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For amount by loan see W-10743
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From Records of Charles E. Warren Recorder of Deeds

W-7428

JAN 29 9 35 AM '68

ARVILLA E. WARREN
RECORDER, SAN JUAN COUNTY
BY

MINING LEASE

THIS MINING LEASE, made and entered into the 10th day of January, 1968, between Stanley N. Lyman and Carol P. Lyman and Chester N. and Viola R. Lyman, hereinafter called Lessors, and AMERICAN SMELTING AND REFINING COMPANY, a New Jersey Corporation, hereinafter called Lessee

WITNESSETH:

Article 1. /The lessors represents that they are the owners of the following described property, (hereinafter designated the "MINING PROPERTIES) situated in San Juan County, State of Utah.

See Exhibits "A" and "B" attached

containing 2540 acres, more or less.

Article 2. Grant of Lease. The lessors, in consideration of the royalties herein reserved and the covenants herein to be performed by the lessee, and the further consideration of Ten Dollars (\$10.00) paid by lessee to lessors, receipt of which is hereby acknowledged, hereby do lease, let and demise, unto the lessee, its successors and assigns, all ores and minerals except oil and gas, situated in, upon or under the Mining Properties, together with the right to use so much of the surface of the Mining Properties as is necessary or desirable to mine and remove such ores and minerals, together with the right to mine, remove and sell any and all ores or minerals except oil and gas,

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situated in, upon, or under the Mining Properties, and together with all rights of way, easements, water and water rights of every kind and nature which are useful, convenient or necessary for the lessee in the exploration, development and mining of all or any of the lands covered by the Mining Properties and this Mining Lease, and the milling, processing, concentrating or refining of ores and minerals mined or extracted from said Mining Properties.

Article 3. Term of Lease. The term of this lease shall be Ten (10) years ~~and as long thereafter as lessee shall continuously prosecute exploration mining or mining development work on the Mining Properties, unless sooner terminated in the manner hereinafter provided.~~ A suspension of operations after the end of the primary ten year period for a period of up to three months shall not be a cause for forfeiture of this lease. If operations after the primary ten year term are suspended for more than three months, and lessee wishes to keep this lease in force and effect, it shall increase the rental provided for in Article 6 (b) hereof to Ten Dollars (\$10.00) per acre for the lease year in which suspension occurs.

Article 4. Possession and Control. The lessee shall have and it is hereby given and granted, the right to enter into the whole and every part of the Mineral Properties, and to investigate, measure, sample, examine, test, develop, work, mine, operate, and use the same, and the water and water rights appurtenant thereto, and to mine, extract and remove from the Mineral Properties the ores and minerals, except oil and gas, therein and appurtenant and belonging thereto, and to treat, mill, ship, sell or otherwise dispose of the same and receive the full proceeds therefrom; and to erect, construct, maintain, use and

operate thereon and therein buildings, structures, machinery and equipment. The time, nature, location and extent of such or any or all mining or mining operations and cessation and resumption thereof shall be at the sole discretion of the lessee.

Article 5. Title. Lessors agree that, promptly following the execution and delivery of this lease, they will deliver to lessee such abstracts of title covering the Mining Properties as are in their possession and control. Lessee shall, at its own expense, promptly cause such abstracts to be brought up to date, and shall have 30 days after all said abstracts are brought up to date within which to examine the same and determine if the title of lessors is acceptable to lessee. Within said 30 day period lessee shall advise lessors in writing as to whether lessor's title is acceptable to lessee. Such notice shall designate those portions of the mining properties, title to which is acceptable to which is acceptable to lessee and those portions of the Mining Properties, title to which is not acceptable to lessee. Concurrently with delivery of said notice, lessee shall deliver to lessors a release releasing all rights of lessee under this Mining Lease with relation to those portions of the Mining Properties, the title to which has been designated as not acceptable to lessee. Upon delivery of such release this Mining Lease shall be deemed terminated with relation to the portion of the Mining Properties covered by said release.

Article 6. Rental. a) Simultaneously with the delivery of the notice referred to in Article 5 above, lessee shall pay lessors the sum of \$ 3.00 times the number of acres contained in the portion of the Mining Properties, the title to which is acceptable to lessee. Such payment shall constitute rental

for the first year of this Mining Lease.

