



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Environmental
Conservation**

DIVISION OF AIR QUALITY
Director's Office

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CERTIFIED MAIL: 7014 0510 0001 9932 8330
Return Receipt Requested

February 27, 2015

Ms. Lisa Wade
Chickaloon Village Traditional Council
P.O. Box 1105
Chickaloon, AK 99674

Subject: Informal Review of Air Quality Minor Permit No. AQ1227MSS04

Dear Ms. Wade:

I have received the Chickaloon Village Traditional Council (CVTC) informal review request dated February 19, 2015 related to the February 5, 2015 action regarding Air Quality Control Minor Permit AQ1227MSS04 for the Usibelli Coal Mine, Inc. (Usibelli) Wishbone Hill Coal Mining & Processing Operation. The purpose of this letter is to inform you that the transmittal received from Earthjustice on behalf of CVTC contains the necessary information required under 18 AAC 15.185 for an informal review and I have accepted your request.

Based on my initial review of the material received, I find that I need some additional information in order to properly evaluate your request. Therefore, in accordance with 18 AAC 15.185(c), I am requesting the following information from you:

- At page 6 of the letter, CVTC questions Usibelli's characterization of its authority to exclude the public, claiming you are unaware of what Stipulation 13 to the Lease ADL 224865 provides. I have enclosed a copy of ADL 224865, which includes Attachment "B" containing Stipulation 13. Please identify the language in ADL 224865 which you believe does not support Usibelli's claimed authority to exclude public access under the lease.
- On page 6, CVTC also raised concerns with respect to public access and Lease ADL 225305. Please identify all public roads, trails, waters, or public assessment easements which you contend fall within the ambient air boundary for this lease.
- On page 8-9, CVTC contends that terrain and vegetation on the eastern edge of the ambient air boundary do not constitute a natural barrier to public access. In my July 10, 2014 information request to the CVTC, I requested that you produce "[a]ll photographs and other

evidence you may have showing vegetation, topography, and other natural conditions in the area of the eastern side of the permit's ambient air boundary." In response, CVTC refused to share relevant photographs with DEC without a "formal consultation" in order to protect the sensitive nature of sacred sites. Since that time, the Air Permit Program further investigated and documented the natural barriers along the eastern boundary and clarified public access requirements. In order to improve my factual understanding of CVTC's ambient boundary concerns, I hereby renew my request for this information. Any information received would be made a part of the permit record. If the requested information is not received, I will be unable to consider it as part of my informal review decision.

In order to provide for efficient processing of this request, please provide any information in response to this letter by March 20, 2015. There will be a management change within DEC during the course of this informal review and another individual will be serving as Air Quality Director after March 1, 2015. Because of this pending transition, I request that you forward your response to both myself and Steve Ross at Steven.Ross@alaska.gov. If you have any questions about this request you may contact me at Alice.Edwards@alaska.gov or by phone at (907) 465-5109.

Sincerely,



Alice Edwards, Director
Division of Air Quality

Enclosure: Lease ADL 224865

cc: John Kuterbach, ADEC/APP, Juneau
Zeena Siddeek, ADEC/APP, Juneau
Steve Ross, Attorney General's Office
Gary Mendivil, ADEC/Commissioner's Office
Colin O'Brien, cobrien@earthjustice.org
Robert Brown, UCM, rob@usibelli.com

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT
P.O. Box 107005
Anchorage, Alaska 99510-7005

ADL No. 224865

LEASE AGREEMENT

AS 38.05.070

This Lease Agreement is made and entered into this 16 day of April, 19 90, between the State of Alaska, by and through the Director of the Division of Land and Water Management with the consent and concurrence of the Commissioner of Natural Resources (hereinafter referred to as "the Lessor"), and Idemitsu Alaska, Inc.

whose address is c/o McKinley Mining, 634 S. Bailey, Suite 205, Palmer, Alaska 99645

(hereinafter referred to as "the Lessee").

