet; thence northeasterly 194.60 feet, along tangential curve, concave to the southeast, having a central angle of 96 degrees 57 minutes 13 seconds and a radius of 115.00 feet; thence South 85 degrees 00 minutes 56 seconds East, tangent to last described curve, a distance of 157.25 feet; thence easterly 99.70 feet, along a tangential curve, concave to the north, having a central angle of 09 degrees 25 minutes 45 seconds and a radius of 605.84 feet; thence northeasterly 100.73 feet, along a reverse curve, concave to the northwest, having a central angle of 56 degrees 01 minutes 50 seconds and a radius of 103.00 feet to the west line of said Southwest Quarter and said line there terminating.

AND

(Empire Township Property)

Section 4, Township 114, Range 19, Dakota County, Minnesota.

AND

That part of Northwest Quarter of Section 3, Township 114, Range 19, Dakota County, Minnesota, lying westerly of the following described line:

Commencing at the northwest corner of said Northwest Quarter; thence South 89 degrees 42 minutes 10 seconds East, assumed bearing along the north line of said Northwest Quarter, a distance of 2192.17 feet to the point of beginning of the line to be described; thence South 00 degrees 01 minute 44 seconds West a distance of 2660.58 feet to the south line of said Northwest Quarter and said line there terminating.

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EXHIBIT J
TO
MINING LEASE AGREEMENT
AFFILIATED SUBLESSEES

1. Cemstone
2. Twin City Concrete Products Co.*
3. Ames
4. Any limited liability company, corporation or partnership in which Lessee, Cemstone, Ames, or Twin City Concrete Products Co. either individually or collectively own 50% or more of the outstanding voting membership interests on the date such entity commences construction of an Improvement on the Property, subject to the requirement that from the date that the entity commences construction of an Improvement on the Property and for three (3) years thereafter Lessee, Cemstone, Ames or Twin City Concrete Products Co. either individually or collectively must own 50% or more of the outstanding voting membership interests in the entity.
5. Ambro & Son, LLP**
6. Colline, Inc.**
7. Cemstone Ready-Mix, Inc., a Wisconsin corporation***

* Subject to the requirement that, from the Effective Date through and including the date that is three (3) years after the date such entity commences construction of an Improvement on the Property, at least 50% of the ownership interests and voting control in such entity are owned by entities that are also shareholders and own at least 5% of either Cemstone or Ames.

** Subject to the requirement that, from the Effective Date through and including the date that is three (3) years after the date each such entity commences construction of an Improvement on the Property, the holders of at least 50% of the voting control in such entity are the same as the holders of at least 50% of the voting control in Ames.

*** Subject to the requirement that, from the Effective Date through and including the date that is three (3) years after the date such entity commences construction of any Improvements on the Property, the holders of at least 50% of the voting control in such entity are the same as the holders of at least 50% of the voting control in Cemstone.

Lessee represents and warrants to University that the ownership and control requirements described above are satisfied on the Effective Date, and Lessee covenants that the ownership and control requirements described above will be satisfied for each such entity on the Commencement Date, on the date that such entity commences construction of an Improvement on the Property, and on the date that is three (3) years after the date such entity commences construction of an Improvement on the Property. For purposes of demonstrating the ownership and control requirements described above with respect to each such entity, on each of the following dates Lessee, Cemstone and Ames shall provide to University a certification certifying that the ownership and control requirements described above have been satisfied from the
Effective Date through the date of such certification: (i) on the Commencement Date; (ii) on the date that such entity commences construction of an Improvement on the Property; and (iii) on the date that is three years after the date such entity commences construction of an Improvement on the Property.
EXHIBIT K
TO
MINING LEASE AGREEMENT

FORM OF GUARANTY

GUARANTY

THIS GUARANTY is made this 8th day of June, 2011, by Cemstone Products Company, a Minnesota corporation, and Ames Construction, Inc., a Minnesota corporation ("Guarantor").

BACKGROUND:

A. REGENTS OF THE UNIVERSITY OF MINNESOTA, a Minnesota constitutional corporation ("University"), and DAKOTA AGGREGATES, LLC, a Minnesota limited liability company ("Lessee"), are about to enter into a certain Mining Lease Agreement dated effective on or about the date hereof (the "Lease"), for approximately 1,722 acres of land in Dakota County, Minnesota, and certain improvements located thereon, as more particularly described in the Lease.

