

Consider the approval of a tax abatement agreement with Zinc Resources, LLC, and take appropriate action.

(12-43:10)

12. August 2, 2021. Moved by Gary Burns and seconded by Clint Ives, the Commissioners Court approved a Tax Abatement Agreement between Victoria County, Texas and Zinc Resources, LLC. Motion adopted.

AGREEMENT

This TAX ABATEMENT AGREEMENT (this "AGREEMENT") is entered into by and between VICTORIA COUNTY, TEXAS, a political subdivision of the State of Texas ("COUNTY"), and ZINC RESOURCES, LLC, a limited liability company organized under the laws of the State of Texas ("ZINC RESOURCES"), having its principal office and place of business at 109 N. Post Oak Lane, Suite 415, Houston, Texas 77024.

WITNESSETH:

WHEREAS, on October 12, 2020, the Commissioners' Court of Victoria County, Texas, re-adopted certain Guidelines and Criteria of Victoria County for Creation of Reinvestment Zones and for Granting Tax Abatement in Reinvestment Zones created in Victoria County, Texas, a copy of which is attached hereto and incorporated herein as Exhibit "A", herein referred to as the "POLICY STATEMENT";

WHEREAS, the POLICY STATEMENT declares the COUNTY'S election to participate in a tax abatement program and sets forth the guidelines and criteria governing all tax abatements to be entered into by the COUNTY as contemplated by the Property Redevelopment and Tax Abatement Act codified in Chapter 312, Vernon's Texas Tax Code, as amended, herein referred to as the "STATUTE";

WHEREAS, on June 7, 2021, the Commissioners' Court of Victoria County, Texas passed Resolution No. 2021-0062 establishing PORT OF VICTORIA COUNTY REINVESTMENT ZONE #1 (the "REINVESTMENT ZONE") for commercial/industrial tax abatement, as authorized by the STATUTE;

WHEREAS, the REINVESTMENT ZONE is comprised of 700.72 acres in Victoria County,

Texas, owned by VICTORIA COUNTY NAVIGATION DISTRICT, which includes, without limitation, that certain 25 acre tract of land herein referred to as the PREMISES, described as:

BEING that 25 acre tract of land situated in the Diego Garcia Survey, Abstract No. 39, Victoria County, Texas, being a portion of a 117.01 acre tract of land conveyed from Ruth S. Emmons to Victoria County Navigation District (VCND) by deed dated July 12, 1970 and recorded in Volume 759, Page 216 of the Deed Records of Victoria County, Texas, which is located within the REINVESTMENT ZONE, more fully described by metes and bounds attached hereto as Exhibit "B" and depicted by survey attached hereto as Exhibit "C";

WHEREAS, by Option Agreement dated July 20, 2021, VICTORIA COUNTY NAVIGATION DISTRICT granted ZINC RESOURCES the option to lease the PREMISES for an initial term of ten (10) years, terminating no later than September 30, 2031, with four (4) additional extension options, pursuant to the terms of Lease Agreement attached hereto as Exhibit "D" (the "LEASE");

WHEREAS, the PREMISES has no Base Year Value, but from and after the effective date of the LEASE, the PREMISES and all improvements on the PREMISES will be added to the tax rolls based on their appraised value to be determined by the Victoria County Appraisal District;

WHEREAS, the PREMISES does not include any property that is owned by a member of their respective councils or boards, agencies, commissions, or other governmental bodies approving, or having responsibility for the approval of this AGREEMENT;

WHEREAS, on June 21, 2021, ZINC RESOURCES submitted an application (the "APPLICATION") with the COUNTY requesting tax abatement under the guidelines and criteria established by the POLICY STATEMENT for the construction and operation of a facility on the PREMISES;

WHEREAS, the requested tax abatement is for the construction of a new, latest-generation

Electric Arc Furnace (EAF) dust recycling facility, including associated site improvements and infrastructure with a capital investment of at least \$22,000,000 (the "FACILITY") and acquisition of new fixed, manufacturing and processing machinery and equipment necessary for the operation of the FACILITY with a capital investment of at least \$33,000,000 (the "EQUIPMENT"), which FACILITY and EQUIPMENT are herein referred to as the "IMPROVEMENTS";

WHEREAS, ZINC RESOURCES acknowledges, represents and warrants that the IMPROVEMENTS are reasonably expected to increase the appraised value of the PREMISES by at least \$55,000,000, create approximately one hundred (100) new temporary construction jobs, create at least forty-five (45) new full-time permanent jobs within one year after start-up;

WHEREAS, the Commissioner's Court has found that construction of the contemplated IMPROVEMENTS, the contemplated use of the PREMISES, and all other terms and conditions of this AGREEMENT are consistent with encouraging development of the REINVESTMENT ZONE in accordance with the POLICY STATEMENT and all applicable law and will maintain and/or enhance the commercial/industrial economic and employment base of the COUNTY to the long term interests and benefit of the COUNTY in accordance with the STATUTE; and

WHEREAS, the Commissioner's Court has found that the terms of this AGREEMENT and the property subject to this AGREEMENT meet the guidelines and criteria established by, and are in compliance with, the POLICY STATEMENT and the STATUTE; that entering into this AGREEMENT would not have a substantial adverse effect on the provision of governmental service or tax base; that ZINC RESOURCES has sufficient financial capacity for the construction of the IMPROVEMENTS; and that the planned or potential use of the PREMISES would not constitute a hazard to public safety, health or morals or be in violation of other code or law.

NOW THEREFORE the parties hereto do mutually agree as follows:

1. ZINC RESOURCES shall construct IMPROVEMENTS with a capital investment of at least \$55,000,000. Construction of IMPROVEMENTS shall commence on or before 8/3/2021. Thereafter, ZINC RESOURCES shall diligently pursue construction of the FACILITY, all in accordance with applicable state and local laws and regulations, so as to substantially complete the same on or before 8/3/2023 (the "COMPLETION DATE"). The COMPLETION DATE may be extended as required in the event of "force majeure". For purpose of this Agreement, "force majeure" shall mean any contingency or cause beyond the reasonable control of ZINC RESOURCES including, without limitation, acts of God or the public enemy, pandemic, war, riot, civil commotion, insurrection, governmental or de facto governmental action, including imposition of tariffs, mandates, or decrees or other similar governmental action affecting the steel industry (unless caused by acts of omissions of ZINC RESOURCES), fires, explosions, floods, strikes, supply chain disruptions, transportation delays or failures, loss or reduction of supply of critical materials, fuel, electricity, or other inputs.

2. From and after the COMPLETION DATE until expiration of this AGREEMENT, ZINC RESOURCES shall keep the LEASE in full force and effect, timely comply with all of the tenant's obligations under the LEASE, and continuously operate and maintain the PREMISES as a zinc recycling facility, subject to force majeure.

3. Subject to force majeure, ZINC RESOURCES shall (a) create employment for approximately one hundred new (100) local construction jobs for approximately 200,000 man hours over the course of construction of the IMPROVEMENTS ("BENCHMARK TEMPORARY EMPLOYEES") and (b) create and maintain at least forty-five (45) new local, full-time employment positions (which may include outsourced employment) in connection with the operation and maintenance of the IMPROVEMENTS, commencing one year following the COMPLETION DATE and continuing through the duration of the ABATEMENT, and having an annual salary of not less than \$1,800,000 (BENCHMARK PERMANENT EMPLOYEES). Within thirty (30) days of the close of each calendar year during the term of this AGREEMENT commencing one year following the COMPLETION DATE, ZINC RESOURCES will furnish to the COUNTY an affidavit, signed by an authorized official of ZINC RESOURCES certifying that it's requirement to retain employment for at least forty-five (45) local, full-time employment positions in connection with the operation and maintenance of the FACILITY for the preceding calendar year has been satisfied.

4. The COUNTY, its agents and employees, shall have reasonable right of access to the PREMISES to inspect the IMPROVEMENTS in order to ensure that the construction of the IMPROVEMENTS are in accordance with the AGREEMENT and all applicable state and local laws and regulations or valid waiver thereof. After completion of the IMPROVEMENTS, the COUNTY shall have the continuing right to inspect the PREMISES to insure that the PREMISES are thereafter maintained and operated in accordance with this AGREEMENT during the abatement period.

5. For the year following the ABATEMENT PERIOD, the Victoria County Appraisal Office will, using its customary methodology, assess real property improvements at not be less

than the depreciated value of initial investment using a 35 year useful life and assess equipment at not less than the depreciated value of initial investment using a 15 year useful life.

6. Subject to ZINC RESOURCES's completion of construction of the IMPROVEMENTS, creation of jobs required hereunder, and satisfaction of all of the other terms and conditions of this AGREEMENT, the POLICY STATEMENT, and STATUTE, the COUNTY agrees, for a term of eight (8) consecutive years beginning January 1, 2023 and ending December 31, 2029 (the "ABATEMENT PERIOD"), to abate Victoria County Taxes and Road and Bridge Taxes on the value of IMPROVEMENTS qualifying as new Eligible Property for abatement in accordance with the terms of the terms of the POLICY STATEMENT and applicable law at the following percentages:

2023	90%
2024	90%
2025	85%
2026	80%
2027	75%
2028	65%
2029	55%
2030	45%

The taxable value of new Eligible Property is estimated to be \$55,000,000 less any available TCEQ exemption obtained (if any). For purposes of this Section, the term "taxable value" shall be that value assigned in good faith by the Victoria County Appraisal District for each year of the ABATEMENT PERIOD.