(b) As long as this lease is in force and effect lessee shall, on or before the first anniversary date of this Mining Lease, and on or before each subsequent anniversary date, pay to lessors a rental payment equal to One Dollar multiplied by the number of acres of Mining Property which are on said anniversary date subject to the terms of this agreement.

Article 7. Royalties. a) Lessee agrees to pay lessors a royalty equal to 7 % of the "gross value" of all ore extracted and sold from the Mining Properties. If the ore is sold in its crude state; the "gross value" shall be the gross proceeds from the sale of the ore, less cost of transportation to market, provided, however, that if the ore is transported more than 100 miles from mine to mill, the cost of transportation in excess of that for 100 miles shall not be deducted. If the crude ore is processed by lessee, the "gross value" shall be the market value at the mine of . ores of equal quality.

b) The amounts paid as rentals, as provided in Article 6 hereof, shall be deemed advances against royalties payable during the Lease year for which such rental payment is made. Lessee shall be entitled during each Lease year to retain all amounts payable as royalties hereunder until such time as lessee has retained an amount equal to the amount which has been paid lessee as rental hereunder for said Lease year. For purposes hereof a Lease year shall be deemed to be the twelve month period commencing on the date of this lease and the twelve month period commencing on the same date each year thereafter.

c) In the event lessors own less than the entire undivided fee interest in the

in the above described property, the rentals and royalties due hereunder shall be proportionally reduced.

d) All ores shall be sold in the name of the lessee, with duplicate settlement sheets furnished to the lessor, and royalty settlements shall be made by the lessee on or before the 25th day of each and every calendar month during the term of this lease for all ores milled by the lessee and for all mill or ore buying returns received during the preceeding calendar month. Each settlement shall be accompanied by a duplicate liquidation or settlement sheet for each lot of ore milled or sold.

Article 8. Damages. Lessee agrees to pay lessors Fifty Dollars (\$50.00) for each drill hole location made by lessee, which lessors agree to accept as full and complete payment for all damages done by lessee to the surface of the lands and crops growing thereon, including damage caused by ingress and egress to such drill hole sites. Lessee agrees to notify lessors of any water found in such drill holes, and shall have the option to purchase at cost the casing in place, subject to the first right of lessee to use such water in its drilling and mining operations and PROVIDED, HOWEVER, that the use of such water by lessors will not interfere with lessee's mining operations. Lessee agrees to keep all gates closed, or install cattle guards, at lessee's discretion. Lessee agrees to pay \$200.00 Lessors for each acre of land as to which Lessee, by its activities, permanently renders the surface thereof unfillable, such as by the piling of waste thereon.

Article 9. Manner of Work. The lessee agrees to cause all work, development and mining to be done in a careful and minerlike manner and to conform in

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V. R. K.

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all respects with the mining laws and regulations of the State of Utah.

Article 10. Use of Adjacent Properties. The lessee shall have the right to remove ores, waste, water and other materials from the demised premises and to carry on general mining operations pertaining to the demised premises by means of shafts and workings on other properties controlled by lessee and to remove ores, waste, water and other materials from such other properties and to carry on general mining operations pertaining to such other properties on the surface of or through shafts and workings on the demised premises, but until weighed and sampled, all ores extracted and removed from the demised premises shall be kept separate from ores extracted and removed from any other properties.

Article 11. Records and Inspection. Lessee's maps and records of all mining operations upon the demised premises pertinent to the computation of royalties, shall be available for lessor's inspection upon request, but not more often than once each month; and the lessor may enter said property at all reasonable times for the purpose of inspecting the same, and lessee shall facilitate such inspection in every reasonable way, but lessor shall enter upon said demised property at lessor's own risk and so as not to hinder unreasonably the operations of lessee; and the lessor shall indemnify and hold harmless the lessee from any damage, claim or demand by reason of injury to or the presence of the lessor or the lessor's agents, representatives, licensees, or guests or any of them on the demised premises or approaches thereto.

Lessee agrees that it will, at all reasonable times during the term of this

agreement, make available for examination and copying by lessors, or their duly authorized representatives, any survey maps, drill hole logs and assay reports relating to the Mining Properties, and any diagrams of mine workings and shafts upon the Mining Properties which lessee has in its possession.

Article 12. State and Federal Laws. Lessee shall comply with the Workman's Compensation Laws of Utah and with Social Security, Unemployment Insurance and all other state and federal laws relating to lessee's operations and shall save lessor harmless from any claim for damages or liability by reason thereof.

