

**METALLIC MINERAL MINING OPERATIONS  
SURFACE USE LEASE**

**No. L-9742  
DRAFT**

MICHIGAN DEPARTMENT OF NATURAL RESOURCES  
FOREST, MINERAL, AND FIRE MANAGEMENT

By authority of Part 5, Act 451 of 1994, as amended.

This Lease, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2007,

By and Between the DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES (Lessor) for the STATE OF MICHIGAN, hereafter called "Lessor", whose address is P. O. Box 30452, Lansing, Michigan 48909-7952 and KENNECOTT EAGLE MINERALS COMPANY, whose address is 1004 Harbor Hill Drive, Suite 103, Marquette, MI 49855, hereafter called "Lessee".

Whereas, pursuant to Section 503(1), Part 5 of the Natural Resources and Environmental Protection Act, 1994 PA 451 (NREPA), as amended, MCL 324.503(1), the Lessor shall: protect and conserve the natural resources of the State; provide and develop facilities for outdoor recreation; prevent the destruction of timber and other forest growth by fire or otherwise; promote the reforestation of forest lands belonging to the State; prevent and guard against the pollution of lakes and streams within the State and enforce all laws provided for that purpose with all authority granted by law; and foster and encourage the protecting and propagation of game and fish.

Whereas, pursuant to Section 503(2) of NREPA, MCL 324.503(2), the Lessor may lease lands owned or controlled by the department to any person and for any purpose that the department determines to be necessary to implement Part 5 of NREPA

Whereas, the Lessee has previously obtained the right to mine metallic minerals under State Metallic Mineral Leases No. 00602 and No. 00603 pursuant to MCL 324.502(3). The purpose of this Lease is to provide for the development, operation, and maintenance of a surface site for a metallic mineral mining operation located upon the property that is the subject of Lease No. 00603; and to provide for the associated development, operation, and maintenance of an underground site for the extraction of metallic minerals pursuant to Lease No. 00602.

Whereas, the Lessor has determined that the purpose of this Lease is necessary to implement the NREPA because the utilization of the State's surface for the stated purpose will protect and conserve the natural resources of the State and allow for development of the State's mineral resources. The mining operation location will protect other surface resources within the mining operation area and the revenue derived from the State-owned minerals within the mining unit will benefit the Lessor through the Michigan Natural Resources Trust Fund programs.

Therefore, Lessor and Lessee, for the valuable consideration specified in this Lease, agree to the following:

## Stipulations and Conditions

### 1. DESCRIPTION OF PREMISES:

Lessor leases to Lessee the described Parcels (the Premises), as shown in Exhibit A. and as described as follows:

**MARQUETTE COUNTY  
Michigamme Township  
T50N, R29W**

**N1/2 of NW1/4 and SW1/4 of NW1/4 of Section 12**

### 2. TITLE:

Lessee acknowledges that (a) Lessor makes no warranty of title with respect to the Premises; (b) Lessee has had the opportunity to make its own assessment to such title; and (c) Lessee waives any claim against Lessor for inadequate or defective title to the Premises.

### 3. LEASE ADMINISTRATION:

Lessor's Unit Manager, William Brondyke, or his successor, Gwinn Management Unit, 410 West M-35, Gwinn, MI 49841 is the Lease Administrator (Lessor's Representative) as pertains to the terms and conditions of the Lease as well as compliance with the terms and conditions of the Lease.

Lessee designates \_\_\_\_\_ as Lessee's Representative, and designates \_\_\_\_\_ as alternate Lessee's Representative as responsible to be the contacts for Lessee regarding operations under the Lease. These contacts shall be authorized to make decisions regarding the maintenance and operation of the Premises for the Lessee.

Each party will notify the other in case of a change in their respective representatives.