7. In the event that (i) the IMPROVEMENTS for which an abatement has been granted are not substantially completed in accordance with this AGREEMENT; (ii) at least 90% of BENCHMARK TEMPORARY EMPLOYMENT has not been created and maintained as required herein; (iii) at least 90% of BENCHMARK PERMANENT EMPLOYMENT has not been created and maintained as required herein; (iv) subject to force majeure, ZINC RESOURCES does not continuously operate and maintain the PREMISES as a zinc recycling facility on the PREMISES during the duration of the AGREEMENT, except for planned and unplanned shutdowns for required maintenance; (v) ZINC RESOURCES is in default of any representation, obligation or agreement hereunder; (vi) following completion of the IMPROVEMENTS and for the duration of the AGREEMENT, ZINC RESOURCES does not continuously operate and maintain the PREMISES as a zinc recycling facility on the PREMISES, except for planned and unplanned shutdowns for required maintenance; (vii) ZINC RESOURCES becomes delinquent in the payment of ad valorem taxes owed to the COUNTY and fails to timely and properly follow the legal procedures for their protest and/or contests; or (viii) there is a violation of Section 6 ("RECAPTURE") or any other provision of the POLICY STATEMENT, then this AGREEMENT shall be in default and the POLICY STATEMENT will govern and control. Notice shall be in writing and shall be delivered by personal delivery or certified mail to ZINC RESOURCES at the address recited herein. Subject to any notice and cure periods which may be required under the POLICY STATEMENT, all taxes previously abated by virtue of this AGREEMENT and all other agreements (if any) will be recaptured (without

the addition of penalty but with interest at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas) will become a debt to the COUNTY and shall be due, owing and paid to the COUNTY within sixty (60) days of the termination. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine. Accordingly, the COUNTY agrees that the damages set forth above are a fair estimate of damages that the COUNTY would incur in the event of a default and termination and as such the County agrees that it shall not be entitled to any damages or to any equitable relief (such as an injunction) in the event of a default or termination.

8. The proposed nature of construction, use, time schedule, map, improvement list and other terms contained in the APPLICATION are incorporated herein by reference to the extent they do not conflict with any of the express terms of this AGREEMENT.

9. The provisions, terms and conditions of the POLICY STATEMENT which is made a part of this AGREEMENT shall govern and prevail should a conflict arise between the text of this AGREEMENT and POLICY STATEMENT.

10. This AGREEMENT cannot be assigned by ZINC RESOURCES unless written permission is first granted by the COUNTY, which permission will not be unreasonably withheld, conditioned or delayed after taking into consideration *the financial condition, experience, intended use, nature of business activities, and reputation of the proposed assignee (or its operator)*. The terms and conditions of this AGREEMENT are binding upon the successors and assigns of all parties hereto.

11. It is understood and agreed between the parties that ZINC RESOURCES, in performing its obligations hereunder, is acting independently, and the COUNTY assumes no responsibilities or liabilities in accordance therewith to third parties and ZINC RESOURCES agrees to indemnify and hold the COUNTY harmless therefrom.

12. Any notice required under this AGREEMENT must be given in writing sent by certified United States mail, postage prepaid, or by personal delivery.

Notice shall be addressed to the COUNTY as follows:

VICTORIA COUNTY COMMISSIONERS' COURT
101 N BRIDGE STREET, ROOM 102
VICTORIA, TEXAS 77901
ATTN: COUNTY JUDGE

Notice shall be addressed to ZINC RESOURCES as follows:

ZINC RESOURCES
ATTN: RON CRITTENDON, CEO
109 N POST OAK LANE #415
HOUSTON, TEXAS 77024
ATTN: RON CRITTENDON

Each party may change its designated address by written notice to all parties as set forth above in this AGREEMENT. Notices shall be deemed to have been received as of three (3) days after mailing unless actual receipt is earlier.

13. ZINC RESOURCES acknowledges and represents that it has all approvals required by applicable law and the full right, power and authority to enter into this AGREEMENT and RON CRITTENDON, its duly authorized Chief Executive Officer, has authority to enter into this AGREEMENT on behalf of ZINC RESOURCES.

14. This AGREEMENT shall constitute a valid and binding agreement between the COUNTY and ZINC RESOURCES, and their permitted successors and assigns, when executed in accordance herewith.

15. This AGREEMENT constitutes the entire agreement between the parties and no verbal or written representatives have been made a part of this AGREEMENT unless specifically set out herein.

16. This AGREEMENT is governed by the laws of the State of Texas and is performable in Victoria County, Texas.

WITNESS our hands this 2nd day of August, 21.

VICTORIA COUNTY, TEXAS

By: 
BEN ZELLER
County Judge

ZINC RESOURCES

By: 
RON CRITTENDON
Chief Executive Officer

EXHIBIT "A"

GUIDELINES AND CRITERIA OF VICTORIA COUNTY
FOR CREATION OF REINVESTMENT ZONES
AND FOR GRANTING TAX ABATEMENT
IN REINVESTMENT ZONES
CREATED IN VICTORIA COUNTY, TEXAS

GUIDELINES AND CRITERIA
Tax Abatement or Phase-In
The City of Victoria and/or Victoria County Texas

WHEREAS the Victoria County recognize that an active program of economic development is necessary to the economic welfare of the community and its citizens;

WHEREAS - Victoria County recognizes that abatement or phase-in of certain taxes can be an effective economic incentive to attract or retain businesses to the community;

WHEREAS the Texas Property Redevelopment and Tax Abatement Act provides that a taxing unit may not enter into a tax abatement agreement and the governing body of a municipality or county may not designate an area as a reinvestment zone unless the governing body has established guidelines and criteria governing tax abatement agreements by the taxing unit, and

WHEREAS the Texas Property Redevelopment and Tax Abatement Act further provides that the guidelines and criteria adopted by a city or county are effective for two years from the date adopted

NOW THEREFORE - Victoria County sets forth the guidelines and criteria for tax abatement or tax phase-in within -its respective jurisdictions as follows:

Section 1
Definitions

The following defined terms shall have the following definitions when capitalized herein:

1.1 "Abatement" means the full or partial exemption from ad valorem taxes of certain real property in a Reinvestment Zone designated by an Affected Jurisdiction for economic development purposes.

1.2 "Affected Jurisdiction" means Victoria County and any municipality or school district, the majority of which is located in Victoria County that levies ad valorem taxes upon and provides services to property located within the proposed or existing Reinvesting zone designated by Victoria County.

1.3 "Agreement" means written contractual agreement between a property owner and/or lessee and an Affected Jurisdiction for the purposes of tax abatement.

1.4 "Base Year Value" means the assessed value of eligible property January 1 preceding the execution of the Agreement plus (if applicable) the agreed upon value of eligible property improvements made after January 1 but before the execution of the Agreement.

1.5 "Deferred Maintenance" means improvements necessary for continued operations, which do not improve productivity or alter the process technology.

1.6 "Distribution Center Facility" means buildings and structures, including machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility operator where a majority of the goods or services are distributed to points at least 25 miles from its location in Victoria County.

1.7 "Expansion" means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.

1.8 "Facility" means property improvements completed or in the process of construction which together compromise an integral whole.

1.9 "Initiating Governing Body" shall be either the Victoria City Council or the Victoria County Commissioner's Court depending on whether Applicant's project is located in the City of Victoria or within Victoria County but outside the City of Victoria.

1.10 "Manufacturing Facility" means buildings and structures, including fixed in place machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.

1.11 "Modernization" means the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration or installation of buildings, structures, fixed in place machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.

1.12 "New Facility" means a property previously undeveloped that is placed into service by means other than or in conjunction with expansion or modernization.

1.13 "New Jobs" means employees associated with the authorized facility on a full-time permanent basis in the City of Victoria or Victoria County within one year of production start-up. These jobs:

- a. Must be dependent upon the proposed project (i.e. the positions would not exist if the project is not completed) **AND**;
- b. Must NOT simply relocate current employees within the company without the employee's previous position being filled. (i.e. Company employment 1 year from start-up must be equal to or greater than the current employment listed on the application plus the number of new jobs.)

1.14 "Other Basic Industry" means buildings and structures including fixed machinery and equipment not elsewhere described, used or to be used for the production of

products or services which serve a market primarily outside the Victoria Metropolitan Statistical Area (VMSA) and result in the creation of new permanent jobs and create new tax base in the VMSA.

1.15 "Phase In" means the incremental increase of taxes over a period of four to eight years until full local taxation is reached, according to the schedule found in Section 2.8. It has been determined that this terminology more accurately reflects the practice of abatement for the City and County of Victoria, Texas.

1.16 "Productive Life" means the number of years a property improvement is expected to be in service.

