

loss is caused by (1) the negligence of Lessee, its employees, servants, agents or contractors; (2) the breach of any provision of this lease by Lessee, its employees, servants, agents or contractors; or (3) the noncompliance of the Lessee, its employees, servants, agents or contractors, with applicable statutes or rules and regulations of Lessor provided, however, that nothing herein shall diminish any other rights or remedies which Lessor may have in connection with any such negligence, breach or noncompliance. With respect to any other such damage or loss, Lessee agrees to indemnify, save Lessor harmless and, at the option of the State, defend, except in matters involving Lessor's title, Lessor against any and all losses, damages, claims, demands or actions caused by, arising out of, or connected with the operations of the Lessee hereunder as are more specifically provided under paragraph 16 of Section 3 hereof.

6. ENTRY BY LESSOR:

Lessor, or persons authorized by Lessor, shall have the right, at all reasonable times, to go upon the Leased Lands for the purpose of inspecting the same, for the purpose of maintaining or repairing said premises, for the purpose of placing upon the property any usual or ordinary signs, for fire or police purposes, to protect the premises from any cause whatever, or for purposes of examining and inspecting at all times the operations, improvements, machinery, and fixtures used in connection therewith, all without any rebate of charges and without any liability on the part of Lessor, for any loss of occupation or quiet enjoyment of the premises thereby occasioned.

7. NOTICES:

(a) All notices to Lessee or Lessor herein provided to be given shall be deemed to have been fully given when made in writing and deposited in the United States mail, return receipt requested and postage prepaid, addressed as follows:

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To the Lessor: State Lands Commission
245 West Broadway, Suite 425
Long Beach, CA 90802

To the Lessee: As set forth in Section 1 hereof

The addresses to which the notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other as hereinabove provided.

(b) All notices to Lessee herein provided to be given shall also be deemed to have been fully given if made in writing and personally served upon Lessee or any officer thereof.

(c) All payments specified in this lease shall be made to Lessor at the address provided in paragraph 7(a) above.

8. EXAMINATION OF BOOKS:

Lessee hereby waives any and all rights and objections it may have to prevent an examination of the books and records at reasonable times of any individual, association, or corporation which has transported for, or received from Lessee, any minerals extracted or produced from the Leased Lands, combined with the adjoining lands of Lessee. Further, Lessee waives any and all rights and objections it may have to prevent an examination and inspection of the books and records at reasonable times of the Lessee or of any such individual, association or corporation with respect to such individual's association's, or corporation's or to Lessee's operations, improvements, machinery and fixtures used or in connection with the Leased Lands, combined with the adjoining lands of Lessee.

9. WAIVER OF USE OF DATA:

(a) Lessee does hereby waive any statutory or other right or objection to prevent disclosure to Lessor or a duly authorized employee or representative of Lessor of any information, reports, data, or studies of any kind, filed by Lessee with any public agency, federal, state or local,

relating to the Leased Lands, or any operations carried out in connection with the lease, irrespective of whether such information, reports, data or studies of any kind contain sensitive or proprietary or confidential information or trade secrets. Any and all such information, reports, data, or studies of any kind filed by Lessee with any public agency, federal, state or local, including all information filed with, pursuant to any paragraph of this lease, shall be available at all times for the use of Lessor or its duly authorized representatives for any purpose. Notwithstanding any provisions hereof, however, any information, reports, data or studies obtained by Lessor from any public agency and which are not public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon a determination by Lessor that such disclosure is in the public interest.

(b) Lessee agrees to supply to Lessor within thirty (30) days of Lessor's request, all physical and factual exploration results, logs, surveys and any other data in any form resulting from operations under this lease or from any surveys, tests, or experiments conducted on the Leased Lands by Lessee or any person or entity acting with the consent of Lessee or with information or data provided by Lessee. Lessee agrees to supply to Lessor within thirty (30) days of Lessor's request, the results of all geological, geophysical or chemical experiments, tests, reports and studies, interpretive or factual, irrespective of whether the results of such tests, experiments, reports or studies contain sensitive, proprietary or confidential information or trade secrets. Lessee further agrees that any statutory or other rights or objections it might have to prevent disclosure of any such tests, experiments, reports or studies referred to in this paragraph 9 to Lessor

are hereby waived. Notwithstanding any provisions hereof, however, all data and documents supplied by Lessee pursuant to this section shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon a determination by Lessor that such disclosure is in the public interest.