### 4. USE OF PREMISES:

A. Lessee hereby acknowledges that the use and occupancy of the Premises shall be subject to the provisions of the NREPA, and confined to the following specific uses:

1. To construct, install, operate, and maintain a metallic mineral mining facilities site for a metallic mineral mine operated by the Lessee. This includes installations necessary for operation of the mine, as shown in the Metallic Mineral Mining and Reclamation Plan approved by the Lessor's representative and in the Department of Environmental Quality (DEQ)-approved Mining Permit issued under Part 632 of the NREPA. A depiction of the facilities is contained in the attached Metallic Minerals Mining Operation Facilities Site Plan, Exhibit B.
2. Clearing of the Premises for the uses specified in subparagraph (1) above except for vegetation along and outside the location of the fence line shown on the Site Plan and the protections afforded to the rock outcrop in the DEQ Mining Permit and the Mining and Reclamation Plan required and approved as provided in Lease No. M-00602. Exhibits D and E respectively.
3. To restore the Premises and surface to the specifications set forth in Exhibit C and Paragraph 14.

4. Prior to occupying the Premises, Lessee shall acquire all permits necessary for the implementation of this Lease, the Mining and Reclamation Plan, and the Part 632 Mining Permit.

Lessee shall obtain Lessor's prior consent, in writing signed by the Lessor's Representative, to use the Premises for any purpose not listed above in A. 1 through 4. Lessor may terminate this Lease if, at any time, Lessee uses the Premises, without express written permission by Lessor, for purposes other than those enumerated in A. 1 through 4. This paragraph is cross-referenced in Paragraph 24. The following activities are specifically prohibited:

**B. PROHIBITED ACTIVITIES:**

1. Blocking of access roads outside the Premises unless such blockage is further approved in writing by the Lessor's Representative.
2. Any clearing activity on State land outside the Premises
3. Any damage to archaeological sites.
4. Dumping or disposal of garbage, trash, spare parts, scrap metal, and other debris onto the Premises or other State land.
5. Disposal of trees, treetops, branches, roots, stumps, and other vegetation debris onto the Premises or other State land.
6. Clearing of, or mining operation activities on the rock outcrop.

Lessor may terminate this Lease if, at any time during the term of this Lease, prohibited activities occur on the Premises. Lessor, at its option, may provide lessee an opportunity and time frame to cure violations resulting from prohibited activities. This Paragraph is cross-referenced in Paragraph 24.

**5. WASTE/NUISANCE:**

Lessee agrees not to commit, or allow to be committed, waste or nuisance on the Premises and will not use, or permit to be used, the Premises for an unlawful purpose.

**6. LESSOR'S OPERATIONS:**

Lessee covenants that its use of the Premises shall, at no time, interfere with the operations of Lessor or its use, or the Public's use, of State land adjacent to the Premises.

**7. CONDITION OF PREMISES:**

Lessee stipulates, represents and warrants that Lessee has examined the Premises, and that they are at the time of this Lease in good order, repair, and in a safe, clean, and tenantable condition. Lessee represents that it is taking possession of the Premises in "as is" condition. Lessee has made an independent environmental assessment of the Premises and has provided a copy of the environmental assessment to the Lessor's Representative. Lessee agrees to maintain the Premises in good order, repair, and in a safe and clean condition throughout the life of the Lease.

**8. TERM:**

Lessor shall furnish the Premises to Lessee for an initial term equal to that of Metallic Minerals Lease Number M-00602 and M-00603. If those leases are terminated or expire prior to completion of the mining operation and reclamation activities as provided for under the approved mining and reclamation plan, this surface use lease shall continue in force to the end date of the mine closure and reclamation activities.

The Lessor will determine the date when such mine closure and reclamation work has been successfully completed by the Lessee.

#### 9. TIMBER CONSIDERATION FEE AND MONITORING FEE:

Lessee shall pay prior to commencement of clearing operations, the standard timber consideration fee for the area to be cleared and utilized on the Premises. The standard timber consideration fee rate for the Upper Peninsula is \$1722.00 per acre. The timber consideration fee for the premises equals \$1722.00 times 120 acres, which totals \$206,640.00. The timber consideration fee shall be paid in two equal installments of \$103,320.00 due upon execution of the lease and upon its first anniversary.