1.17 "Regional Service Facility" means buildings and structures, including machinery and equipment, used or to be used to service goods where a majority of the goods being serviced are domiciled at least 25 miles from the facility's Victoria County location.

1.18 "Reinvestment Zone" is a specific parcel of property designated by the City or the County (as applicable) within which tax abatement can be granted.

1.19 "Research Facility" means buildings and structures, including fixed in-place machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

Section 2 Requirements For Phase-In

2.1 Authorized Facility. A facility may be eligible for phase-in if it is located in a designated Reinvestment Zone and is a: Manufacturing Facility, Research Facility, Distribution Center or Regional Service Facility, or Other Basic Industry.

2.2 Creation of New Value. Phase-in may only be granted for the additional value of eligible property improvements made subsequent to and specified in a phase-in Agreement between the Affected Jurisdiction and the property owner or lessee, subject to such limitations as governing body may require.

2.3 Employee Origin. In order to be eligible for designation as a Reinvestment Zone and receive tax phase-in, the planned improvement must not be expected to solely or primarily have the effect of transferring employment from one part of Victoria County to another.

2.4 Eligible Property. Phase-in may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility.

2.5 Ineligible Property. The following types of property shall be fully taxable and ineligible for phase-in: land; inventories; supplies; tools; furnishings, and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodation; retail facilities; Base Year Value investments; property to be rented or leased to third parties except as provided in Section 2.6; property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas; and property in a Reinvestment Zone that is owned or leased by a member of the governing body creating the Reinvestment Zone, or a member of the Victoria Planning Commission for a City-created Reinvestment Zone.

2.6 Lease Facilities. If a new facility is to be constructed by a third party owner for lease to an Applicant otherwise eligible for tax phase-in, then the building owner may also be eligible for phase-ins. To calculate the applicable category for phase-in, the investment of both entities will be added and each shall be eligible to receive phase-in at the same rate as would have been available if one owner was accomplishing the entire project.

2.7 Economic Qualifications. In order to be eligible to receive tax phase-in, the planned new facility or planned expansion to modernization of an existing facility must meet the following qualifications:

- a. Be reasonably expected to increase the appraised value of the property in the amount of not less than Five Hundred Thousand (\$500,000) dollars after construction is completed.
- b. For new construction projects expected to create less than ten (10) New Jobs, pay employees in New Jobs an aggregate base weekly wage equal to ten (10) times the average weekly wage across all sectors for Victoria County for the most recent calendar quarter reported by the Texas Workforce Commission as of the date of the application.
- c. Companies seeking to qualify for tax phase-in on the basis of job retention shall document that without the creation of a reinvestment zone and/or tax phase-in; the company will either reduce or cease operations.

2.8 Maximum Available Abatements Per Year *

Taxable Investment (Millions)	Year.							
	1	2	3	4	5	6	7	8
Up to .50	---	---	---	---	---	---	---	---
.50 to 1.99	90	80	60	40	---	---	---	---
2.0 to 3.99	90	90	75	60	45	---	---	---
4.0 to 7.99	90	90	80	70	60	50	---	---
8.0 to 15.99	90	90	85	75	65	55	45	---
16.0 or more	90	90	85	80	75	65	55	45

* Affected jurisdictions reserve the right to grant abatements less than the maximums stated above.

* For Eligible Property investments in excess of \$100 million or 100 New Jobs, the Affected Jurisdictions reserve the right to grant Abatements up to the state maximum of 100% for 10 years.

2.9 New and Existing Facilities. Tax phase-in may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.

2.10 Transferability. A tax abatement Agreement may only be assigned to a new owner or lessee of a facility with the written consent of the governmental entity that granted the abatement, which may be withheld at said governmental entity's discretion.

2.11 Partially Eligible. Partially eligible for phase-ins are modernization projects and manufacturing facilities, which are intended to replace existing equipment, or facilities when the existing equipment and facilities will be removed thus eliminating existing value from the tax rolls. In this event, the value of the existing facility and equipment shall be frozen at the time of the phase-in Agreement and shall remain frozen throughout the phase-in period. The eligible abatable value of the new project shall be the difference between the total new investment amount and the existing tax value of the equipment and/or facility to be removed.

2.12 Taxability. From the execution of the phase-in contract to the end of the Agreement period, taxes shall be payable as follows: (1) the value of ineligible property as provided in Section 2.5, shall be fully taxable; (2) the Base Year Value of existing eligible property as determined each year shall be fully taxable; and, (3) the additional value of new eligible and partially eligible property shall be taxable in the manner described in Section 2.8.

2.13 Term of Phase-in. The term shall be no longer than as set out in the schedule shown in paragraph 2.8 for each stated range of investment.

Section 3 **Application**

3.1 Written Request. Any present or potential owner of taxable property in an Affected Jurisdiction may request the creation of a Reinvestment Zone and tax phase-in by filing a written request with the Affected Jurisdictions and attaching a plat and metes and bounds description effectively describing said Reinvestment Zone.

3.2 Contents of Application. The application shall consist of a completed application form accompanied by: a general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken; a descriptive list of the improvements which will be a part of the facility; a map and property description; and a time schedule for undertaking and completing the planned improvements. In the case of modernizing, a statement of the assessed value of the facility separately stated for real

and personal property shall be given for the tax year immediately preceding the application. The application form shall also include such financial and other information necessary for the governing body to evaluate the financial capacity and other factors of the applicant.

3.3 Filing the Application. The initial application for the creation of a "Reinvestment Zone" and tax phase-in shall be made to Victoria's Mayor if the project is to locate within the incorporated territory of the City of Victoria. If the project is to be located within Victoria County but outside of the incorporated territory of the City of Victoria, then the initial application shall be made to the Victoria County Judge. Upon receipt of a completed application, the Mayor or County Judge, as applicable, shall notify in writing the presiding officer of the legislative body of each Affected Jurisdiction and provide each presiding officer with a copy of the application. The Mayor or County Judge as applicable shall then set a public hearing before the "Initiating Governing Body" to afford the Applicant an opportunity to request that a Reinvestment Zone be designated and to describe the project and request the tax phase-in. All interested parties will have the opportunity to publicly state why the phase-in should or should not be granted at this hearing. Notice of the Public Hearing shall be clearly identified on a governing body agenda and be timely posted as provided by law. After the Initiating Governing Body creates the Reinvestment Zone, the other Affected Jurisdictions may set their public meetings in the same manner as described above to grant or not grant the applied for abatement.

3.4 Feasibility Study. After receipt of an application for creation of a Reinvestment Zone and application for phase-in, Victoria Economic Development Corporation shall provide the Affected Jurisdictions a feasibility study setting out the impact of the proposed Reinvestment Zone and tax phase-in. The feasibility study shall include, but not be limited to, an estimate of the economic impact on each jurisdiction of the creation of the Zone and the abatement amount of taxes on the property to be included in the Zone.

3.5 Timeliness. The governing body shall not establish a Reinvestment Zone for the purpose of abatement if it finds that the request for the phase-in was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility.

Section 4 **Public Hearing**

4.1 No Obligation. The adoption of these guidelines and criteria by the governing body of a taxing unit does not:

- a. limit the discretion of the governing body to decide whether to enter into a specific tax phase-in Agreement;
- b. limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for tax phase-in; or

- c. create any property, contract, or other legal right in any person or entity to have the governing body considers or grant a specific application or request for tax phase-in.

4.2 Adverse Effects. Should any Affected Jurisdiction be able to make findings during its public hearing that the granting of abatement will have a substantial adverse effect on its bonds, tax revenue, service capacity or the provision of service, that finding shall be a reason for the governing body to deny any designation of the Reinvestment Zone, the granting of abatement, or both. Additionally, the Initiating Governing Body reserves the right to grant less than the abatement percentages shown in Section 2.8, or deny all phase-ins if the governing body, in its sole discretion, determines that Applicants' investment will not meet the community enhancement goals of said governing body.

4.3 Additional Conditions to Approval. Neither a Reinvestment Zone nor phase-in Agreement shall be authorized if it is determined that: (1) there would be a substantial adverse affect on the provision of government service or tax base; (2) the applicant has insufficient financial capacity; (3) planned or potential use of property would constitute a hazard to public safety, health or morals; or, (4) violation of other codes or law.

Section 5 **Agreement**

5.1 Compliance with Guidelines and Criteria. The Initiating Governing Body of a taxing unit may not enter into a Tax Phase-in Agreement unless it finds that the terms of the Agreement and the property subject to the Agreement meet these Guidelines and Criteria.

5.2 Contents of Agreement. After approval, the governing body shall formally pass a resolution and execute an Agreement with the Applicant, and if applicable, the owner of the facility which shall include: (1) estimated value to be abated and the Base Year Value; (2) percent of value to be abated each year as provided in Section 2.7; (3) the commencement date and the termination date of phase-in; (4) the proposed use of the facility; nature of construction, time schedule, map, property description and improvement list as provided in, Section 3.2; (5) contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections 6 and 7, or other provisions that may be required for uniformity or State law. Such Agreement shall be executed within 60 days after the applicant has forwarded all necessary information and documentation to the governing body or at such later date as may be agreed between applicant and the governing body.