10. PRESERVATION OF PROPERTY, WASTE DISCHARGE:

Lessee shall carry on all work hereunder with due regard for the preservation of the property covered by this lease with due regard to the environmental impact of its operations in accordance with the following terms and conditions:

(a) Lessee shall remove equipment and facilities within ninety (90) days after Lessee has ceased making use thereof in its operations.

(b) All permanent operating sites shall be landscaped or fenced so as to screen them from public view from public roads to the maximum extent practical. Such landscaping or fencing shall be approved in advance by Lessor and kept in good condition.

(c) All excavating and production operations shall be conducted in such manner as to eliminate as far as practicable dust, noise, vibration or noxious odors. Operating sites shall be kept neat, clean and safe. Operations shall be conducted so as to prevent widespread deposition of dust. Detrimental material deposited on trees and vegetation shall be removed. The determination as to what is detrimental is a responsibility of Lessor.

(d) Any operations disturbing the soil surface, including road building, construction and movement of heavy equipment in support of or relating to specific mineral extraction or production activities shall be conducted in such a manner as will not result in unreasonable damage to trees and plant cover, soil erosion, or in the degradation of waters of the

state, including fish and aquatic habitat.

(e) Pollution of rivers, lakes or other bodies of water, and all impairment of and interference with bathing, fishing or navigation in such waters is prohibited, and no refuse of any kind from any extraction or production activities shall be permitted to be deposited on or pass into waters of any rivers, lakes or other bodies of water without specific written State authorization.

(f) Access to extraction or production sites by the public shall be controlled by Lessee to prevent accidents or injury to persons or property.

(g) The above are in addition to, and not to be construed as limitations upon, all other rules, regulations, restrictions, mitigation measures and all other measures designed to restrict, limit, modify or minimize the environmental impact of operations carried out pursuant to this lease.

11. EXISTING RIGHTS:

This lease is issued subject to all existing valid rights as of the date of execution hereof, and such rights shall not be affected by the issuing of this lease. In the event the Leased Lands have been sold by the State of California, subject to mineral reservation, Lessee agrees to follow such conditions and limitations prescribed by law.

12. OTHER EASEMENTS AND INTERESTS:

To the extent of the right, title and interest of the State of California in the Leased Lands, Lessor shall have the right at any time during the term of this lease, or any extension thereof, to grant to any person upon such terms as it may determine such easements, rights-of-way, permits, leases or other interests in the Leased Lands, including easements for tunnels or wells bored through or in the Leased Lands as Lessor may, in its discretion, determine to be necessary or appropriate,

provided, however, interests which unreasonably interfere with or endanger Lessee's operations shall not be granted.

13. COMPLIANCE WITH LAWS AND RULES:

Lessee shall comply with all valid laws of the United States and of the State of California and with all valid ordinances of cities and counties applicable to Lessee's operations hereunder, including without limitation by reason of the specification thereof, Lessee's compliance with all provisions of the Public Resources Code, the Administrative Code and the Statutes of California. Lessee further agrees without limitation by reason of the specification thereof to comply with all provisions of Division 2 and Division 6 of the Public Resources Code, Statutes of California, applicable to Lessee's operations hereunder and with all rules and regulations as may from time to time be issued by the State, or by other state agencies, applicable to the Lessee's operations hereunder. Lessee also agrees that, in its employment practices hereunder, it shall not discriminate against any person because of race, color, religion, sex, ancestry or national origin.

14. WORKER'S COMPENSATION INSURANCE:

Lessee shall at all times in any and all operations under this lease and in any and all work in and upon the Leased Lands, carry full and complete Worker's Compensation Insurance covering all employees.