Lessee shall pay a yearly lease monitoring fee to the Lessor to cover Lessor's costs of monitoring the mining operation to insure terms and conditions of the Lease are met. The lease monitoring fee will be \$4,000.00 per year, payable upon execution of this lease and upon each anniversary.

#### 10. RENT/USE FEE:

Lessee shall pay the sum of \$241,300.00 in two equal installments of \$120,650.00 as initial payment for use of the Premises. Payments are due upon execution of the lease and upon its first anniversary. Lessee shall pay the sum of \$50,000.00 for continued use of the Premises during years three through ten of the lease. Payment is due upon the second through ninth anniversaries of the lease. The lease fee for years eleven through the termination of this lease will be based at \$50,000.00 and escalated annually by the Consumer Price Index. The annual use fee payments will be payable whether the mine is actively producing minerals or not.

#### 11. LESSEE SERVICES AND REQUIREMENTS:

Lessee shall furnish the following services and abide by these conditions at its own expense:

- A. Lessee shall replace to the satisfaction of Lessor, State snowmobile trails that will be closed or affected by development and use of the premises.
- B. Lessee shall meet or exceed the groundwater, surface water and air quality monitoring requirements of State and Federal Permits.
- C. Lessee's clearing and use of the Premises at and near the rock outcrop shall be restricted to the approved use contained in the DEQ Mining Permit and the Mining and Reclamation Plan.
- D. Lessee will secure, maintain and keep the Premises in good repair.
- E. Lessee will pay for all public utilities used including, but not limited to, electric and telecommunications service. Utility service may require separate easement approval by the Lessor.
- F. Lessee is responsible for snow removal on the Premises as well as maintenance of the designated access road.
- G. Lessee shall dispose of all garbage and debris from the Premises in conformity with applicable rules and law. Lessee shall at all times keep the Premises in a clean and sanitary condition and in conformity with standards, rules and law for sanitation and public health.
- H. Lessee is responsible for all costs and expenses that may be payable or incurred in the use of the Premises in compliance with this Lease.
- I. The Lessee will provide the Lessor with 'as built' utility and flowline specifications and routes contained within the Premises upon completion of the facility or following any modification.

- J. Reports, Records and Notifications required under the DEQ Mining Permit that are sent or provided to the Supervisor of the Mineral and Mapping Unit, Office of Geological Survey, DEQ, shall also be sent or provided to the Supervisor of the Metallics and Nonmetallics and Underground Gas Storage Leasing Unit, Forest Mineral and Fire Management, DNR, within the same timeframes. Reports, Records and Notifications required under the DEQ Mining Permit that are sent or provided to the OGS Area Geologist shall also be sent or provided to the DNR Lease Administrator within the same timeframes.
- K. In addition to legal requirements, Lessee shall maintain standards of cleanliness that reflect favorable public opinion on the Lessee and the DNR. If the Lessor's Representative determines that Lessee has failed to maintain an acceptable standard of cleanliness and if after 5 working days, following verbal and written notification by Lessor, the problem is not cured to the satisfaction of Lessor, Lessor may perform or have the duties of Lessee performed by others. Lessee shall pay 120 percent of the cost of such work, whether performed by the Lessor or by others at the discretion of Lessor. Emergency situations that prevent Lessee from correction within 5 working days shall be reported to the Lessor's Representative and appropriate regulatory agencies, and another cure period will be established.

#### 12. ASSIGNMENT:

Lessee may not assign, this Lease without Lessor's prior written consent, which consent not be unreasonably withheld, delayed or denied. Lessee shall request Lessor's prior written consent at least 60 days in advance of such an assignment. With Lessor's prior written consent, an assignment shall be effective to transfer the following: (1) Lessee's rights under the lease; (2) Lessee's obligations under the lease only insofar as such obligations relate to use of the premises after the effective date of assignment; and (3) any risk of loss associated with use of the premises after the effective date of assignment. The request for Lessor's consent shall include the assignee's bond in place of the bond required under Paragraph 21 of this lease. An assignment granted without the written consent required by this paragraph shall be null and void.