Section 6 Recapture

6.1 Discontinuation of Service. In the event that the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty or accident or natural disaster for a period of one year during the phase-in period, then the phase-in Agreement shall terminate and so shall the abatement of the taxes for the current and any future calendar year during which the facility no longer produces. The taxes, which were to be abated for that calendar year, shall be paid to the Affected Jurisdictions within 60 days from the date of termination.

6.2 Default and Cure. Should the governing body determine that the company or individual is in default according to the terms and conditions of its Agreement, the governing body shall notify the company or individual in writing at the address stated in the Agreement, and if such is not cured within 60 days from the date of such notice ("Cure Period"), then the Agreement may be terminated.

6.3 Termination of Agreement. In the event that the company or individual (1) allows its unabated ad valorem taxes owed any of the Affected Jurisdictions to become delinquent and fails to properly follow the legal procedures for their protest and/or contest in a timely manner, or (2) violates any of the terms and conditions of the phase-in Agreement with any of the Affected Jurisdictions and fails to cure during the Cure Period, the Agreement then may be terminated by every Affected Jurisdiction and all taxes previously abated by virtue of every Agreement will be recaptured by each Affected Jurisdiction and shall be paid by Applicant to each Affected Jurisdiction within 60 days of the termination.

Section 7 Administration

7.1 Informed Appraisal. The Chief Appraiser of the County shall annually determine an assessment of the real and personal property comprising the Reinvestment zone. Each year, the company or individual receiving abatement shall furnish the appraiser with such information as may be necessary for abatement, including changes in appraised value of property and verification of full-time equivalent positions as required by the Agreement. Once value has been established, the Chief Appraiser shall notify the Affected Jurisdictions that levies taxes on the amount of the assessment.

7.2 Periodic Inspections. The Agreement shall stipulate that employees and/or designated representatives of the Affected Jurisdictions will have access to the Reinvestment Zone during the term of the phase-in to inspect the facility to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not

unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.

7.3 Annual Evaluation. Upon completion of construction, the Affected Jurisdictions shall annually evaluate each facility and report possible violations to the contract and Agreement to the governing body and its attorney.

Section 8 **Sunset Provision**

8.1 Biannual Review. These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, at which time all Reinvestment Zones and tax phase-in contracts created pursuant to its provisions will be reviewed by the governing body to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed or eliminated providing that such actions shall not affect existing contracts.

8.2 Industrial Districts. These Guidelines and Criteria do not apply to Industrial District Contracts entered into in accordance with Chapter 42 of the Texas Local Government Code.

EXHIBIT "B"

LEGAL DESCRIPTION OF PREMISES

**LEASE TRACT
25.00 ACRES**

**THE STATE OF TEXAS
COUNTY OF VICTORIA**

Being a 25.00 acre tract of land situated in the Diego Garcia Survey, Abstract No. 39, Victoria County, Texas, and being a portion of that certain 117.01 acre tract of land as conveyed from Ruth S. Emmons to Victoria County Navigation District (VCND) by deed dated July 12, 1970 and recorded in Volume 759, Page 219 of the Deed Records of Victoria County, Texas, said 25.00 acre tract of land being more fully described by metes and bounds as follows:

COMMENCING from a point for the East corner of said 117.01 acre VCND tract, (coordinate value of Northing: 13,443,698.74'; Easting: 2,622,851.99'), same being in the northwest right-of-way line of Farm to Market Highway 1432 (120' R.O.W.);

THENCE, South 53°31'29" West, with the southeast line of said 117.01 acre VCND tract and the northwest right-of-way line of said Farm to Market Highway 1432, a distance of 474.54 feet to a point;

THENCE, North 36°31'28" West, leaving said right-of-way line and crossing said 117.01 acre VCND tract, a distance of 31.52 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the southeast corner and **POINT OF BEGINNING** of the herein tract (coordinate value of Northing: 13,443,441.99'; Easting: 2,622,451.67');

THENCE, crossing said 117.01 acre VCND tract the following Thirteen (13) calls:

- 1) South 53°31'29" West, a distance of 800.05 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an interior corner of the herein described tract;
- 2) South 36°28'31" East, a distance of 5.00 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;
- 3) South 53°31'29" West, a distance of 200.00 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the beginning of a curve to the right;
- 4) Along said curve to the right with a radius of 617.27 feet, a central angle of 23°38'54", an arc length of 254.77 feet, and a chord which bears South 65°20'56" West, a distance of 252.97 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the non-tangent end of said curve to the right and an exterior corner of the herein described tract;
- 5) North 12°49'36" West, a distance of 5.00 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an interior corner of the herein described tract and the beginning of a non-tangent curve to the right;
- 6) Along said curve to the right with a radius of 612.27 feet, a central angle of 59°59'19", an arc length of 641.05 feet, and a chord which bears North 72°49'57" West, a distance of 612.16 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the tangent end of said curve to the right;

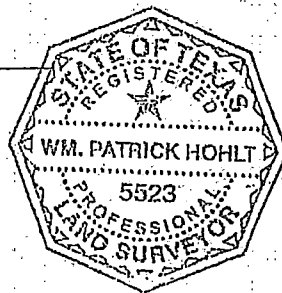
- 7) North 42°50'18" West, a distance of 205.91 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;
- 8) North 40°48'07" East, a distance of 8.57 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract and the beginning of a non-tangent curve to the left;
- 9) Along said curve to the left with a radius of 496.67 feet, a central angle of 38°20'47", an arc length of 332.41 feet, and a chord which bears South 68°22'16" East, a distance of 326.24 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the non-tangent end of said curve to the left and an interior corner of the herein described tract;
- 10) North 53°31'23" East, a distance of 713.81 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an interior corner of the herein described tract;
- 11) North 36°28'37" West, a distance of 525.00 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;
- 12) North 53°31'23" East, a distance of 735.98 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;
- 13) South 36°31'28" East, a distance of 999.00 feet to the **POINT OF BEGINNING**, **CONTAINING** within these metes and bounds 25.00 acres of land more or less,

All bearings are based on the Texas Coordinate System, South Central Zone (4204) NAD83. All distances and coordinates shown are surface and may be converted to grid by dividing by the combined adjustment factor of 1.000130.

A survey drawing of even date herewith accompanies this legal description.

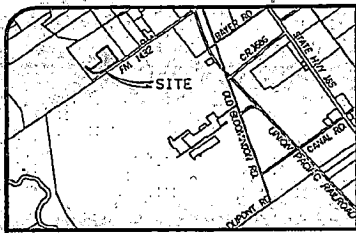
The foregoing Fieldnote Description is based on an actual survey made under my supervision in July 2021 and is true and correct to the best of my knowledge and belief and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the lease agreement.

Wm. Patrick Hohlt
 Wm. Patrick Hohlt
 Registered Professional Land Surveyor
 Texas No. 5523
 TXSURV Firm #100576-00



2104902-FN LEASE TRACT

EXHIBIT "C"
SURVEY OF PREMISES



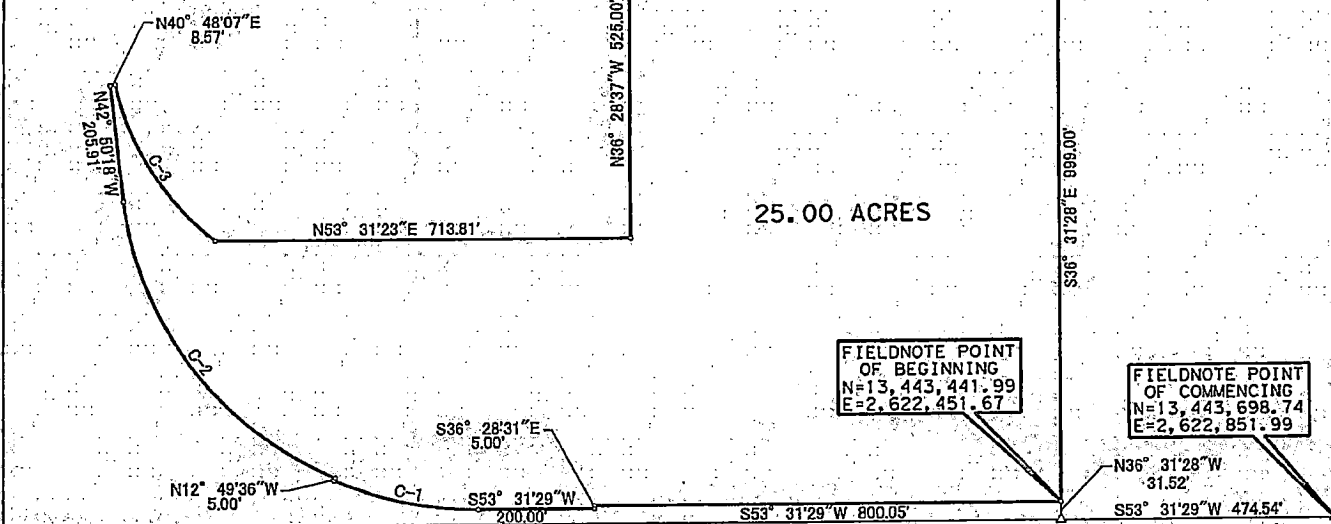
BEING A 25.00 ACRE TRACT OF LAND SITUATED IN THE DIEGO GARCIA SURVEY, ABSTRACT 39, VICTORIA, VICTORIA COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 117.01 ACRE TRACT OF LAND AS CONVEYED FROM RUTH S. EMMONS TO VICTORIA COUNTY NAVIGATION DISTRICT BY DEED DATED JULY 12, 1970 AND RECORDED IN VOLUME 759, PAGE 219 OF THE DEED RECORDS OF VICTORIA COUNTY, TEXAS.