WITNESSETH:

WHEREAS, the Lessor has undertaken the necessary administrative actions under applicable laws and regulations to fully authorize and enable the lease of the Parcel described herein, which is acknowledged by the Lessee by his signature hereto;

WHEREAS, the Lessee is aware of the provisions of Title 38, Alaska Statutes, Title 11, Alaska Administrative Code, and other applicable laws, regulations, and ordinances, and fully understands the duties and obligations of the Lessee under this Lease, and the rights and remedies of the Lessor,

NOW THEREFORE, the Lessor and the Lessee, in consideration of the mutual covenants and conditions stated in this Lease, agree as follows:

The Lessor agrees to lease to the Lessee the following parcel of land (hereinafter referred to as "the Parcel") which is situated in the State of Alaska and is described as follows:

See Attachment "A", Page 11, LEGAL DESCRIPTION

EXCEPTING AND RESERVING THEREFROM, to the Lessor and its assigns during the term of this Lease, the following specific interests, which shall be in addition to and not in derogation of any general reservations to the Lessor which are required by law and which may be stated elsewhere in this Lease:

Subject to:

ADL 52715 - 50 foot wide public access easement

ADL 202787 - 100 foot wide utility easement

ADL 218234 - 100 foot wide public access easement

Stipulations at Attachment "B", Page 12

TO HAVE AND TO HOLD the said demised premises for a term of Twenty Five (25) years commencing on the 16th day of April, 19 90 and ending at 12 o'clock midnight on the 15th day of April, ~~2015~~, unless sooner terminated as hereinafter provided.

The Lessee shall pay to the Lessor rental as follows: Equal Annual payments, in advance, on or before the 16th day of April of every year during said term at the rate of ten thousand two hundred sixty dollars (\$ 10,260.00) per year, such annual rental payments to be subject to adjustment following expiration of the initial 25-year period of this lease and at each 10-year period thereafter pursuant to AS 38.05 as enacted, or as may be hereafter amended.

It is agreed that the covenants, terms and agreements herein contained shall be binding upon the successors and assigns of the respective parties hereto.

THE LESSOR AND THE LESSEE FURTHER COVENANT AND AGREE AS FOLLOWS:

1. Use of Parcel. The Lessee shall use and occupy the Parcel in compliance with all applicable laws, regulations, ordinances, and orders which a public authority has promulgated or may promulgate, including those of a building or zoning authority and those relating to pollution and sanitation control. The Lessee shall not permit any unlawful occupation, business, or trade to be conducted on the Parcel. The Lessee shall properly locate himself and his improvements on the Parcel, and shall not commit waste of the Parcel, whether ameliorated or otherwise. Notwithstanding such laws, regulations, ordinances, and orders, the Lessee shall maintain the Parcel in a reasonably neat and clean condition, and take all prudent precautions to prevent or suppress pollution of the ground, surface water, air, or land, and to prevent or suppress grass, brush, or forest fires, and to prevent erosion or destruction of the land.

2. Permanent Improvements. The Lessee must within 90 days of completion of any site improvements including, but not limited to, structural improvements, clearing, leveling, excavation, and backfill, file with the Lessor adequate and reasonable documentation of such improvements, setting forth all applicable costs and quantities. Failure to provide such documentation will result in loss of credit for such improvements in determination of the original condition of the Parcel for reappraisal purposes.

3. Encumbrance of Parcel. The Lessee, during the term of this Lease, shall not encumber or cloud the Lessor's title to the Parcel, or any portion thereof, nor enter into any lease, easement, or other obligation of the Lessor's title without the prior written consent of the Lessor; and any such act or omission, without the prior written consent of the Lessor, shall be void against the Lessor.

4. Assignment of Parcel. The Lessee may not assign or sublet the Parcel, without the prior written approval of the Lessor. The Lessor may approve such assignment or subletting if the Lessor finds it to be in the best interest of the State. No assignment or subletting of the Parcel shall be approved until the assignee agrees to be subject to and governed by the provisions of this Lease in the same manner as the original Lessee. No such assignment or subletting will be effective until approved by the Lessor in writing. No assignment or subletting of the Parcel, or any portion thereof, by the Lessee shall annul the Lessee's obligation to pay the rent herein required for the full term of this lease. Except as provided in this lease, no subdivision of the leasehold interest, including any exposed airspace thereon, shall occur.

5. Denial of Warranty Regarding Conditions. The Lessor makes no warranty, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the Parcel, to include, without limitation, the soil conditions, water drainage, natural or artificial hazards which may exist, or the profitability or fitness of the Parcel for any use.

6. Agreement to Terms of Lease Documents. (a) The Lessor and the Lessee agree and recognize that each of the covenants and conditions in this Lease and any attachments thereto are merged and incorporated into this agreement and shall be binding upon themselves and upon their respective successors and assigns and shall inure to their benefit. The Lessor and the Lessee further agree and recognize that this Lease shall be conditioned upon satisfactory performance by the Lessor and the Lessee of all covenants contained herein.