#### 13. MINING OPERATIONS FACILITIES SITE PLAN:

The attached Exhibit B is the Mining Operations Facilities Site Plan (Site Plan) as of Lease inception date. A new Site Plan showing any proposed improvements must be submitted to the Lessor's Representative at least 30 days prior to the expected installation date. Lessee shall provide to the Lessor's Representative a detailed final Site Plan showing the location of all installations and structures placed on the Premises upon completion of construction and installation activities.

#### 14. COMPLETION/ABANDONMENT:

Within 90 days after expiration of the lease term, completion of the mining operation, abandonment by Lessee, or upon Lease cancellation, Lessee shall begin removal of all installations on the Premises. This shall include removal and proper disposal of all buildings, waste, waste rock, contaminated soils, groundwater or other materials, buildings and equipment and restore the Premises according to the approved Mining and Reclamation Plan. Lessee shall then grade the site to its approximate original contour, seed, mulch and fertilize exposed soil areas as specified in Exhibit C.

#### 15. LAWS, CODES AND PERMITS:

All applicable laws and related government-issued permits are made a part and condition of this Lease. Violations of any of the applicable laws and related permits shall be considered a violation of the terms and conditions of this Lease and Lessor, at its sole discretion, may seek any available legal remedy to cure the violation. No administrative rules made after the approval of this Lease shall operate to affect the term of the Lease or rental rate unless agreed to by both Lessor and Lessee.

#### 16. DAMAGE AND REPAIRS:

Lessee shall reimburse Lessor for any repairs or remediation work on the Premises resulting from damage to the Premises caused by Lessee including but not limited to damages to the environment or natural resources as defined in Section 20101 (1) (k) of 1994 PA 451, as amended, MCL 324.20101 (k).

#### 17. INSPECTION OF PREMISES:

Lessor and Lessor's agents and employees shall have the right at all reasonable times, to enter the Premises for the purpose of making any inspections or repairs, as deemed appropriate by Lessor for the preservation of the Premises.

#### 18. INDEMNIFICATION:

Lessee expressly agrees to hold harmless, defend, and indemnify Lessor, its agents and employees, from and against any and all claims, costs, losses, suits, demands, actions, liabilities, damages, causes of action or judgments, including, but not limited to, alleged violations of environmental laws, that may in any manner be imposed on or incurred by the Lessor, its agents and employees, for any bodily injury, loss of life, and/or damage to property, resulting from, arising out of, or in any way connected with Lessee's use of the Premises. This indemnification and hold harmless provision shall survive the termination of the leasehold interest and the sale of the Premises by Lessor.

#### 19. INSURANCE:

Lessee shall provide to Lessor certificates of insurance listing the State of Michigan, its several departments, boards, agencies, commissions, officers, and employees as additional insured's, within 30 calendar days following the execution and delivery of this Lease to Lessee, and every year thereafter, for the following insurance coverage. Insurance coverage shall be effective as of the effective date of this Lease. The insurance policies shall provide that they will not be modified, canceled, or allowed to expire without 30 days prior written notice given to Lessor.