**DIEGO GARCIA SURVEY
ABSTRACT NO. 39**

117.01 ACRES
RUTH S. EMMONS
TO
VICTORIA COUNTY NAVIGATION DISTRICT
DATED: JULY 12, 1970
VOLUME 759, PAGE 219
DEED RECORDS



TRACT III
40.27 ACRE EASEMENT
TO
VICTORIA COUNTY NAVIGATION DISTRICT
UNITED STATES OF AMERICA
VOLUME 836, PAGE 459
DEED RECORDS
(IDENTIFICATION NO. 1005E)



44.515 ACRES
(PARCEL NO. 1)
CAROLYN JANSKY AND
MARTIN JANSKY
VICTORIA COUNTY NAVIGATION DISTRICT
VOLUME 1606, PAGE 896
DEED RECORDS

DATE: 07/14/21
SCALE: 1" = 200'
SHEET 1 OF 1

DRAWN BY: MPH
JOB NO.: 2101902
FLD. BK. NO.: NA

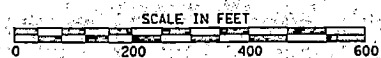
LEASE EXHIBIT
25.00 ACRES

CivilCorp
CIVIL CORP
4411 ARBOL BLVD SUITE 200 VICTORIA, TEXAS 77901
TEL: 409-361-7300 FAX: 409-361-7001
WWW.CIVILCORP.COM TEXAS REG. #00589600 TEXAS REG. #00589600

- NOTE:
- A LEGAL DESCRIPTION OF EVEN DATE HERewith ACCOMPANIES THIS EXHIBIT DRAWING.
 - ALL BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204) NAD83 GEOID 12B. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY THE COMBINED ADJUSTMENT FACTOR OF 1.000130.

288.8342 ACRES
ETHEL WEAVER EVANS, ET AL
TO
E. I. DUPONT de NEMOURS & CO., INC.
VOLUME 830, PAGE 152
DEED RECORDS

- △ CALCULATED POINT
- SET 5/8 INCH DIAMETER IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CIVILCORP"



CURVE DATA

CURVE NO.	RADIUS	DELTA	ARC LENGTH	CHORD
C-1	617.27'	23° 38'54"	254.77'	S65° 20'56" W 252.97'
C-2	612.27'	59° 59'19"	641.05'	N72° 49'57" W 612.16'
C-3	496.67'	38° 20'47"	332.41'	S68° 22'16" E 326.24'

EXHIBIT "D"

LEASE DATED _____ BY AND BETWEEN
VICTORIA COUNTY NAVIGATION DISTRICT as _____
and ZINC RESOURCES as _____

LEASE AGREEMENT

between

VICTORIA COUNTY NAVIGATION DISTRICT

and

ZINC RESOURCES, LLC

_____, 2021

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into effective as of _____, 2021 (the "Effective Date"), by and between the Victoria County Navigation District, a navigation district formed under the provisions of Article XVI, Section 59 of the Constitution of the State of Texas, ("Landlord") and Zinc Resources, LLC, a Texas limited liability company ("Tenant").

RECITALS

A. Landlord owns property in Victoria County, Texas, commonly known as the Port of Victoria North Industrial Park - (also the "Land"), which encompasses the tract of described in Exhibit A hereto (the "Demised Premises").

B. Tenant wishes to lease the Demised Premises which includes the building (comprised of approximately 3,079 square feet of office space, 4,017 square feet of storage space, and 17,136 square feet of covered work area) located on the Demised Premises (the "Building") for the Term and to establish and operate on the Demised Premises an EAF dust recycling facility. Tenant intends to make renovations, upgrades and improvements to the Building (the "Building Improvements") and to construct other improvements on the Demised Premises (the "Demised Premises Improvements"). The Building Improvements and the Demised Premises Improvements may be referred to collectively herein as the "Improvements". Unless the context specifies otherwise, as used herein the Demised Premises shall include both the tract of land depicted in Exhibit A, and the Building located thereon.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the agreements set forth herein, landlord and Tenant (collectively, the "Parties" and individually, a "Party") hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.01 Definitions. Each capitalized term used in this Lease shall have the meaning set forth or referred to in Schedule 1.01 hereto. In addition, Schedule 1.01 sets forth certain rules for the interpretation of this Lease.

ARTICLE 2 PREMISES

2.01 Premises. Landlord hereby does lease, let and demise unto Tenant and Tenant hereby does lease and rent from Landlord, upon and subject to the provisions of this Lease, the Demised Premises.

ARTICLE 3 TERM

3.01 Term. The term of this Lease (the "Term") shall commence on the Effective Date and shall end on the last day of the calendar month which is ten (10) years after the last day of the Commencement Month. The term "Lease Year" shall mean each period of twelve (12) calendar months commencing on the first day of the calendar month following the Commencement Month, except that the first Lease Year shall include the period of time between the Effective Date and the end of the Commencement Month. Tenant shall have the option to extend the Term for up to four (4) additional ten (10) year renewal periods. Tenant may exercise this option only by delivering to Landlord written notification of its intent to extend the lease for an additional ten (10) year term. Said notice must be received by Landlord no later than six (6) months prior to the expiration of the then current Term.

ARTICLE 4 RENT

4.01 Base Rent.

a. Commencing on the Effective Date, Tenant shall pay to Landlord annual base rent ("Base Rent") of \$120,000.00; being 4,800.00 per acre per Lease Year. Base Rent shall be adjusted pursuant to Section 4.01(a)b. Base Rent shall be paid in equal monthly installments in advance on the first day of each calendar month; provided, however, that Base Rent, shall be prorated for the balance of the Commencement Month.

b. Commencing on the first Adjustment Date (*i.e.*, _____, 2026), and on each Adjustment Date thereafter, Base Rent will increase, on a cumulative basis, at the rate the greater of (i) 20% over the Base Rent during the previous ten (10) Lease Year period or (ii) increases in the Index from the first day of the previous ten (10) Lease Year period.

(i) The term "Adjustment Date" means the first day of the first calendar month following the ten (10) year anniversary of the Effective Date of this Lease, and (ii) in the case of each subsequent adjustment in Base Rent, the first day each succeeding ten (10) year anniversary of the first Adjustment Date.

(ii) The term "Index" means the "Producers Price Index" published by the Bureau of Labor Statistics of the United States Department of Labor ("BLS"), or any successor agency, or any renamed local index covering the Victoria County area, or any other measure thereafter employed by said BLS or successor agency in lieu of such Index that represents a weighted index of prices measured at the wholesale, or producer level.

c. In the event that the Index for the most recent Comparison Month is not available as of any Adjustment Date, the Base Rent shall be increased by twenty percent (20%) over the Base Rent in effect for the previous ten (10) Lease Year period. When the Index for such Comparison Month is available, any further adjustment, if applicable, shall be made retroactive to the applicable Adjustment Date, with Tenant making any additional payments of Base Rent, if applicable, no later than thirty (30) days after such Index is available.

4.02 Tonnage Rent. In addition to Base Rent, Tenant will pay, at the rates established in Landlord's Tariffs posted from time to time, the charge per ton of commodity transported across

Landlord's maritime dock facilities, rail facilities; or otherwise transported from the Demised Premises, but in no event, during any Lease Year after the first anniversary date of the Effective Date less than \$25,000.00. The additional amount so determined is herein called the "Tonnage Rent". Such charges shall be invoiced monthly and shall be due and payable within thirty (30) days after being invoiced. Once minimum Tonnage Rent is due as set forth above, if the Tonnage Rent is less than \$25,000.00 for a Lease Year, Landlord shall invoice Tenant for the deficiency at the end of such Lease Year. Notwithstanding the forgoing, the Tonnage Rent shall not increase more than ___% in any renewal period nor more than 75% over the Term, as extended.

4.03 Additional Rent. All amounts required to be paid by Tenant under the terms of this Lease other than Base Rent, and Tonnage Rent are herein from time to time collectively referred to as "Additional Rent". Additional Rent shall include amounts owed by Tenant to Landlord pursuant to any ancillary agreement between Landlord and Tenant related to Tenant's operations at the Port of Victoria, including, without limitation, any Rail Permit. Base Rent, Tonnage Rent, and Additional Rent are herein collectively referred to as "Rent".