15. BOND:

Lessee shall furnish and shall thereafter maintain a bond in favor of the State of California in the sum specified in paragraph 3 of Section 1 hereof to guarantee the faithful performance of Lessee of the requirements, terms, covenants and observance of the conditions of this lease and of the provisions of the Public Resources Code and the rules and regulations of the State. Said bond shall require the surety to give at least one

hundred and twenty (120) days' written notice of its intention to cease acting as guarantor. If a surety gives notice of its intention to cease acting as guarantor, the Lessee shall provide to Lessor within sixty (60) days of such notice a replacement bond of equal value to become effective upon the expiration of the existing bond. Failure to provide such a replacement bond within the required time shall constitute a default entitling Lessor to levy against the entire amount of the existing bond. Lessee agrees that in no event shall the amount of the bond be construed as a limitation on its liability. In place of a Corporate Surety Bond, Lessee may post cash, pledge a deposit account or provide an irrevocable stand by letter of credit from a state or nationally chartered bank.

16. INDEMNIFICATION:

To the extent hereafter provided, Lessee agrees to indemnify, save harmless and, at the option of Lessor, defend, except in matters involving title, the State of California, its officers, agents and employees against any and all claims, losses, demands, causes of action or liability of any kind which may be asserted against or imposed upon the State of California or any of its officers, agents or employees by any third person or entity arising out of or connected with operations hereunder, or the use by Lessee or its agents, employees or contractors of the land. Without limiting the generality of the foregoing, such indemnification shall include any claim, loss, demand, cause of action or liability of any kind asserted against or imposed upon the State of California or any of its officers, agents or employees arising out of or connected with any alleged or actual violation by Lessee, its agents, employees or contractors of property or contractual rights of any third person or entity. This provision shall not be construed so as to require Lessee to indemnify the State for any alleged acts or negligence or other wrongful act of the State or any officer, agency or employee thereof, except to the extent that such negligence or other

wrongful act is alleged to consist of the issuance of this lease or the adoption and enforcement of the provisions set forth in the lease or in the rules and regulations in effect at the time of the issuance of this lease, or in any alleged failure to the State to adequately enforce any such provisions, provided further that said indemnification shall be limited as follows:

(a) That the foregoing indemnity specified in the lease and regulations is not intended to nor shall it be construed to require the Lessee to defend Lessor's title to mineral resources and that, in the case of litigation involving the titles of the Lessee and Lessor, Lessee and Lessor will join in defending their respective interests, each bearing the cost of its own defense.

(b) For the purpose of satisfying any judgments, settlements, claims or liabilities for damages or trespasses to land or mineral resources resulting from a judicial determination that Lessor has no title to the land or mineral resources in the Leased Lands and that the owner thereof is entitled to payment for resources extracted under the lease, this indemnification will be limited to any Lessor liability in excess of the monies received by Lessor in the form of royalties or other payments, as owner of the mineral resources, including any interest actually earned thereon.

At the option of Lessor, Lessee shall procure and maintain liability, property damage or other insurance for the benefit of Lessor in an amount satisfactory to Lessor.

17. SUSPENSION OF OPERATIONS:

(a) The State may temporarily suspend production or any other operation by the Lessee under this lease whenever the State finds that the operation, unless suspended, would pose an immediate and serious threat to life, health, property or natural resources. The suspension shall be effective immediately upon either oral or written notice by the State

to the Lessee. Any oral notice shall be followed by written confirmation from the State. The State shall lift the suspension when the State finds, on the basis of evidence submitted by the Lessee or otherwise available, that resumption of the suspended operation or operations would no longer pose an immediate and serious threat to life, health, property or natural resources. If the State orders suspension of operations because their continuation would or might cause or aggravate erosion of the leased lands or other properties, the operations shall be resumed only in compliance with a State approved program for erosion prevention.

(b) No suspension ordered or approved under this paragraph shall relieve the Lessee from any obligation under this lease unless specifically provided in the terms of the suspension.