- A. Lessee shall obtain commercial general liability insurance, protecting against all claims, demands, suits, actions or causes of action and judgments, settlements or recoveries, for bodily injury or property damage arising out of a condition of the Premises, or arising in connection with or as a direct or indirect result of the Lessee's use and occupancy of the Premises or its exercise of the right and privileges granted in the Lease. Lessee agrees to maintain a minimum policy limit, in the amount of **\$5,000,000.00** per occurrence for property damage, **\$2,000,000.00** per occurrence for bodily injury, and **\$10,000,000.00** aggregate.
- B. Lessee shall obtain workers' compensation insurance under the Michigan Workers' Compensation Act or similar employee benefit act or any other State act applicable to an employee, along with Employer's Liability Insurance for claims for damages because of bodily injury, occupational sickness or disease or death of an employee when workers' compensation may not be an exclusive remedy, subject to a limit of liability of not less than **\$500,000** each accident.
- C. Lessee shall maintain automobile no-fault coverage as required by law.
- D. Lessee shall maintain Pollution Liability insurance covering pollution incidents that result in bodily injury or property damage, subject to a limit of liability of not less than **\$5,000,000.00**.

#### 20. ACCIDENTS OR PROPERTY DAMAGE:

Lessee shall report verbally and in writing to the Lessor's Representative, all accidents resulting in serious personal injury or death. Notification shall be by telephone or in person within 72 hours with a written report to follow within seven business days. Lessee shall report verbally and in writing to the Lessor's Representative any damage to the Premises or adjacent State-owned land. Notification shall be by telephone or in person within 72 hours with a written report to follow within seven business days. Lessee shall report verbally and in writing to the Lessor's Representative any serious damage to the Premises or

adjacent State-owned land, such as but not limited to, fire or releases of regulated substances. Notification shall be immediately by telephone or in person with a written report to follow within seven business days. Lessee shall also provide to the Lessor all reports regarding damage to the Premises or adjacent land required by the Michigan Department of Environmental Quality.

#### 21. PERFORMANCE BOND:

As a guarantee of faithful performance of the conditions of this Lease, Lessee delivers herewith a new cash or surety bond or letter of credit in the sum of **\$1,000,000.00**. When security for the performance of the terms of this Lease or the settlement of associated claims is no longer necessary, any bond deposited will be returned to Lessee, and any letter of credit will be released. Lessee agrees that, upon Lessee's failure to fulfill any requirement of this Lease, the security deposited will be retained by the State of Michigan and applied to satisfy Lessee's obligations, without prejudice to any other rights and remedies of the State of Michigan.

#### 22. NONDISCRIMINATION:

Lessee shall comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453 as amended, MCL 37.2101 et seq.; the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 et seq.; and all other Federal, State and Local fair employment practices and equal opportunity laws. Lessee covenants that it will not discriminate against any employee or applicant for employment with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Lessee agrees to include in every subcontract entered into for the performance of this Lease this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Lease.

#### 23. UNFAIR LABOR PRACTICES:

Lessee shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 et seq.

#### 24. CANCELLATION:

Lessor may cancel this Lease provided Lessee is notified in writing at least 30 days prior to the effective date of cancellation and any one of the following occur:

- A. Lessor determines that the Premises are no longer being used for the Purposes identified in this Lease.
- B. Lessor determines that Lessee provided Lessor with information in its application for this Lease, or at any time during the Lease term, that was false or fraudulent.
- C. Lessee fails to perform any of its obligations under this Lease, and such failure is not cured within 30 days or greater time frame as determined by the Lessor, after written notice of default to Lessee.
- D. Lessee or any subcontractor, manufacturer, or supplier, of Lessee appears in the register compiled by the Michigan Department of Labor and Economic Growth 1980 PA 278, as amended, MCL 423.321 et seq. (Employers Engaging in Unfair Labor Practices Act).
- E. Lessee or any subcontractor, manufacturer or supplier of Lessee is found guilty of discrimination under 1976 PA 453, as amended, MCL 37.2101 et seq. (Elliott-Larsen Civil Rights Act); or 1976 PA 220, as amended, MCL 37.1101 et seq. (Persons with Disabilities Civil Rights Act).

25. LESSEE RIGHTS:

Upon payment of the rent and the performance of the conditions outlined herein, Lessee may use the Premises as provided in Paragraph 4, provided that the use of the Premises by Lessee shall at no time unreasonably interfere with the operations or use of the Lessor or the Public on the State lands adjoining the Premises.