(b) If all or part of said Parcel has been tentatively approved, but not yet patented, by the United States to the Lessor, then this Lease shall be conditioned upon receipt by the Lessor of such patent. If for any reason the Lessor does not receive patent, any rental payments made to the Lessor under this Lease will not be refunded. Any prepaid lease rentals on lands to which patent is denied the Lessor shall be refunded to the Lessee of record and any properly recorded lienholder, if any, jointly. The money refunded shall, however, be limited to the prorata portion of the unexpired term. The Lessor shall have no further liability to the Lessee for the termination of the Lease.

7. Payment of Taxes and Assessments. The Lessee shall pay all taxes and assessments accruing against the Parcel during the term of the Lease.

8. Right-of-Way for Public Highways and Utilities. In the event that the Parcel borders or includes one or more section lines, the Lessor hereby expressly reserves unto itself and its successors and assigns a right-of-way 100 feet wide and centered on such section line or lines.

9. Navigable and Public Waters. The Lessor reserves an easement 50 feet wide for public access along the mean high water line or ordinary high water mark of all water bodies listed in this Lease which are bordering on or included within the Parcel. Public easements to and along listed water bodies are reserved for all of those uses and purposes normally associated with or incident to an easement for access to the public resources of the water body to and along which the easement has been reserved. No public access easement may be obstructed or otherwise rendered by the Lessee incapable of reasonable use by the public for the purposes for which it was reserved. No public access easement may be vacated, abandoned, or extinguished without approval of the Lessor.

10. Reservation of Easements. The Lessor expressly reserves the right to take for the use of the State of Alaska and the right to grant to third parties, easements or rights-of-way of unlimited size across the Parcel herein leased if it is determined to be in the best interests of the State to do so, even though the creation of the easement or right-of-way terminates the entire leasehold estate; provided, however, that the Lessee shall be entitled to compensation for all improvements or crops which are damaged or destroyed as a direct result of such easement or right-of-way.

11. Condemnation of Leasehold or Improvements. With the exception of the taking of easements or rights-of-way which is governed by paragraph 10 above, if the whole or any part of the Parcel is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions control:

(a) Taking of the entire premises. If all of the premises are taken by condemnation, the terms of the Lease and all rights of the Lessee will immediately terminate, and the rent must be adjusted so that it is due only until the date the Lessee is required to surrender possession of the premises. The Lessor is entitled to all the condemnation proceeds, except that the Lessee will be paid the portion of the proceeds attributable to the fair market value of the buildings or improvements placed on the condemned premises by the Lessee.

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

(1) If the taking by condemnation reduces the ground area of the Parcel by at least 30 percent or materially affects the use being made by the Lessee of the Parcel, the Lessee has the right to elect to terminate or not to terminate the Lease by written notice to the Lessor not later than 180 days after the date of taking.

(2) If the Lessee elects to terminate, the provisions in (a) of this subsection govern the condemned portion of the Parcel and the terms of the Lease govern disposal of the remainder of any buildings or improvements made by the Lessee.

(3) If the Lessee elects not to terminate, the Lease continues and the Lessor is entitled to the full condemnation proceeds except the portion attributable to the fair market value of the buildings or improvements placed on the condemned portion of the premises by the Lessee. Rent at the existing rate will terminate on the date of taking. Except as it may be adjusted from time to time under the terms of the Lease and applicable statutes, rent for the balance of the term will be adjusted by the Lessor to reflect the taking.

(c) Taking of insubstantial part of premises. If the taking by condemnation reduces the ground area of the Parcel by less than 30 percent and the Lessor determines that the taking is of such an insubstantial portion that the Lessee's use of the Parcel is not materially affected, the provisions of (b)(3) of this subsection will govern.

12. Access. The Lessor makes no representations or warranty that it will construct or maintain access to the Parcel.

13. Valid Existing Rights. This Lease is entered into and made subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land in existence on the date of execution of this Lease.

14. Inspection. The Lessor shall have reasonable access to the Parcel for purposes of inspection regarding the faithful performance of the covenants and conditions of this Lease and for the performance of other lawful requirements.