18. BREACH:

In the event of Lessee's failure to comply with any of the provisions of this lease, or with any regulation or laws applicable thereto and in force during the period of the lease, Lessor reserves the right, following a 90-day written notice of breach and opportunity to cure as provided by paragraph 26 of Section 3, to declare a forfeiture and cancel this lease subject to paragraph 25 of Section 3 thereof. In the event of the cancellation of this lease, Lessee shall comply with the restoration, reclamation and removal conditions specified in paragraph 25 of Section 3 hereof.

19. WAIVER OF BREACH:

The waiver by Lessor of any default or breach of any term, covenant or condition shall not constitute a waiver of any other default or breach whether of the same or of any other term, covenant or condition, regardless of Lessor's knowledge of such other defaults or breaches. The subsequent acceptance of monies

hereunder by Lessor shall not constitute a waiver of any preceding default or breach of any term, covenant or condition, other than the failure of Lessee to pay the particular monies so accepted, regardless of Lessor's knowledge of such preceding default or breach at the time of acceptance of such monies, nor shall acceptance of monies after termination constitute a reinstatement, extension or renewal of the lease or revocation of any notice or other act by Lessor.

20. SOLVENCY:

In the event that Lessee at any time during the term hereof is insolvent under any of the provisions of the Federal Bankruptcy Act or makes a voluntary assignment of his assets for the benefit of creditors, or is adjudged a bankrupt, either upon Lessee's voluntary petition in bankruptcy, or upon the voluntary petition of Lessee's creditors, or any of them, or should an attachment be levied and permitted to remain for any unreasonable length of time upon or against the interest, rights or privileges of Lessee in and to all mineral resources extracted, produced and saved from the Leased Lands by reason of Lessee's operations thereon, then upon election by Lessor, all of the interest, rights and privileges of Lessee in and to all mineral resources extracted, produced and saved from the Leased Lands by reason of Lessee's operations thereon, shall terminate upon receipt of written notice from Lessor advising that Lessor has so elected. In such event Lessor shall have, and Lessee by the acceptance hereof, hereby gives Lessor the right, option and privilege to cancel and terminate this lease and all of the terms and provisions granted hereby, and all of the rights and privileges of Lessee in and to or upon the Leased Lands, and in and to any mineral resources extracted, produced and saved from the Leased Lands by reason of Lessee's operations thereon, and all of Lessee's rights and privileges granted by this lease shall terminate immediately upon receipt of written notice from Lessor that Lessor has so exercised its option.

21. ASSIGNMENT, SUBLETTING AND OPERATORS:

(a) Lessee may assign or transfer this lease or any interest therein and may sublet said land or any part thereof, as provided in Public Resources Code Section 6804, to any person, association of persons, or corporation, who at the time of such assignment, transfer or sublease possesses the qualifications required of Lessees by Division 6, Part 2, Chapter 3 of the Public Resources Code, subject to the prior written consent of the State. Such written consent to an assignment, transfer or sublease may be conditioned upon the altering, changing or amending of this lease, the acceptance of additional consideration or participation of Lessor in any consideration received by the Lessee or its successors in interest for such assignment, transfer or sublease, as is deemed to be in the best interest of Lessor. The consent to any transfer of any interest of this lease shall not be deemed a consent to any subsequent assignment, subletting or occupancy or use by another person. Any assignment, transfer or subletting without such consent, whether voluntary or by operation of law, shall be void and transfer no rights to the purported transferee; further, any such attempted transfer shall be a breach of the lease and shall at the option of Lessor terminate this lease. However, the above provision shall not prevent Lessee from subcontracting parts of the work to be performed without Lessor approval so long as Lessee remains responsible to Lessor. Upon approval of any assignment, transfer or sublease, the assignee, transferee or sublessee shall be bound by the terms of this lease to the same extent as if such assignee, transferee or sublessee were the original lessee, any conditions in the assignment, transfer or sublease to the contrary notwithstanding.