B. Cemstone Products Company and Ames Construction, Inc. collectively own 100% of the membership interests of Lessee and therefore benefit directly from the Lease.

C. University has agreed to grant, execute and deliver the Lease to Lessee in consideration, among other things, of the covenants and obligations made and assumed by Guarantor as herein set forth.

AGREEMENT:

In order to induce University to execute and deliver the Lease and in further consideration of the sum of ten and no/100 dollars ($10.00) and other good and valuable consideration paid by University to Guarantor, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor irrevocably and unconditionally agrees as follows:

1. Guarantor hereby guarantees, without the necessity of prior notice, the full and prompt payment of all sums payable by Lessee under the Lease (including without limitation all Production Royalty payments, Initial Advanced Minimum Royalty payments and Annual Minimum Royalty payments), and the due and punctual performance of all of Lessee’s other obligations thereunder (including without limitation all payment and other obligations that, pursuant to the express terms of the Lease, survive the expiration or earlier termination of the Lease).
2. Guarantor hereby guarantees, without the necessity of prior notice, the due and punctual payment in full of any and all loss, damages or expenses incurred by University or the LLC (as defined in the Lease) and arising out of any default by Lessee in performing any of its obligations under the Lease, including but not limited to, all reasonable attorneys’ fees which University incurs as the result of the default of Lessee or the enforcement of this Guaranty.

3. University may, in its sole discretion, without notice to or consent of Guarantor and without in any way affecting or terminating any of Guarantor’s obligations and liabilities hereunder, from time to time, (a) waive compliance with the terms of the Lease or any default thereunder; (b) amend, modify or supplement any of the provisions of the Lease; (c) grant any extension or renewal of the terms of the Lease; (d) effect any release, compromise or settlement in connection therewith; (e) assign or otherwise transfer any or all of University’s interest in the Lease; or (f) accept or discharge any other person as a guarantor of any or all of Lessee’s obligations under the provisions of the Lease.

4. Guarantor’s obligations hereunder (a) shall be unconditional, irrespective of the enforceability of the Lease or any other circumstance which might otherwise constitute a discharge of a guarantor or Lessee at law or in equity; (b) shall be primary; (c) shall not be conditioned upon University’s pursuit of any remedy which it has against Lessee or any other person; and (d) shall survive and shall not be diminished, impaired or delayed in connection with (i) any bankruptcy, insolvency, reorganization, liquidation or similar proceeding relating to Lessee, its properties or creditors, (ii) any transfer, assignment, sublease or termination of Lessee’s interest under the Lease, or (iii) expiration of the Lease.

5. All rights and remedies of University under this Guaranty, the Lease, or by law are separate and cumulative, and the exercise of one shall not limit or prejudice the exercise of any other such rights or remedies. Any waivers or consents by Guarantor as set forth in this Guaranty shall not be deemed exclusive of any additional waivers or consents by Guarantor which may exist in law or equity.

6. Guarantor hereby waives trial by jury in any action brought by University under or by virtue of this Guaranty. This covenant is made by Guarantor as a further inducement to University to enter into the Lease.

7. Guarantor agrees to deliver to University a written instrument, duly executed and acknowledged, certifying that this Guaranty is in full force and effect, that University is not in default (if this is in fact the case) in the performance of any of its obligations under the Lease and stating any other fact or certifying any other condition reasonably requested by University or its assignees or by any mortgagee or prospective mortgagee or their assignees or by any purchaser of the property which is the subject of the Lease or any interest in such property including, but not limited to, stating that it is understood that such written instrument may be relied upon by any of the foregoing parties. The foregoing instrument shall be furnished within ten (10) days after receipt of University’s written request which may be made at any time and from time to time and shall be addressed to University and any mortgagee, prospective mortgagee, purchaser or other party specified by University.
8. If Guarantor pays any sum to or for the benefit of University pursuant to this Guaranty, then, while any Event of Default (as defined in the Lease) exists or any amounts are due and owing by Lessee to University under the Lease (whether before or after termination of the Lease), Guarantor shall have no right of contribution, indemnification, exoneration, reimbursement, subrogation or other right or remedy against or with respect to Lessee, any other guarantor, or any collateral, whether real, personal or mixed, securing the obligations of Lessee to University, and Guarantor hereby waives and releases all and any such rights which it may now or hereafter have during the continuance of an Event of Default.