Article 13. Protection from Liens and Damages. The lessee shall keep the demised premises and the whole and every part thereof free and clear of liens for labor done or work performed upon the demised premises or materials furnished to it for the development or operation thereof under this lease while the same is in force and effect, and will save and keep harmless the lessor from all costs, loss or damage which may arise by reason of injury to any persons employed by the lessee in or upon the demised premises or any part thereof, or, except as provided in Article 11 hereof, which may arise by reason of injury to any persons or damage to any property as the result of any work or operations of the lessee or of its possession and occupancy of the demised premises. A lien upon the property shall not constitute a default if the lessee in good faith disputes the validity of the claim, in which event the existence of the lien shall constitute a default only from and after the validity of the lien has been adjudicated adverse to lessee.

Article 14. Taxes. a) Lessee shall pay before they are delinquent all

taxes levied or assessed against any and all personal property, machinery and equipment placed upon the Mining Property by the lessee during the term of this lease.

b) Lessee agrees to pay 93% of all mine occupation taxes, net proceeds taxes, production or severance taxes, and all ad valorem taxes assessed against the valuation or increased valuation on the Mining Properties, and all other taxes or assessments (other than Federal or Estate Income or franchise taxes) resulting from or attributable to the production and/or sale by lessee of ores or minerals from the Mining Properties, and the balance of the tax is to be paid by lessors. The parties hereto shall have the obligation to pay their respective share of the taxes herein provided irrespective of the time the same are levied or assessed. Lessors shall pay all other real estate taxes. In order to establish a reserve fund for the payment of taxes it is hereby agreed that the lessee shall deposit with the First Security Bank of Monticello, a sum equal to 2% of the gross value (as defined in Art. 7 hereof), of the ores mined and sold, of which 93% shall be chargeable to lessee and 7% chargeable to lessors, and deduct the same from the payments to lessee and lessors. The same shall be used by said bank, as escrow holder, for the payment of all taxes based upon the extraction or production of ore, upon the mutual agreement of the parties hereto so directing the bank. If it is determined that such fund is too much or too little, then the amount set up as a reserve fund shall be either decreased or increased as needed. Any funds remaining after payment of taxes shall be refunded to the parties hereto in proportion to their liability for the payment of

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taxes.

Article 15. Forfeiture Clause. The failure of the lessee to make or cause to be made any of the payments herein provided for or to keep or perform any agreement on its part to be kept or performed according to the terms and provisions of this agreement, shall, at the election of the lessor, work a forfeiture hereof; provided, however, that in the event of a default on the part of the lessee, and the election of the lessor to terminate this agreement on account thereof, the lessor shall give to the lessee a written notice of its intention to declare a forfeiture of this agreement and to terminate the same on account thereof, specifying the particular default or defaults relied upon by it and the lessee shall have sixty (60) days after receipt of such notice in which to make good such default or defaults, in which event, there shall be no forfeiture therefor. Waiver of failure to give notice of a particular default or defaults shall not be construed as condoning any subsequent default.

Article 16. Cancellation. Lessee may surrender all or any part of the demised premises by giving lessors thirty (30) days notice, in writing, of its intention to so surrender, and upon such surrender lessee shall be relieved of all obligations under this lease in respect to such surrendered land, and to pay any rental thereon, except for the making of payments which have already accrued at the date of such surrender.

Article 17. Removal of Equipment. The lessee shall have and it is hereby given and granted 3 months after a valid forfeiture, cancellation or other termination of this agreement to remove from said property, all warehouse stocks, merchandise, materials, tools, hoists, compressors, engines, motors, pumps.

transformers, electrical accessories, metal or wooden tanks, pipes and connections, mine cars and any and all machinery, trade fixtures, and equipment erected or placed in or upon said property by it, provided that such right of removal shall not extend to machinery foundations, and underground tracks, and mine timbers in place unless lessor shall have given its previous written consent thereto. If lessee is hampered by snowdrifts, washouts, inclement weather, or other climatic conditions, from completing the removal of said equipment within the time specified, then lessors agree to extend the time by a reasonable period if requested by the lessee.

Article 18. Unavoidable Delays. If the lessee is unable to perform any of the terms or covenants of this lease except the payment of royalties, rentals and taxes, by reason of damage or delay resulting from disaster, labor disturbances, shortage of labor, strikes, lockouts, force majeure or act of God, or from any regulations or restrictions of any governmental agency, or on account of any eventuality beyond the reasonable control of lessee, the lessee shall be excused from performance during the period of such prevention.