(b) In the event that Lessee does not itself conduct operations as authorized by this Lease, but employs a third party operator (Operator) to do so, Lessee agrees to obtain

the written approval of the Lessor prior to employment of the Operator. Such consent shall not be withheld unreasonably.

22. SUCCESSORS:

The covenants and conditions herein contained shall, subject to the provisions of any assignment, apply to and bind all heirs, successors, executors, administrators and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

23. MODIFICATION OF LEASE:

Whenever it appears to be in the public interest, the parties hereto by mutual agreement in writing, may alter or modify the terms of this lease, or may terminate the same, with such adjustments and for such considerations as may be fair and equitable in the circumstances.

24. QUITCLAIM:

Lessee may at any time make and file with Lessor a written quitclaim of all rights under this lease. Such quitclaim shall be effective as of the date of its filing, subject to the continued obligation of the Lessee and his surety to make all payments of all rentals and royalties therefor accrued, and Lessee will immediately and, at its own expense and risk, restore the land to an environmentally safe and usable condition with due care to carry out all obligations imposed by this lease. No such quitclaim shall release Lessee or his surety from any liability for breach of any obligation of this lease with respect to which Lessee is in default at the time of the filing of such quitclaim or relinquishment.

25. SURRENDER OF PREMISES:

If Lessee is not the surface owner at the time of the expiration of this lease, or sooner termination thereof, the

Lessee shall deliver up and surrender possession of the Leased Lands with all improvements, structure and fixtures thereon in good order and condition; alternatively, and at the option of Lessor and as specified by Lessor, Lessee, who is not the surface owner at the expiration of this lease, or sooner termination thereof, shall deliver up and surrender possession of the Leased Lands after removing all or any part of the improvements, structures and fixtures, and other things which have been put upon the Leased Lands by Lessee, removing such of the same as shall be required by lessor within ninety (90) days, and otherwise restore the premises and replant those areas designated by Lessor.

26. CANCELLATION:

This lease may be forfeited and cancelled upon the failure of the Lessee after ninety (90) days' written notice and demand to comply with any of its provisions or with the laws, rules or regulations thereto.

27. SURFACE MINING AND RECLAMATION ACT OF 1975:

To the extent applicable by law, Lessee agrees to comply with the Surface Mining and reclamation Act (Public Resources Code section 2710 and following) or any successor act.

28. FORCE MAJEURE:

The obligations imposed upon Lessee by the provisions of this lease may be suspended during such time as Lessee is prevented from complying therewith by wars, riots, acute and unusual labor or material shortages, acts of God, laws, rules and regulations of any federal, state, county or municipal agency or by such other unusual conditions as are beyond the control of the Lessee.

29. TIME OF ESSENCE:

Time is of the essence in this lease.

30. RELATIONSHIP OF THE PARTIES:

In performing obligations arising under this lease, it is understood that this lease does not constitute, and the parties hereto do not intend it to create among the parties or their successors in interest a partnership, or joint venture or the relationship of master and servant, or principal and agent.

31. SEVERABILITY:

If any provision herein is judicially determined to be invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions.

32. TAXES:

(a) Lessee shall pay, when due, all taxes and assessments lawfully assessed and levied under the laws of the State or of any political subdivision thereof or the United States of America, against any and all improvements, property or assets of Lessee situate upon the Leased Lands or other rights of Lessee arising out of the lease.

(b) Lessee recognizes and understands in accepting this lease that it may be liable for a possessory interest tax imposed by a city or county on its leasehold interest and that its payment of such a tax shall not reduce the amount of consideration due Lessor under this lease and that Lessor shall have no liability for the payment of such a tax.

33. CAPTIONS:

The captions in this lease are for convenience only and are not a part of this lease and do not in any way limit or amplify the terms and provisions of this lease.

IN WITNESS WHEREOF, the parties hereto do execute this lease.