9. If Guarantor advances any sums to Lessee or its successors or assigns or if Lessee or its successors or assigns shall hereafter become indebted to Guarantor, such sums and indebtedness shall be subordinate in all respects to the amounts then or thereafter due and owing to University by Lessee.

10. This Guaranty shall be binding upon Guarantor, and Guarantor’s heirs, administrators, executors, successors and assigns, and shall inure to the benefit of University and its heirs, successors and assigns. Without limiting the generality of the preceding sentence, Guarantor specifically agrees that this Guaranty may be (a) freely assigned by University and (b) enforced by University’s mortgagee.

11. The liability of the Guarantor hereunder, if more than one, shall be joint and several. In addition, if one or more other guarantors have guaranteed Lessee’s obligations under the Lease, then the liability of the Guarantor hereunder and the liability of such other guarantors shall be joint and several. For purposes of this instrument the singular shall be deemed to include the plural, and the neuter shall be deemed to include the masculine and feminine, as the context may require.

12. If any provision of this Guaranty is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Guaranty shall remain in full force and effect and shall be liberally construed in favor of University in order to effect the provisions of this Guaranty.

13. Guarantor agrees that this Guaranty shall be governed by and construed according to the laws of the State of Minnesota and that Guarantor is subject to the jurisdiction of the courts of Dakota County, Minnesota, and Hennepin County, Minnesota.

14. This Guaranty may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Guaranty.
IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered as of the day and year first above written.

Cemstone Products Company,
a Minnesota corporation

By: ________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________

Ames Construction, Inc.,
a Minnesota corporation

By: ________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________
GUARANTY

THIS GUARANTY is made this 8th day of June, 2011, by Cemstone Products Company, a Minnesota corporation, and Ames Construction, Inc., a Minnesota corporation ("Guarantor").

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A. REGENTS OF THE UNIVERSITY OF MINNESOTA, a Minnesota constitutional corporation ("University"), and DAKOTA AGGREGATES, LLC, a Minnesota limited liability company ("Lessee"), are about to enter into a certain Mining Lease Agreement dated effective on or about the date hereof (the "Lease"), for approximately 1,722 acres of land in Dakota County, Minnesota, and certain improvements located thereon, as more particularly described in the Lease.

B. Cemstone Products Company and Ames Construction, Inc. collectively own 100% of the membership interests of Lessee and therefore benefit directly from the Lease.

C. University has agreed to grant, execute and deliver the Lease to Lessee in consideration, among other things, of the covenants and obligations made and assumed by Guarantor as herein set forth.

AGREEMENT:

In order to induce University to execute and deliver the Lease and in further consideration of the sum of ten and no/100 dollars ($10.00) and other good and valuable consideration paid by University to Guarantor, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor irrevocably and unconditionally agrees as follows:

1. Guarantor hereby guarantees, without the necessity of prior notice, the full and prompt payment of all sums payable by Lessee under the Lease (including without limitation all Production Royalty payments, Initial Advanced Minimum Royalty payments and Annual Minimum Royalty payments), and the due and punctual performance of all of Lessee’s other obligations thereunder (including without limitation all payment and other obligations that, pursuant to the express terms of the Lease, survive the expiration or earlier termination of the Lease).

2. Guarantor hereby guarantees, without the necessity of prior notice, the due and punctual payment in full of any and all loss, damages or expenses incurred by University or the LLC (as defined in the Lease) and arising out of any default by Lessee in performing any of its obligations under the Lease, including but not limited to, all reasonable attorneys’ fees which University incurs as the result of the default of Lessee or the enforcement of this Guaranty.
3. University may, in its sole discretion, without notice to or consent of Guarantor and without in any way affecting or terminating any of Guarantor’s obligations and liabilities hereunder, from time to time, (a) waive compliance with the terms of the Lease or any default thereunder; (b) amend, modify or supplement any of the provisions of the Lease; (c) grant any extension or renewal of the terms of the Lease; (d) effect any release, compromise or settlement in connection therewith; (e) assign or otherwise transfer any or all of University’s interest in the Lease; or (f) accept or discharge any other person as a guarantor of any or all of Lessee’s obligations under the provisions of the Lease.