4.04 Commodities Reporting. Tenant shall implement and maintain appropriate processes and procedures to accurately determine the quantity of the property, products and commodities moved over, through or across Landlord's rail or maritime facilities and the Demised Premises. On the 10th day of each calendar month, Tenant shall furnish to Landlord a written report detailing such movements of all property, products, and commodities including the kind and quantity thereof, during the preceding calendar month. Landlord and its designated representatives, employees, agents and assigns shall have access at all reasonable times for inspection of Tenant's supporting records pertaining to the movement of property, products and commodities.

4.05 No Abatement. Except to the extent provided in Article 10; no happening, event, occurrence or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder to pay Rent, or entitle Tenant to any abatement, diminution, reduction, offset or suspension of Rent whatsoever; and Tenant waives any rights now or hereafter conferred upon it by statute or other Applicable Law, to any abatement, diminution, reduction, offset or suspension of Rent because of any event, happening, occurrence or situation whatsoever.

ARTICLE 5

IMPOSITIONS; UTILITIES; NET LEASE

5.01 Impositions Defined. The term "Impositions" shall mean all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees, and other charges by any public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed or imposed by any public authority upon or accrued or become a lien on (i) the Demised Premises or any part thereof; (ii) the rent and income received by or for the account of Tenant from any subleases or for any use of occupancy of the Demised Premises; (iii) such leasehold interest, franchises, licenses, and permits as may be pertinent to the use of the Demised Premises; or (iv) any documents to which the Tenant is a party.

creating or transferring an interest or estate in the Demised Premises or any appurtenances to the Demised Premises. Impositions shall not include any income tax, capital levy, estate, succession, inheritance or transfer taxes, or similar tax of Landlord; any franchise tax imposed upon any owner of the fee of the Demised Premises; or any income, profits, or revenue tax, assessment, or charge imposed upon the rent or other benefit received by Landlord under this Lease by any municipality agency, or authority (each a "Governmental Authority" and collectively, "Governmental Authorities"). However, if at any time during the Term the present method of taxation shall be so changed that the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and improvements thereon shall be discontinued and in whole or partial substitution therefor, taxes of the type described in the immediately preceding sentence or taxes, assessments, levies, impositions, or charges shall be levied, assessed, and/or imposed wholly or partially as a capital levy or otherwise on the rents received from said real estate or the rents reserved herein or any part thereof, then such substitute taxes, assessments, levies, impositions, or charges, to the extent so levied, assessed, or imposed, shall be deemed to be included within the term Impositions.

5.02 Tenant's Obligation. During the Term, Tenant will pay as and when the same shall become due all Impositions directly to the Governmental Authority or other person entitled to receive payment thereof and provide Landlord with reasonable evidence that such Impositions have been paid in a timely manner. Impositions that are payable by Tenant for the tax year in which the Term commences as well as during the tax year in which the Term ends shall be apportioned so that Tenant shall pay its proportionate share of the Impositions only for the portions of the tax year during the Term. Where any Imposition that Tenant is obligated to pay may be paid pursuant to Applicable Law in installments, Tenant may pay such Imposition in installments as and when installments become due. Tenant shall, if so requested, deliver to Landlord evidence of due payment of all Impositions Tenant is obligated to pay hereunder, concurrently with the making of such payment.

5.03 Tax Contest. Tenant may, at its sole cost and expense, contest the validity or amount of any Imposition for which it is responsible, in which event the payment thereof may be deferred to the extent permitted by Applicable Law, during the pendency of such contest, if diligently prosecuted. Fifteen (15) days prior to the date any contested Imposition shall become delinquent, Tenant shall deposit with Landlord or, at the election of Tenant, such bank or trust company having its principal place of business in Victoria, Texas, selected by Tenant and reasonably satisfactory to Landlord (the "Imposition Trustee"), an amount sufficient to pay such contested item, together with any interest and penalties thereon and the estimated fees and expenses of any Imposition Trustee, which amount shall be applied to the payment of such items when the amount thereof shall be finally determined. In lieu of such cash deposit, Tenant may deliver to Landlord a surety company bond in form and substance, and issued by a company, satisfactory to Landlord, or other security reasonably satisfactory to Landlord. Nothing herein contained, however, shall be construed to allow any Imposition to remain unpaid for such length of time as would permit the Demised Premises, any part thereof, or any interest therein to be sold or seized by any Governmental Authority for the nonpayment of the same. If at any time, in the judgment of Landlord reasonably exercised, it shall become necessary to do so, Landlord may, after written notice to Tenant, under protest if so requested by Tenant, direct the application of the amounts so deposited or so much thereof as may be required to prevent a sale or seizure of any interest in or to the Demised Premises or foreclosure of any lien created thereon by such item. If the amount deposited exceeds the amount of such payment, the excess shall be paid to Tenant, or, in case there should be any deficiency, the amount of such deficiency shall be promptly paid on demand by Tenant to Landlord (provided Landlord has advanced such amount), and, if not

so paid, such amount shall be a debt of Tenant to Landlord, together with interest thereon at the Interest Rate from the date advanced until paid. Tenant shall promptly furnish Landlord with copies of all proceedings and documents with regard to the contest of any Imposition, and Landlord shall have the right, at its expense, to participate therein.

5.04 Evidence Concerning Impositions. The certificate, advice, bill, or statement issued or given by the appropriate officials authorized by Applicable Law to issue the same or to receive payment of any Imposition of the existence, nonpayment, or amount of such Imposition.

5.05 Rendition. For each tax year commencing after the Effective Date, Tenant shall render the Demised Premises, and any interest Tenant may hold therein, for each Governmental Authority imposing Impositions thereon and may, if Tenant shall so desire, endeavor at any time or times to obtain a lowering of the valuation of the Demised Premises, or any interest therein, for any year for the purpose of reducing ad valorem taxes thereon, and in such event, Landlord will, at the request of Tenant, cooperate in effecting such a reduction, provided that Landlord shall not be required to incur any expense in connection therewith without its prior consent.

5.06 Utilities. Tenant shall be responsible for any and all costs associated with the installation, extension, and/or upgrade of Utilities on or to the Demised Premises which are necessary for Tenant's operations on the Demised Premises, subject to prior approval by Landlord such approval not to be unreasonably withheld, conditioned or delayed. Tenant shall pay all charges for gas, electricity, light, heat, air conditioning, power, telephone, cable, internet service and other communication services, and all other utilities and similar services rendered or supplied to the Demised Premises, and all water fees, water rents, sewer/septic service charges, or other similar charges levied or charged against, or in connection with, the Demised Premises. Tenant shall be responsible for the cost of drilling a pre-permitted water well to provide water to the Demised Premises, in such manner and at a location to be approved by Landlord, in its sole discretion. Landlord shall apply for and obtain a permit for the drilling and operation of said water well for Tenant's usage during the Term in accordance with applicable laws, statutes, rules, and regulations, including, without limitation, those promulgated by the Victoria County Groundwater Conservation District. Tenant shall be responsible for all drilling, construction, operation and maintenance costs associated with said water well, including, without limitation, all costs associated with any testing and compliance reporting required by applicable law, rule, or regulation. No later than the first day of each month during the Term, Tenant shall provide Landlord with water meter readings accurately documenting Tenant's water production from said well. Tenant shall be charged \$2.75 per 1,000 gallons for water produced from said water well. Tenant may not sell, transfer, or convey the water produced from said well, or any usage right associated with said well, without Landlord's written consent, in its sole discretion. During the initial ten (10) year Term of this Lease, Tenant shall be allocated ninety (90) acre-feet annually from Landlord's available water production rights from the Land. Tenant shall also be allowed access to the existing water well on the Demised Premises, and shall be responsible for the performance of and any related costs associated with the refurbishment, maintenance, repair, operation, and compliance with any reporting requirements or any rules, regulations, or statutes associated with said well. Tenant shall be charged \$2.75 per 1,000 gallons for water produced from said well. Potable water for the Demised Premises may be obtained by Tenant from Landlord's existing water well servicing its Administrative Building. Landlord makes no warranty or guarantee related to such potable water access allowed to Tenant, and shall not be responsible for or in any way liable to Tenant or any third-party for any damage or loss occasioned by the interruption, delay, or cessation of said water supply. Tenant shall pay charges equivalent to

Landlord's then published tariff rate for water usage from any wells operated by Landlord (currently \$3.75 per 1,000). In the event Tenant's usage for any Lease Year (after the first Lease Year) during the Term is less than 22.5 acre feet, Tenant shall pay to Landlord a charge equivalent to Landlord's then published tariff rate for water usage from wells operated by Landlord (currently \$3.75 per 1,000 gallons). Tenant's allocated available water shall be adjusted following each ten (10) year lease term to reflect a ten percent (10%) increase over Tenant's highest annual acre feet usage rate during the previous ten (10) year lease term, not to exceed ninety (90) acre feet annually. Landlord's charges for water pursuant to the provisions of this Lease shall be "Additional Rent" as provided in Section 4.03 above, and shall be subject to periodic adjustment in the same manner and frequency as Base Rent under Section 4.01, above. It is agreed that water service for the Building on the Demised Premises shall be provided by the water well to be installed, maintained, and operated by Tenant under the terms of this Lease, and Tenant shall be responsible for all costs associated with disconnecting the Building's current water service from Landlord's existing water well located near the Demised Premises.