15. **Mineral Reservations.** The Lessor hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils. The Lessor also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes, hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Provided, however, that no rights reserved hereunder shall be exercised by the Lessor or its subsurface lessees, until provision has been made by the Lessor or its subsurface lessees to pay to the Lessee of the land upon which the rights are herein reserved, full payment for all damages sustained by said Lessee by reason of entering upon said land; and provided that, if said Lessee for any cause whatsoever refuses or neglects to settle said damages, the Lessor or its subsurface lessees, or any applicant for a subsurface lease, contract or option from the Lessor or its subsurface lessee for the purpose of exploring for or extracting valuable minerals, coal, petroleum, natural gas, or geothermal resources shall have the right, after posting a surety bond with the Lessor issued by a corporation qualified to do business in Alaska and licensed to sell insurance in Alaska, or after posting with the Lessor a sufficient bond executed by one or more individual sureties approved by the Lessor and after due notice and an opportunity to be heard, to exercise rights granted to it for reasonable use of the surface required for the full enjoyment of the reserved subsurface rights which it holds. Each surety bond shall be sufficient in amount and security to secure the affected rights of the surface Lessee, and such Lessee and the Lessor or its subsurface lessee shall have the standing which may be necessary to determine the damages which the surface Lessee of such lands may suffer, and the security appropriate to hold the surface Lessee harmless in relation thereto.

16. **Surface Reservations.** Unless otherwise stated in this Lease or in an attachment or amendment hereto, the Lessee shall not sell or remove for use elsewhere any of the surface resources of the parcel, e.g., stone, gravel, sand, peat, topsoil, timber, or any other material valuable for building or commercial purposes; provided, however, the Lessee may make reasonable personal use of such materials on the site.

17. **Appropriation or Disturbance of Waters.** (a) During the term of this Lease, the Lessee shall have the right to apply for an appropriation of ground or surface water on the Parcel in accordance with the Alaska Water Use Act. All water applied for and appropriated during the term of this Lease shall remain appurtenant to the Parcel during said term, and such water and water rights shall not be severed or transferred from the Parcel or any part thereof during said term without the prior consent of the Lessor. The Lessee's rights under any permit or certificate of appropriation shall revert to the Lessor upon termination of the Lease or forfeiture of the Lease for cause.

(b) If the Lessee desires to use the Parcel to construct any form of hydraulic project or employ any equipment or engage in any activity which will use, divert, obstruct, pollute, or change the natural flow or bed of any anadromous fish river, lake or stream, the Lessee shall, prior to the commencement of any such operation, procure the approval of the Commissioner of the Department of Fish and Game.

18. Acquisition of Rights or Interests. Any right or interest acquired during the term of this Lease and accruing to the benefit of the Parcel shall remain appurtenant to the Parcel during that term, and shall not be severed or transferred from the Parcel without the prior consent of the Lessor. In the event of termination or forfeiture of this Lease, any such right or interest shall revert to the Lessor along with the Parcel.

19. Land Alterations Due to Natural or Artificial Causes. The Parcel described herein shall constitute the entire Parcel of property to be leased by the Lessor to the Lessee pursuant to this agreement. If, through natural or artificial causes, accretion or reliction of land occurs contiguous to the Parcel, the Lessee shall have no right to occupy or use such accreted land unless a separate lease is entered with the Lessor with respect to such lands. The parties agree and stipulate that the rules of law usually applicable to accretion or reliction of land shall not apply to this Lease, nor to the Parcel leased hereunder, in order that the parties may give effect to the provision agreed upon herein.

20. Waiver or Forbearance. The receipt of rent by the Lessor, with or without knowledge of any breach of the Lease by the Lessee, or of any default on the part of the Lessee in the observance or performance of any of the terms, conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease. No failure on the part of the Lessor to enforce a condition or covenant of this Lease, nor the waiver of any right hereunder by the Lessor, unless in writing, shall discharge or invalidate the application of such term or covenant; nor shall any forbearance or written waiver affect the right of the Lessor to enforce any term or covenant in the event of any subsequent breach or default. The receipt by the Lessor of rent or any other sum of money, or the termination in any manner of the Lease, or the giving by the Lessor of any notice hereunder to effect such termination, shall not reinstate, continue, or extend this Lease nor destroy or in any manner impair the validity of any such notice of termination which may have been given hereunder by the Lessor to the Lessee prior to the receipt of any such sum of money or other consideration, unless the contrary effect shall be expressed in writing and signed by the Lessor.

