

Skunk Canyon
water site

Lease No. C-1393

STATE LAND DEPARTMENT
STATE OF ARIZONA

Commercial LEASE

THIS INDENTURE, made and entered into this 21st day of November, 1974,

by and between the State of Arizona, hereinafter called the lessor, and
Cyprus Bagdad Copper Company, a division of Cyprus Mines Corporation
of Bagdad, State of Arizona, hereinafter called the lessee:

WITNESSETH, that the State Land Commissioner, by virtue of the authority vested in him by law, and in consideration of the application heretofore made, and the covenants and agreements of this lease, hereinafter set forth, has this day leased to the said lessee the State Land, as hereinafter described, subject to any and all indebtedness that may be known to be due or that may be proven to be due hereafter.

TO HAVE AND TO HOLD the same for the period ending the 20th day of November, 1984 and subject to the conditions and reservations elsewhere set forth herein. The lessee agrees to pay as rental therefor an amount to be determined by the State Land Commissioner each year by an appraisal made by him, or his duly authorized agent, as provided by law. The rental so fixed by the State Land Commissioner will be due and payable annually in advance.

IT IS HEREBY COVENANTED AND AGREED by both parties hereto that this lease is issued subject to all the provisions and requirements thereto, which are found in the various Acts of the Legislature of the State of Arizona, the same as though they were fully set forth herein.

IT IS HEREBY FURTHER COVENANTED AND AGREED that all of the covenants, conditions and agreements, included in this lease, shall be, become and are a part of the lease, the same as though set forth in full over the signatures of the contracting parties hereto.

IN WITNESS WHEREOF, the Arizona State Land Commissioner, by virtue of the powers vested in him by law, has caused these presents to be executed by said lessor, at Phoenix, Arizona, on the day and year first above written, and the said lessee has hereunto affixed his signature at the place and on the day and year as set forth herein.

By *J. T. Ryan*
State Land Commissioner.

By _____
Deputy State Land Commissioner.

(SEAL)

Signed in the County of Yavapai, State of Arizona, on the 17th day of November, 1975.

(Signed Here) *[Signature]*
Lessee.

This lease is issued in duplicate

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SUPPLEMENTAL CONDITIONS

(A) The lessee will not sub-let or assign the land herein described or this lease without the written consent of the State Land Commissioner, first obtained, and will, upon the expiration of the lease, surrender peaceable possession of the said land.

(B) The lessee will not permit any loss, nor commit or cause any waste in, to or upon said land; nor cut or remove nor allow to be cut or removed any timber or standing trees that may be upon said land, save and except only such as may be necessary for the improvement of said land, (and then only with the written consent of the State Land Commissioner) or for fuel for the domestic use of said lessee; provided that nothing herein shall be construed to permit the cutting of saw timber for any purpose.

(C) That the lessor excepts and reserves out of the grant hereby made, all oils, gases, coal, ores, limestone, minerals, fossils, and fertilizers of every name and description that may be found in or upon the land herein described, or any part thereof.

(D) The lands herein described are subject to the execution by lessor of drilling permits and leases for the purpose of prospecting for, and the extraction of, oil and/or gases.

(E) That the lessor also reserves the right, as provided by law, to grant to the United States rights-of-way and easements over, across or upon the lands embraced in this lease for canals, reservoirs, dams, power or irrigating plants or works, railroads, tramways, transmission lines or other purposes, for irrigation works in connection with any government reclamation project.

(F) That if at any time after the execution of this lease, it is shown to the satisfaction of the State Land Commissioner, that there has been fraud or collusion upon the part of the lessee to obtain or hold this lease at a less rental than its value, or through such fraud and collusion a former lessee of said land has been allowed to escape payment of the rental due for the use of said land by the former lessee, this lease shall be null and void, at the option of the State Land Commissioner, insofar as it relates to the land affected by said fraud or collusion.

(G) That if at any time after the execution of this lease it is shown to the satisfaction of the State Land Commissioner that the lessee herein has misrepresented, by implication or otherwise, the value of the improvements placed upon the land herein embraced by a former lessee, or any other person or persons and the lessee herein not being the owner of said improvements at the time of the execution of this lease, this lease shall be null and void, at the option of the State Land Commissioner, insofar as it relates to the land upon which said improvements are situated.

(H) If the lessee should fail to pay the agreed rental when due, or fail to keep the covenants and agreements herein set forth, the State Land Commissioner, at his option, may cancel said lease or declare the same forfeited in the manner provided by law.

(I) That the State of Arizona shall be forever wholly absolved from any liability for damages which might result to the lessee herein on account of this lease having been forfeited for nonpayment of rentals due thereunder prior to the expiration of the full time for which it is issued.

(J) It is understood by the lessee that the establishment of any water right, or rights, shall be by and for the State of Arizona, and that no claim thereto shall be made by said lessee; such rights shall attach to and become appurtenant to the said land.

(K) If the lessee desires to place improvement on the land described herein the approval of the State Land Commissioner must first be obtained. That the lessee will, on or before the first day of July of each year during the term herein specified, file with lessor a sworn statement setting forth therein the character of improvements constructed on said demised premises and the actual cash value thereof.

(L) That said lessee shall have the right to remove from said demised premises, at the end of the term herein specified or upon the earlier termination thereof, all buildings, structures or improvements of whatever nature placed by it on said premises. Such right to be exercised within thirty (30) days from the date of the end of such term or earlier termination thereof.

(M) That said lessee shall give lessor thirty (30) days' notice in writing in advance of the abandonment of said premises or termination of these presents.

(N) The terms, conditions and covenants of this lease are subject to present laws relating to state lands and the rights of both lessor and lessee hereunder are each and all subject to such modifications as may be consistent with such amendments, revisions or repeals of existing laws as may hereafter be made and no provisions of this lease shall create any vested right in the lessee herein.