26. RESERVATION:

Lessor reserves the right to grant rights-of-way and easements of any kind and nature over and across the Premises and to grant or exercise all other rights and privileges of every kind and nature not specifically granted in this Lease, as long as the exercise of this right does not interfere with Lessee's use of the Premises as allowed in Paragraph 4.

28. TAXES:

If Lessee is a nongovernmental entity, it may be subject to taxation for the Premises as provided in 1953 PA 189, as amended, MCL 211.181 et seq.

Lessee's failure to notify the taxing authority of this Lease or its failure to pay its pro rata share of real property taxes by the first due date shall be a breach of the Lease. Lessee shall have 90 days to cure any failure to pay property taxes before being in default of this lease. Lessee shall, upon request, provide Lessor with paid receipts for any real property taxes.

NOTICE AND APPROVALS

29. NOTICES:

Any notices to Lessor or to Lessee required by this Lease shall be complete if submitted in writing and transmitted by personal delivery (with signed delivery receipt), or certified or registered mail return receipt requested. Unless either party notifies the other in writing of a different mailing address, notices to Lessor and Lessee shall be sent to the addresses listed below:

To Lessor:

State of Michigan  
Department of Natural Resources  
Forest, Mineral and Fire Management  
P.O. Box 30452  
Lansing, Michigan 48909-7952

To Lessee:

30. NOTICE EFFECTIVE TIME AND DATE:

Notices shall be deemed effective as of 12:00 noon Eastern Standard Time on the fourth business day following the date of mailing, if sent by mail. Business day is defined as any day other than a Saturday, Sunday, legal holiday or day preceding a legal holiday. A receipt from a U.S. Postal Service, or comparable agency performing such function, shall be conclusive evidence of the date of mailing.

31. INTERPRETATION:



This Lease shall be interpreted in accordance with the laws of the State of Michigan.

**32. NO UNNAMED PARTNERS:**

Lessee covenants that there are no unnamed partners having authority over the operation or management of the Premises and further represents that Lessee is the only entity responsible for carrying out Lessee's responsibilities.

**33. LESSEE'S INDEPENDENT STATUS:**

Lessee covenants that its officers, employees or agents, are not employees of the State of Michigan. Lessor and Lessee agree that the Lessee shall have a leasehold interest only on the Premises and that Lessee will have no title lien or any reversionary interest in the Premises or in any property belonging to Lessor surrounding or adjacent to the Premises.

**34. CONTRACTS:**

Lessee may execute contracts or agreements as the operator of the business authorized under the terms of this Lease. The contracts or agreements must not obligate Lessor or conflict with the terms of the Lease. Lessee shall indemnify, defend, and exculpate Lessor from any liability that may accrue or be asserted against the Department or the State of Michigan under such contracts or agreements.

**35. REQUIRED APPROVALS:**

This Lease shall not be binding or effective until signed and notarized by both parties.

**36. SEVERABILITY:**

If any provision or addendum of this Lease is found to be illegal or otherwise unenforceable by a court of law, it shall be severed from the remainder of the Lease, and will not affect the enforceability of the remaining provisions and addenda.

**37. NON-ENFORCEMENT:**

The decision of Lessor not to enforce the performance of any provision or addendum of this Lease may not be construed as a waiver or relinquishment of Lessor's right to performance of it. Lessee's obligation to comply with the Lease remains in full force and effect.

**38. ENTIRE AGREEMENT AND EXHIBITS:**

This Lease, with the Exhibits listed below, constitutes the entire agreement between Lessor and Lessee with regard to this transaction and may be amended only in writing and executed in the same manner as this Lease was originally executed.

Exhibit A – Survey of Premises

Exhibit B – Metallic Minerals Operation Facilities Site Development Plan.

Exhibit C – Vegetation Restoration Requirements

Exhibit D – Mining and Reclamation Plan

Exhibit E – Metallic Lease M-00602

Exhibit F – Metallic Lease M-00603