4. Guarantor’s obligations hereunder (a) shall be unconditional, irrespective of the enforceability of the Lease or any other circumstance which might otherwise constitute a discharge of a guarantor or Lessee at law or in equity; (b) shall be primary; (c) shall not be conditioned upon University’s pursuit of any remedy which it has against Lessee or any other person; and (d) shall survive and shall not be diminished, impaired or delayed in connection with (i) any bankruptcy, insolvency, reorganization, liquidation or similar proceeding relating to Lessee, its properties or creditors, (ii) any transfer, assignment, sublease or termination of Lessee’s interest under the Lease, or (iii) expiration of the Lease.

5. All rights and remedies of University under this Guaranty, the Lease, or by law are separate and cumulative, and the exercise of one shall not limit or prejudice the exercise of any other such rights or remedies. Any waivers or consents by Guarantor as set forth in this Guaranty shall not be deemed exclusive of any additional waivers or consents by Guarantor which may exist in law or equity.

6. Guarantor hereby waives trial by jury in any action brought by University under or by virtue of this Guaranty. This covenant is made by Guarantor as a further inducement to University to enter into the Lease.

7. Guarantor agrees to deliver to University a written instrument, duly executed and acknowledged, certifying that this Guaranty is in full force and effect, that University is not in default (if this is in fact the case) in the performance of any of its obligations under the Lease and stating any other fact or certifying any other condition reasonably requested by University or its assignees or by any mortgagee or prospective mortgagee or their assignees or by any purchaser of the property which is the subject of the Lease or any interest in such property including, but not limited to, stating that it is understood that such written instrument may be relied upon by any of the foregoing parties. The foregoing instrument shall be furnished within ten (10) days after receipt of University’s written request which may be made at any time and from time to time and shall be addressed to University and any mortgagee, prospective mortgagee, purchaser or other party specified by University.

8. If Guarantor pays any sum to or for the benefit of University pursuant to this Guaranty, then, while any Event of Default (as defined in the Lease) exists or any amounts are due and owing by Lessee to University under the Lease (whether before or after termination of the Lease), Guarantor shall have no right of contribution, indemnification, exoneriation, reimbursement, subrogation or other right or remedy against or with respect to Lessee, any other guarantor, or any collateral, whether real, personal or mixed, securing the obligations of Lessee.
to University, and Guarantor hereby waives and releases all and any such rights which it may now or hereafter have during the continuance of an Event of Default.

9. If Guarantor advances any sums to Lessee or its successors or assigns or if Lessee or its successors or assigns shall hereafter become indebted to Guarantor, such sums and indebtedness shall be subordinate in all respects to the amounts then or thereafter due and owing to University by Lessee.

10. This Guaranty shall be binding upon Guarantor, and Guarantor’s heirs, administrators, executors, successors and assigns, and shall inure to the benefit of University and its heirs, successors and assigns. Without limiting the generality of the preceding sentence, Guarantor specifically agrees that this Guaranty may be (a) freely assigned by University and (b) enforced by University’s mortgagee.

11. The liability of the Guarantor hereunder, if more than one, shall be joint and several. In addition, if one or more other guarantors have guaranteed Lessee’s obligations under the Lease, then the liability of the Guarantor hereunder and the liability of such other guarantors shall be joint and several. For purposes of this instrument the singular shall be deemed to include the plural, and the neuter shall be deemed to include the masculine and feminine, as the context may require.

12. If any provision of this Guaranty is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Guaranty shall remain in full force and effect and shall be liberally construed in favor of University in order to effect the provisions of this Guaranty.

13. Guarantor agrees that this Guaranty shall be governed by and construed according to the laws of the State of Minnesota and that Guarantor is subject to the jurisdiction of the courts of Dakota County, Minnesota, and Hennepin County, Minnesota.

14. This Guaranty may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Guaranty.
IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered as of the day and year first above written.

Cemstone Products Company,
a Minnesota corporation

By: ____________________________
Name: H.T. Becken
Title: Chief Executive Officer
Date: June 8, 2011

Ames Construction, Inc.,
a Minnesota corporation

By: ____________________________
Name: Raymond G. Ames
Title: President
Date: June 8, 2011