Article 19. Notices. Any notices required or permitted to be given to the lessor hereunder shall be considered as delivered forty-eight (48) hours after the same shall have been deposited in the United States mail, duly certified, with postage thereon prepaid. All notices given hereunder shall be addressed to the respective addresses given below:

If to Lessor, *Blanding, Utah*

and if to lessee, Attention Exploration Department
120 Broadway
New York, New York 10005

and

P. O. Box 5795
Tucson, Arizona 85703

Said addresses for receiving notices may be changed by either party upon two (2) days previous written notice to the other party.

Article 20. Inurement. These presents shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of the parties hereto.

Article 21. Construction. Titles to the respective articles hereof shall not be deemed a part of this lease but shall be regarded as having been used for convenience only.

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

Shirley N. Lyman
Carol R. Lyman

Clairie W. Lyman
Viola R. Lyman

LESSORS

AMERICAN SMELTING AND REFINING CO.

C. P. Pollock

Vice President

LESSEE



Ed Home

Secretary

Approved as to form
LEGAL DEPARTMENT
BY *[Signature]*

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State of Utah)
County of San Juan) ss.



On the 10 day of January, 1968, personally appeared Slater N and Carol P. Lyman Clabee N and Viola R. Lyman, one of the signers of the foregoing instrument, who duly acknowledged that he executed the same.

Carol Lee
Notary Public

My Commission Expires: My commission expires May 17, 1968

State of New York)
County of New York) ss.

On the 22nd day of January, 1968, personally appeared before me C.P. Pollock, who, being by me duly sworn, did say that he is Vice President of American Smelting and Refining Company, and that said instrument was signed in behalf of said corporation by authority of its bylaws and said C.P. Pollock acknowledged to me that said corporation executed the same.

Clare A. Baione
Notary Public

My Commission Expires:
CLARE A. BAIONE
Notary Public, State of New York
No. 24-01333's Qualified in Kings Co.
Cert. Filed in New York Co.
Commission Expires March 30, 1969

EXHIBIT "A"

Lessors own 100 percent of surface and minerals in the following properties:

	<u>Acres (approx.)</u>
<u>T35S R23E</u>	
•Sec. 11 NE 1/4 SW 1/4	40
•Sec. 14 NW 1/4 NE 1/4	40
•Sec. 13 W 1/2 W 1/2, NE 1/4 SW 1/4	200
•Sec. 13 SW 1/4 SE 1/4	40
•Sec. 24 NE 1/2 NW 1/4 NE 1/4, NE 1/2 SE 1/4 NE 1/4	40
•Sec. 14 NE 1/2 SE 1/4 SE 1/4	20
•Sec. 28 SE 1/4 SE 1/4	40
<u>T36S R23E</u>	
•Sec. 21 SW 1/4 SW 1/4	40
•Sec. 28 W 1/2 NW 1/4, S 1/2	400
•Sec. 27 SW 1/4, SW 1/4 NW 1/4, SW 1/4 SE 1/4	240
•Sec. 34 W 1/2, W 1/2 NE 1/4	400
TOTAL	<u>1500</u>

ABSTRACT

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EXHIBIT "B"

Lessors own all of surface and 75 percent of minerals in the following properties:

<u>T35S R23E</u>	<u>Acres (approx.)</u>
•Sec. 11 S 1/2 SE 1/4	80
•Sec. 12 SW 1/4 SW 1/4, SE 1/4 SW 1/4, SW 1/4 SE 1/4	120
•Sec. 13 E 1/2 NW 1/4, W 1/2 NE 1/4	160
•Sec. 26 E 1/2 NW 1/4, W 1/2 NE 1/4, SE 1/4 NE 1/4, SW 1/4 W 1/2 SE 1/4, NE 1/4 SE 1/4	480
•Sec. 27 W 1/2 SW 1/4	80
•Sec. 33 N 1/2 NW 1/4, NW 1/4 NE 1/4	120
TOTAL	<u>1040</u>

ABSTRACT

Entry No. <u>W-7428 228</u>
Recorded <u>1-29-68</u> at <u>9:35 AM</u> . Book <u>431</u> Page <u>241</u>
FEE PAID
ARVILLA E. WARREN Recorder, San Juan County, Utah
\$ <u>22.50</u> By <u>Arvilla E. Warren</u> Deputy

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