(O) Any improvements placed on this commercial lease must conform to existing Laws and Ordinances relative to commercial construction and maintenance in the area where this land is located. Approval granted by regulatory authorities will accompany application to place improvements when filed with the State Land Department.

(P) That the lessor also reserves the right to grant rights-of-way and easements over, across, or upon the lands embraced in this lease for public highways, railroads, tramways, telephone, telegraph, transmission lines, pipe lines, irrigation works, flood control, drainage works, logging and other purposes, and this lease is issued subject to all existing rights-of-ways.

- (Q) Lessee shall notify the Lessor in writing of the number of any license issued by the State Tax Commission of Arizona to Lessee, any Sub-Lessee, Concessionaire or Assignee, and the name in which issued; Lessee, any Sub-Lessee, Concessionaire or Assignee does hereby consent to the examination of any such returns filed with the State Tax Commission by Lessee, any Sub-Lessee, Concessionaire or Assignee.
- (R) Lessee and each Sub-Tenant, Concessionaire or Assignee shall at all times keep and maintain an accounting system and books of accounts and records satisfactory to Lessor; Lessee shall, at all times during business hours, have access to such records at the place where the same are kept, for the purpose of inspecting and auditing the same.
- (S) Within 60 days after request is made by Lessor, Lessee shall file with Lessor a statement of the total gross sales made for the period therein specified; unless otherwise directed by Lessor, this report may be made by filing with the Lessor the requested information on the form used by the State Tax Commission of Arizona (Form ST-1 (1-68) at present) "Combined Transaction-Privilege (sales) Tax, Education Excise Tax, & Special Excise Tax For Education Return."
- (T) Improvements made on or to the site without the written consent of the Lessor as required by Arizona Revised Statutes, Section 37-321, shall constitute a breach of this lease and subject this lease to cancellation by Lessor.
- (U) All buildings and structures shall be of new construction, and no buildings or structures shall be moved from any other location onto the leased premises without the prior written approval of Lessor.
- (V) Gas, electric, power, telephone, water, sewer, cable television and other utility or service lines of every nature whatsoever shall be placed and kept underground (except to the extent, if any, such underground placement may be prohibited by law) unless Lessor otherwise approves in writing.
- (W) Prior to the approval of any application to place improvements on the leased premises, the Lessee shall file with Lessor plans and specifications (including but not limited to grading and landscape plans) showing the nature, location, approximate cost, quality of proposed materials, size, area, height, color, shape and design of the proposed improvements; the Lessor may also require a perimeter survey of the leased premises, upon which shall be shown the location of the completed improvements.

SPECIAL CONDITIONS

This lease may be amended from time to time by mutual agreement of the parties hereto, provided that the lessor deems such amendment to be in the best interests of the State of Arizona.

The lessee acknowledges that lessee has not been induced to enter into this lease agreement by any promises from the State Land Department or any of its personnel that the premises being leased herein will be offered for sale at any time.

If at any time during the duration of this lease the whole or any part of the leased premises shall be taken for any quasi-public or public purpose by any person, private or public corporation, or any governmental agency having authority to exercise the power of eminent domain or condemnation proceedings pursuant to any law, general, special or otherwise, this lease shall expire on the date when the leased property shall be so taken or acquired and the Lessee shall have no compensable right or interest in the real property being condemned and shall have no compensable right or interest in severance damages which may accrue to the remaining lease property not acquired by condemnation proceedings. Net rent to be paid by the tenant shall be apportioned and paid to the date of such taking.

The State shall be entitled to and shall receive any and all awards, including severance damage to remaining state lands, that may be made for any eminent domain or condemnation proceedings concerning the land which is the subject of this lease, except that Lessee shall have the right to receive any and all awards or payments made for any buildings or other improvements lawfully placed on the subject property by the Lessee with the approval of the Land Department.

In the event of a partial take and if the State determines that it is in the best interest of the State, the lease may continue in full force and effect for those lands not taken. Rent for any remaining land under the lease after the taking shall be reduced proportionately to the acreage remaining, subject, however, to reappraisal under State Land Department statutes, regulations and procedures.

SPECIAL CONDITION

It is agreed and understood by Lessee that withdrawal of groundwater is subject to all of the limitations resulting from the opinion of Arizona Supreme Court in Farmers Investment Company v. Pima Mining Company, et al, June 19, 1974, Ariz., 523 P2d 487, and should any such withdrawal of groundwater be limited or restricted in any lawful manner that Lessee shall have no recourse against the Arizona State Land Commissioner, the Arizona State Land Department or any of its respective officers, agents, servants or employees from any damage arising from such limitation or restriction of groundwater from the premises subject to lease.

Further, Lessee agrees to save, hold harmless, and indemnify the State of Arizona, the Arizona State Land Commissioner, the Arizona State Land Department and its officers, agents, employees and servants from any and all claims, costs, damages, expenses, or charges arising out of, incidental to, or resulting in any way from this agreement, including any liabilities arising from the action or failure to act by the State of Arizona, the Arizona State Land Commissioner, the Arizona State Land Department and its officers, agents, servants and employees.

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ASSIGNMENT OF LEASE

Phoenix, Arizona,.....

The application of.....
for permission to assign Lease No.....and the application of.....
.....for the assumption of said Lease,
having been duly considered this.....day of....., 19.....
and without waiver of State rights which may exist against the lease assigned, and with this consent not
to be construed as initiating any new rights in assignee of lease, consent is hereby given for the assign-
ment applied for and it is ordered that the said Lease No.....and all rights thereunder be and
are hereby transferred to the said.....

.....
State Land Commissioner.

By.....
Deputy State Land Commissioner.

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