21. Breach and Remedies. (a) Time is of the essence in the Lease Agreement. If the Lessee shall breach the performance of any of the terms, covenants, conditions or stipulations contained herein or attached hereto, and said breach shall not be remedied within 60 days after written notice of such breach has been served upon the Lessee and the holder of a security interest by the Lessor, the Lessee shall be subject to such legal action as the Lessor shall deem appropriate, including, but not limited to, the termination of this Lease, provided that no improvements now upon the Parcel, or which may be placed thereon during the term of this Lease, may be removed therefrom during any time in which the Lease may be in breach. In the event that this Lease is terminated for breach of any of the covenants or conditions contained herein or attached hereto, all rents paid by the Lessee shall be forfeited to and retained by the Lessor not as a penalty but as liquidated damages. The Lessor shall not be liable for any expenditures made by the Lessee or undertaken by the Lessee under this Lease prior to termination.

(b) If the Lessee fails to cure or remedy a breach of default within the time allowed in (a) of this paragraph, the holder of a security interest who has received notice under (a) of this paragraph may cure or remedy the breach or default if the breach or default can be cured by the payment of money or, if this cannot be done, by performing or undertaking in writing to perform the terms, covenants, restrictions and conditions of the lease capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this paragraph, or within any additional period which the Lessor may allow for good cause.

(c) In the event that this Lease is terminated, or in the event that the Parcel, or any part thereof is abandoned by the Lessee during the term of this Lease, the Lessor may immediately, or at any time thereafter, enter or re-enter and take possession of said Parcel, or any part thereof, and without liability for any damage therefor, remove all persons and property therefrom either by summary proceedings or by suitable action at law; provided, however, that the words "enter" and "re-enter" as used herein are not restricted to their technical legal meaning. Any entry or re-entry, possession, repossession, or dispossession by the Lessor, whether taken by summary proceedings or otherwise, shall not be deemed to absolve, relieve, release or discharge the Lessee, either in whole or part, for any monetary liability under the Lease.

22. Disposition of Improvements and Chattels After Termination. (a) The Lessee shall, within 60 days after termination of the Lease by the Lessor or by operation of law, remove all improvements and chattels located on the Parcel, provided that the Lessor first determines that such removal will not cause injury or damage to the Parcel or seriously impair its redisposal. Following such removal, the Lessee shall leave the Parcel in a safe and clean condition acceptable to the Lessor. The Lessor may, in its discretion, extend the time for removal of improvements under this subparagraph where undue hardship is demonstrated.

(b) If any improvements or chattels having an appraised value exceeding \$10,000.00, as determined by the Lessor, are not removed from the Parcel within the time allowed, they shall, upon 30 days prior written notice to the Lessee, be sold at public auction under the direction of the Lessor. The proceeds of sale shall inure to the Lessee who placed the improvements or chattels on the land, after deduction for the benefit of the Lessor of all monies due and owing under this Lease and all expenses incurred in administering the termination and conducting the sale. If there are no other bidders at such sale, the Lessor is authorized to bid on such improvements or chattels. In such event, the Lessor shall acquire all rights, both legal and equitable, which any other purchaser could acquire by reason of said sale and purchase.

(c) Any chattels or improvements having a total appraised value of \$10,000.00 or less, as determined by the Lessor, and which are authorized for removal by the Lessor but are not removed within the time allowed, shall become the absolute property of the Lessor upon the expiration of the time allowed.

(d) Authorized improvements of the Lessee which the Lessor determines have become fixtures of the Parcel shall be purchased by the subsequent purchaser or lessee. There will be no compensation to the Lessee for improvements which were not authorized under the Lease.

23. Indemnity to Lessor. During the term of the Lease the Lessee shall indemnify and hold the Lessor harmless from and against all claims and demands for loss or damage, including property damage, personal injury, wrongful death, and wage or employment claims, arising out of or in connection with the use or occupancy of the Parcel by the Lessee or by any other person holding under the Lessee, or at its sufferance or invitation; and from any accident or fire on the Parcel; and from any nuisance made or suffered thereon; and from any failure by the Lessee to keep the Parcel in a safe and lawful condition consistent with applicable laws, regulations, ordinances, or orders; and from any assignment, sublease, or conveyance, attempted or successful, by the Lessee of the Parcel or any part thereof or interest therein contrary to the conditions and covenants of this Lease. The Lessee will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Parcel at the sole risk of the Lessee, and will save the Lessor harmless from any claim of loss or damage thereto by any cause whatsoever.