5.07 Net Lease. Except as expressly provided in this Lease, Landlord shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease or the financing, ownership, construction, maintenance, operation, upgrade, renovation, remodel or repair of the Demised Premises. It is expressly understood and agreed that this is a completely net lease intended to assure Landlord the rentals herein reserved on an absolute net basis.

5.08 Right to Perform Tenant's Obligation as to Impositions. If Tenant fails to timely pay any Imposition for which it is responsible hereunder, or fails to timely notify Landlord of its intention to contest the same, or fails to pay contested Impositions as provided in Section 5.03, Landlord may, at its election (but without obligation), pay such Imposition with any interest and penalties due thereon, and the amount so paid shall be reimbursed by Tenant on demand together with interest thereon at the Interest Rate from the date of such payment until repaid.

ARTICLE 6

CONDITION OF DEMISED PREMISES; IMPROVEMENTS

6.01 Condition of Demised Premises. Tenant acknowledges that it is leasing the Demised Premises, including any structures or other improvements located thereon, "AS IS, WHERE IS, WITH ALL FAULTS" and that, except as provided below, Landlord makes no representations or warranties of any nature, express or implied, concerning the Demised Premises or any structures or other improvements thereon, including any representation or warranty concerning (i) the physical condition of the Demised Premises or any structures or other improvements, (ii) the suitability of the Demised Premises or any structures or other improvements thereon for Tenant's intended use, (iii) the environmental condition of the Demised Premises and any structures or other improvements or (iv) compliance of the Demised Premises or any structure or other improvements with any Applicable Laws. Tenant has had adequate opportunity to inspect, conduct tests and other due diligence and otherwise evaluate the Demised Premises and the structures and other improvements thereon. Notwithstanding the foregoing negation of representations and warranties, Landlord represents and warrants to Tenant that Landlord has no actual knowledge of any condition (environmental or otherwise), or of facts or circumstances concerning the Demised Premises or violations of Applicable Law which would negatively impact or prevent Tenant's intended use and occupancy under this Lease or impair the suitability of the Demised Premises for Tenant's intended use. Landlord further

represents and warrants that there is no lien or other security interest of any kind on the Landlord's interest in the Demised Premises and no rights of any person or entity in or to the Demised Premises which are superior to the rights of Tenant under this Lease or which would impair Tenant's rights and benefits under this Lease and any mortgage or security interest Landlord places on the Land or any interest therein in the future shall be expressly subordinate and inferior in right to the interests of Tenant under this Lease and the rights of any lenders to Tenant holding liens on Tenant's interest under this Lease.

6.02 Construction of Improvements. Tenant shall, subject to the subsequent provisions of this Article 6, perform and/or construct all Building Improvements and Demised Premises Improvements in accordance with the terms of this Lease.

6.03 Alterations; Demolition. At any time and from time to time during the Term, Tenant may perform such construction, alteration, renovation, repair, refurbishment, and other work with regard to the Building Improvements and/or the Demised Premises Improvements as Tenant may elect, provided that the same is done in accordance with the Construction Standards herein, and is approved by Landlord which approval by Landlord shall not be unreasonably withheld, conditioned or delayed.

The Building Improvements and the Demised Premises Improvements shall not be altered, demolished, or removed without the prior written consent of Landlord, which consent may be withheld, delayed, or conditioned in Landlord's sole discretion.

6.04 Construction Standards and Liens. The Building Improvements and the Demised Premises Improvements shall be constructed, and any and all alteration, renovation, repair, restoration, refurbishment, or other work with regard thereto shall be performed, in accordance with the following "Construction Standards" (herein so referenced):

a. (i) With respect to any material construction, installation, alteration, renovation, repair, refurbishment and other work with regard to the Building Improvements and/or the Demised Premises Improvements, Landlord shall have approved the site plan, drainage plans, construction plans and specifications, and construction materials to be utilized which approval shall not be unreasonably withheld, conditioned or delayed.

(ii) All such construction or work shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question, and then if the cost of such work exceeds \$500,000.00, then also utilizing a general contractor (and if Tenant elects to use one, the project manager) and principal design engineers approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed);

(iii) All such construction or work shall be done in material compliance with all Applicable Laws;

(iv) No such construction or work shall be commenced until Tenant shall have obtained all licenses, permits, and authorizations required of all Governmental Authorities having jurisdiction, including Landlord;

(v) No such construction or work shall be commenced until Tenant shall have obtained, and Tenant shall maintain in force and effect, the insurance coverage required in Article 8 with respect to the type of construction or work in question.

(vi) No such construction or work shall be commenced until Tenant shall have provided Landlord with such performance bonds and payment bonds (if the cost of such work exceeds \$100,000.00) as Landlord shall reasonably request;

(vi) After commencement, such construction or work shall be prosecuted with due diligence to its completion, subject to extension due to delays caused solely by Tenant's contractor(s) and not within Tenant's control or by Force Majeure; and

(vii) After completion of initial construction or substantial alteration of the Building Improvements and/or Demised Premises Improvements, Tenant shall provide Landlord with a complete set of as-built drawings.

b. Tenant shall have no right, authority, or power to bind Landlord or any interest of Landlord in the Demised Premises, the Land, or any improvements located on the Land for any claim for labor or for materials or for any other charge or expense incurred in construction of the Building Improvements or the Demised Premises Improvements or performing any alteration, renovation, repair, restoration, refurbishment, or other work with regard thereto, nor to render Landlord's interest in the Demised Premises, the Land or any improvements located on the Land liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith and Tenant shall in no way be considered to be the agent of Landlord with respect to, or general contractor for, the construction, erection, or operation of any such Building Improvements, Demised Premises Improvements, alteration, renovations, repairs, restorations, refurbishments or other work. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Demised Premises or the Land shall be filed, Tenant shall promptly pay and release or bond such liens to Landlord's reasonable satisfaction or otherwise obtain the release or discharge thereof. If Tenant fails to promptly pay and release or bond such lien to Landlord's reasonable satisfaction, Landlord shall have the right, but not the obligation, to pay, release or obtain a bond to protect against such liens and claims following written notice to Tenant, and Tenant shall reimburse Landlord on demand for any such amounts paid together with interest thereon from the date of such payment until paid.

c. Landlord, as well as its agents, representatives, employees, Commissioners, architects, engineers and Affiliates, if any, shall not be liable to Tenant or any other Person for any loss, claim or demand asserted on account of Landlord's exercise of its rights and duties hereunder, or any failure or defect in such exercise. No approval of designs, plans, specifications or other matters will, if followed, result in a properly designed facility, building or other improvements. Such approvals shall in no event be construed as representing or guaranteeing that any improvements or renovations will be built or performed in a workmanlike manner, nor shall such approvals relieve Tenant of its obligation to construct the improvements and perform any alteration, renovation, repair, restoration, refurbishment, or other work in a workmanlike manner as provided in this Article 6.

6.05 Ownership of Improvements. During the Term the Building existing on the Demised Premises at the time this Lease is signed shall be solely the property of Landlord, as well as any additional construction, installation, alteration, renovation, repair, refurbishment and other work done

by Tenant to said Building during the Term. Any other improvements on the Demised Premises, shall be solely the property of Tenant, but upon expiration or termination of the Term, said additional improvements, including, but not limited to, any roadways, driveways, buildings, structures, or other improvements shall be the property of Landlord, free and clear of all claims of Tenant or any third party. Any personal property of Tenant located on the Demised Premises as a part of the Demised Premises Improvements shall be the property of Tenant and upon expiration or termination of the Term, the Tenant shall remove such items at its own expense. All such personal property of Tenant that remains on the Demised Premises after the deadline for removal shall be deemed abandoned and, at Landlord's election, may be retained by Landlord as Landlord's property, disposed of by Landlord, without accountability, in such manner as Landlord deems fit (including having such property stored at the risk and expense of Tenant), or required by Landlord's written notice to Tenant to be removed by Tenant. No later than the expiration or, if Tenant has paid the Rent in advance for, and maintains all required insurance during, such thirty (30) day period, no later than thirty (30) days after the earlier termination, of the Term, Tenant shall have the right to remove any personal property located on the Demised Premises provided that (i) all resulting damage or injuries to the Demised Premises are completely remedied at the expense of the Tenant and (ii) Tenant complies with Landlord's reasonable requirements respecting any required restoration resulting from the removal of personal property as set forth in the immediately preceding sentence. In addition, upon expiration or termination of the Lease, within sixty (60) days after written notice from Landlord requiring that Tenant do so, Tenant shall demolish and/or remove any Demised Premises Improvements placed on the Demised Premises by Tenant, as may be identified by Landlord for demolition and/or removal. All demolition and removal work shall be at Tenant's sole cost and expense.