STATE OF CALIFORNIA
STATE LANDS COMMISSION

Dated: _____

By _____
W. H. THOMPSON, Chief
Extractive Development Program

(Lessee)

Dated: _____

By _____

Title _____

CORPORATE SEAL,
if corporation

Approved as to form

JOHN D. VAN DE KAMP
ATTORNEY GENERAL
STATE OF CALIFORNIA

By _____
Deputy Attorney General

_____ Date

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EXHIBIT A

Parcel One - Sand City Site

A strip of tide and submerged lands 200 feet in uniform width lying between the ordinary high-water mark of the Pacific Ocean, Monterey Bay and a line drawn parallel therewith and 200 feet seaward therefrom; said strip of land being bounded on the northeast by a line drawn perpendicular to the ordinary high-water mark and extending northwesterly from the point of intersection of the ordinary high-water mark with the northerly line of Lot 1 of the Abrego Subdivision of the Rancho Noche Buena as surveyed and subdivided for the heirs of Don Jose Abrego in July of 1878 according to the map thereof on filed in the office of the County Surveyor of Monterey County, file reference D-18; and bounded on the southwest by the northwesterly projection of that certain course numbered (10) in the deed description of that certain 45.125 acre parcel of land granted by Laura W. Metz, et al. to Monterey Sand Co., a partnership, by deed dated October 20, 1958 and recorded November 14, 1958 in volume 1909 of Official Records of Monterey County at page 490, said projection being extended from the point at which said course numbered (10) intersects the ordinary high-water mark of Monterey Bay.

Said strip of land being more particularly described as follows:

BEGINNING at the point of intersection of the ordinary high-water mark of Monterey Bay with the westerly projection of the southerly boundary of that certain 1.31 acre parcel of land conveyed to Granite Construction Company by Deed and Agreement dated May 23, 1946 and recorded June 10, 1946 in the Office of the County Recorder of Monterey, California under Recorder's Series No. 16405, said 1.31 acre parcel being described as Parcel II in said Deed and Agreement, said southerly boundary being the northerly line of Lot 1 of Abrego Subdivision of the Rancho Noche Buena; thence, along said ordinary high-water mark with the meanders thereof:

(1) In a southwesterly direction, 840 feet, more or less, to the point of intersection of said line of ordinary high-water with the said Course numbered (10) in said deed (or the northwesterly projection thereof) granting said 45.125 acre parcel of land to Monterey Sand Company said course numbered (10) being stated in

said deed as "N.61'15'W., 972.6 feet"; thence, leaving said line of ordinary high-water and along said course numbered (10) and/or the northwesterly projection hereof:

(2) N.61'15'W., 200 feet more or less to an intersection with a line that is parallel with and 200 feet seaward of said ordinary high-water mark; thence;

(3) Northeasterly and parallel with said line of ordinary high-water and 200 feet seaward (northwesterly) therefrom, 840 feet, more or less, to an intersection with the said line drawn perpendicular with the shoreline of Monterey Bay and extending northwesterly from the point of intersection of said line of ordinary high-water with the westerly projection of the southerly boundary of said 1.31 acre parcel of land; thence, following said line perpendicular to the ordinary high-water mark of Monterey Bay;

(4) In a southeasterly direction, perpendicular to the ordinary high-water mark of Monterey Bay, 200 feet to the place of beginning, containing 3.86 acres, more or less.

Parcel Two - Marina Site

A strip of tide and submerged land 200 feet in uniform width lying between the ordinary high-water mark of the Pacific Ocean, Monterey Bay, and a line drawn parallel therewith and 200 feet seaward therefrom;

Said strip of land being bounded on the North by the northerly line of Lot 92 and/or the westerly prolongation of said northerly line, or as may be subsequently determined by agreement of adjoining; and bounded on the south by the southerly line of Lot 95 and/or the westerly prolongation of said southerly line or as may be subsequently determined by agreement of adjoining; as said Lots 92 and 95 are shown delineated on that certain map entitled "Locle Paddon Company's Bayside Subdivision of Monterey City Lands", filed for record February 8, 1916 in Volume 2 of Maps and Grants (outside lands), Official Records of Monterey County, at page 15, containing 2.38 acres, more or less, of tide and submerged lands of Monterey Bay.