24. Surrender of Leasehold. Upon the expiration, termination or cancellation of this Lease the Lessee shall quietly and peaceably leave, surrender and yield up unto the Lessor all of the Parcel.

25. Notices. All notices required or permitted under this Lease Agreement shall be made by certified mail, postage prepaid, to the parties at the following addresses:

To the Lessor: Division of Land and Water Management
 P.O. Box 107005
 Anchorage, Alaska 99510-7005

To the Lessee: Idemitsu Alaska, Inc.
 c/o McKinley Mining
 634 S. Bailey
 Suite 205
 Palmer, Alaska 99645

Any notice or demand which must be given or made by the Lessor or the Lessee shall be in writing and shall be complete if sent by United States certified mail to the address shown in the Lease Agreement, or to such other address as each of the parties may designate in writing from time to time. A copy of any such notice shall be forwarded to the Lessor, and to the holder of any security interest in the Parcel who has properly recorded its interest in the Lease with the Lessor.

26. Service Charges. The Lessee shall pay a service charge for any late payment or returned check issued by it as follows:

(a) Late Payment Penalty: A service charge plus annual interest (twice the interest rate charged on installment payments at the prevailing rate for real estate mortgage loans made by the Federal Land Bank for the farm credit district for Alaska) on the amount due will be charged on a past-due account until payment is received by the Lessor or until the Lease Agreement termination date is reached. Acceptance of a late payment or of a service charge for a late payment is subject to the Lessor's rights under paragraphs 20 and 21 of this Lease.

(b) Returned Check Penalty: A service charge will be assessed for any check on which the bank refuses payment. If the bank refuses payment, the default termination date remains the same. Late penalties under (a) of this paragraph shall continue to accumulate.

27. Integration and Modification. This Lease, including all attachments and documents which by reference are incorporated herein or made a part hereof, contains the entire agreement between the parties hereto.

This Lease may not be modified or amended except by a document signed by both parties hereto, and any purported amendment or modification shall be without legal effect until reduced to writing and signed by both parties hereto.

28. Severability of Clauses of Lease Agreement. If any clause, or provision, herein contained, shall be adjudged to be invalid, it shall not affect the validity of any other clause or provision of this Lease or constitute any cause of action in favor of either party as against the other.

IN WITNESS WHEREOF the State of Alaska, as Lessor, acting through the Director of the Division of Land and Water Management of the Department of Natural Resources or his lawfully-designated representative, and otherwise being lawfully authorized, and the Lessee have caused these presents to be executed in duplicate, and have hereunto set their respective hands, agreeing to keep, observe and perform the applicable statutes, as amended, the rules and regulations promulgated thereunder, and the terms, conditions and provisions herein contained or attached, which on the Lessor's or the Lessee's respective parts are to be kept, observed and performed.

LESSEE: IDEMITSU ALASKA, INC.
BY [Signature]
PROJECT MANAGER & SECRETARY

LESSOR:
[Signature]
FOR THE DIRECTOR
Division of Land and Water Management

APPROVED:
[Signature]
COMMISSIONER
Department of Natural Resources

[Signature]
MY COMMISSION EXPIRES
FEBRUARY 28, 1993

Attachment "A"

LEGAL DESCRIPTIONTownship 19N, Range 2E, Seward MeridianSection 27: S $\frac{1}{2}$ S $\frac{1}{2}$,Section 34: N $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$,
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Containing 380 acres, more or less.

APPROVED BY THE MATANUSKA-SUSITNA BOROUGH PLATTING
AUTHORITY IN ACCORDANCE WITH MSB 16.15.011, 40 ACRE
EXEMPTION BY DOCUMENT THIS 9TH DAY OF APRIL, 1990.John Duff
PLANNING DIRECTOR

ATTEST:

Marilyn McGuire
MARILYN MCGUIRE PLATTING CLERK

Attachment "B"

LEASE STIPULATIONS

1. Use of the parcel is limited to those activities necessary to support the storage, processing and transportation of coal.
2. Lessee shall complete construction in accordance with development plan construction schedule of a coal storage, processing and transportation facility capable of processing at least 350 tons per hour of raw coal. Any changes or extensions must be approved in advance by the Division of Land and Water Management, Southcentral Region Office.
3. By completion of construction, Lessee shall complete and submit an as-built survey of the haul road, and of facility structures.
4. Prior to the commencement of construction activities, the Lessee shall post a performance bond with the Division of Land and Water Management in the amount of \$500,000.00. The bond will be released upon completion of construction consistent with approved development plan.
5. Sections 27, 28 and the N $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$ Section 34 of the parcel may be used for general facilities necessary for the storage, processing and transportation of coal.
6. The remainder of the parcel not described in 5 above may be used only for the construction, operation and maintenance of a coal haul road.
7. The parcel shall not be used for residential purposes unless approved in advance by the Division of Land and Water Management, Southcentral Region Office.
8. On site construction activities may not begin until Lessee acquires a Surface Coal Mining Permit applicable to the parcel under AS 27.21. Site preparation activities such as surveying and brushing will be allowed before acquisition of the permit.
9. Upon abandonment, termination, expiration, revocation, cancellation, temporary or permanent shut down, or completion of the project, the parcel shall be reclaimed in accordance with 11 AAC 90.
10. Except as described at stipulation 13, public access may be restricted on the parcel by the Lessee.
11. Upon abandonment, termination, expiration, revocation, cancellation, or completion of the project, the haul road will be open for public use.
12. The portion of the haul road within section 36 may be used for official business by the Department of Corrections. This use will be subject to a memorandum of understanding between Lessee and Department of Corrections.

13. A guard shall be present at all times to facilitate public travel across the haul road on ADL 52715.
14. The Lessee shall indemnify, save harmless, and defend the Lessor (State of Alaska) and its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the Lessees's operations or use of the leased areas.
15. Insurance

Without limiting Lessees's indemnification, it is agreed that Lessee shall purchase at its own expense and maintain in force at all times during the term of this agreement the following policies of insurance. Certificates of insurance must be furnished to the Lessor prior to beginning operations under this agreement and must provide for 30 days prior notice of cancellation, non-renewal and/or material change. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach and grounds for termination of the lease. Required insurance is subject to annual review and adjustment by the Division of Risk Management, who may require reasonable increases based on increased risks.

A. Workers' Compensation Insurance

The Lessee shall provide and maintain, for all employees of the Lessee engaged in work under this lease, Workers' Compensation Insurance as required by AS 23.30. The Lessee shall be responsible for Workers' Compensation Insurance for any contractor or subcontractor who directly or indirectly provides services under this lease. This coverage must include employer's liability protection not less than \$1,000,000 per occurrence.

B. Comprehensive (Commercial) General Liability Insurance

With coverage limits not less than \$1,000,000 combined single limit per occurrence and \$5,000,000 annual aggregates where generally applicable and shall include premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements.

C. Comprehensive Automobile Liability Insurance

Covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 combined single limit per occurrence and \$5,000,000 annual aggregate.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

I. General Liability and Auto Liability Coverage

- a. The State of Alaska, its officers, its agents and its employees are to be covered as insured respects liability arising out of use of the premises or operations of the Lessee.
- b. The Lessee's insurance coverage shall be primary insurance as respects the state of Alaska, its officers, agents and employees. Any insurance or self-insurance maintained by the state shall be excess of the Lessee's insurance and shall not contribute with it.
- c. Coverage shall state that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with the respect to the limits of insurer's liability.

II. Workers' Compensation and the Employer's Liability Coverage.

- a. The insurer shall agree to waive all rights of subrogation against the State of Alaska, its officer, agents, and employees for losses arising from the lease premises.

16. Third Party Beneficiaries

The Lessor and the Lessee neither intend nor contemplate that any third person is a beneficiary of any term of this contract.

17. Non-Discrimination Statement

The Lessee shall comply with equal opportunity laws and regulations.

18. Successors in Interest

Unless otherwise provided in this lease, the terms, covenants, and conditions contained herein shall apply to bind the heirs, successors, executors, administrators, and assigns of all parties hereto, all of whom shall be jointly and severally liable hereunder.

19. Partial Invalidity

If any term, covenant, condition, or provision of this lease is determined to be invalid, void, or unenforceable, by a court of competent jurisdiction, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

20. Protection of Monuments

All survey monuments, witness corners, reference monuments, mining claim posts, bearing trees and unsurveyed lease corner posts shall be protected against damage, destruction, obliteration. Any damaged, destroyed or obliterated markers shall be re-established in accordance with accepted survey practices of the Department of Natural Resources.

21. Circumstances Which Excuse Performance

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reasons of acts of God, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.