6.06 Mutual Cooperation.

a. Landlord, as owner of the Demised Premises and the Land, shall reasonably cooperate with and assist Tenant in Tenant's efforts to file for and obtain all building permits, certificates of occupancy, easements, licenses, variances, permissions and consents necessary to construct, operate and maintain its facility on the Demised Premises so long as Landlord is not required to incur any obligations or liabilities other than minor incidental expenses or impose any restrictions conditions or other encumbrances on the Land.

b. Landlord shall not unreasonably delay or prohibit Tenant from commencing and thereafter continuously pursuing construction of the Building Improvements or the Demised Premises Improvements in accordance with this Lease but this sentence does not require Landlord to refrain from exercising any of Landlord's rights under this Lease.

c. Landlord shall have the right to require periodic meetings with representatives of Tenant present (in person or by phone) to discuss issues relating to the progress of construction of the Building Improvements and/or the Demised Premises Improvements, including the coordination of construction of such improvements. If Landlord requests, representatives of the general contractor(s) and architects for the Building Improvements and the Demised Premises Improvements shall be present. Such meetings shall occur no less frequently than monthly and no more frequently than weekly.

ARTICLE 7
USE, CONTINUOUS OPERATIONS, MAINTENANCE, AND REPAIRS

7.01 Use.

a. Subject to the terms and provisions hereof, Tenant shall have the right to use and enjoy the Demised Premises for the operation of a EAF dust recycling facility, and for no other uses, except as may be approved, in writing, by Landlord. Tenant may utilize all or any part of the Demised Premises for uses other than those named herein only with the written consent of Landlord.

b. Tenant shall not use or occupy the Demised Premises, permit the Demised Premises to be used or occupied, nor do or permit anything to be done in or on the Demised Premises in a manner which would (i) in any way make void or voidable any insurance then in force with respect thereto, (ii) make it impossible to obtain the insurance required to be furnished by Tenant hereunder, (iii) constitute a public or private nuisance, (iv) be unreasonably disruptive to Landlord's other Tenants, the Land or the improvements located thereon, or (v) violate any Applicable Law.

c. Upon execution of this Lease, and no later than eighteen (18) months thereafter, Tenant shall commence and continue commercial operation on the Demised Premises, subject to Force Majeure and periodic shut-downs to the extent required for maintenance, repairs and restoration.

7.02 Maintenance and Repairs.

a. Tenant shall take good care of the Demised Premises and Improvements, make all repairs thereto, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Demised Premises and Improvements in good order, repair, and condition at all times and in compliance with all Applicable Laws. Tenant will not do, permit, or suffer any waste, damages, disfigurement, or injury to or upon the Demised Premises or any part thereof. However, the foregoing provisions of this Section 7.02 shall not prohibit Tenant from undertaking the initial construction of the Building Improvements or the Demised Premises Improvements or any subsequent repairs, remodeling, renovation, or reconstruction (whether resulting from casualty, condemnation, or otherwise) in accordance with the terms of this Lease.

b. Landlord shall have no obligation to maintain, repair or replace the Demised Premises or any improvements or equipment located thereon, except as may be expressly stated in this Lease.

ARTICLE 8
INSURANCE AND INDEMNITY

8.01 Insurance. Tenant will, at its cost and expense, keep and maintain in force the following policies of insurance:

a. Insurance on the Demised Premises Improvements against loss or damage by fire and against loss or damage by any other risk now and from time to time insured against by "special form" (formerly "all risk") property insurance, and in builder's risk completed value during construction (including malicious mischief and vandalism), in amounts sufficient to provide coverage

for the full insurable value of the Demised Premises Improvements; the policy for such insurance shall have a replacement cost endorsement or similar provision. "Full insurable value" shall mean actual replacement value (exclusive of cost of excavation, foundations, and footings below the surface of the ground or below the lowest basement level), and such full insurable value shall be confirmed from time to time at the request of Landlord by one of the insurers.

b. Boiler and pressure apparatus insurance to the limit of not less than \$10,000,000.00 with respect to any one accident, such limit to be increased if requested by Landlord by an amount which may be reasonable at the time. If the Demised Premises Improvements shall be without a boiler plant, no such boiler insurance will be required.

c. Worker's compensation and employer's liability coverage insurance as to Tenant's employees involved in the construction, operation, or maintenance of the facility and/or Demised Premises in compliance with Applicable Law.

d. Such other insurance against other insurable hazards which at the time are commonly insured against in the case of improvements similarly situated, due regard being given to the type of the Demised Premises Improvements, their construction, location, use, and occupancy.

8.02 Liability Insurance.

a. Tenant will, at its cost and expense, keep and maintain in force commercial general liability insurance for bodily injury, death and property loss and damage (including coverages for product liability, contractual liability and personal injury liability) covering Tenant for claims, lawsuits or damages arising out of its performance under this Agreement, and any negligent or otherwise wrongful acts or omissions by Tenant or any employee or agent of Tenant, with a combined single limit of not less than \$5,000,000 with such limit to be increased if requested by Landlord (but no more frequently than once every three (3) years) by an amount which may be commercially reasonable at the time, taking into account the operation of Tenant's facility, as well as the type of the Demised Premises Improvements, their construction, location, use and occupancy. Tenant shall require that: (i) Approved Contractor and any other general contractor for initial construction, tenant improvement work, casualty restoration work or any significant alterations provide completed operations coverage in its commercial general liability policy, and (ii) such insurance name Tenant and Landlord as additional insureds and be written on an occurrence, rather than a claims made, basis.

b. In addition, throughout the Term and for a period of five (5) years after the expiration or termination of this Lease, Tenant shall maintain in effect environmental liability insurance for the benefit of Landlord and Tenant in an amount no less than \$10,000,000 with a deductible no higher than \$250,000. Provided, however, that Tenant shall not be required to maintain such environmental liability insurance after the expiration or termination of the Lease if: (a) within thirty (30) days of the Effective Date, Tenant conducts an Environmental Site Assessment ("ESA"); and (b) within thirty (30) days of the expiration or termination of the Lease Tenant conducts an ESA and remedies any deficiencies that were not present on the initial ESA and that were caused by Tenant's use of the Premises.

8.03 Policies. All insurance maintained in accordance with the provisions of this Article 8 shall be issued by companies reasonably satisfactory to Landlord and the Permitted Mortgagee, if any

(hereinafter defined). All property policies shall be carried in the name of both Landlord and Tenant, as their respective interests may appear, and shall contain a mortgagee clause acceptable to the Permitted Mortgagee, if any. All property policies shall expressly provide that any loss thereunder may be adjusted with Tenant and Landlord, but shall be payable to Landlord, who shall agree to receive and disburse all proceeds as set forth in Section 9.02. All liability insurance policies shall name Landlord and the Permitted Mortgagee, if any, as an additional insureds and shall include contractual liability endorsements. All such policies of insurance may be provided on either an occurrence or claims-made basis. If such coverage is provided on a claims made basis, such insurance shall continue throughout the term of the Agreement, and upon the termination of this Agreement, or the expiration or cancellation of the insurance, Tenant shall purchase or arrange for the purchase of either an unlimited reporting endorsement ("Tail" coverage), or "Prior Acts" coverage from the subsequent insurer, with a retroactive date on or prior to the effective date of this Agreement and for a period of not less than five (5) years following the termination or expiration of this Agreement. No cancellation, non-renewal or material modification will occur without thirty (30) days' prior written notice by the insurer to Landlord, Tenant and the Permitted Mortgagee, if any. Tenant shall furnish Landlord and the Permitted Mortgagee, if any, with such evidence of insurance, including duplicate originals or copies certified as being true and correct of all insurance policies, or certificates of insurance reasonably satisfactory to Landlord and the Permitted Mortgagee, if any, with new certificates of insurance or other evidence of insurance to be delivered no later than thirty (30) days prior to the expiration of the current policies. If Tenant fails to maintain any insurance required to be maintained by Tenant pursuant to this Lease, Landlord may, at its election (without obligation), procure such insurance as may be necessary to comply with these requirements, and Tenant shall reimburse Landlord, on demand, with interest thereon at the Interest Rate from the date of expenditure until fully reimbursed. Any and all property insurance policies required to be maintained pursuant to this agreement shall, if they do not automatically permit the waivers of subrogation contained herein, be endorsed to reflect the waivers of subrogation provided for herein.

8.04 Tenant's Indemnity. Tenant shall defend, indemnify and hold harmless Landlord and its affiliates, officers, directors, employees, representatives, commissioners, managers and agents (the "Indemnified Parties") from and against, and Tenant shall be responsible for, any and all liabilities (including strict liability), actions, demands, penalties, fines, losses, costs and expenses (including reasonable attorneys' and experts' fees and expenses), suits, costs of any settlement or judgment, and claim of any and every kind whatsoever, whether arising in equity, at common law, or by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind and character (including claims for personal injury, bodily injury, emotional distress, real and personal property damage and economic loss) (all of which are hereinafter collectively called "Claims"), which may now or in the future be brought or instituted or asserted on account of or growing out of or arising from (i) any failure on the part of Tenant and its affiliates, partners, members, shareholders or other equity owners, officers, directors, employees, managers or agents, or licenses (the "Tenant Parties") to comply with the provisions of this Lease, or to comply with the provisions of Applicable Law applicable to the Tenant Parties or the Premises, (ii) any and all injuries or damages, including death, to the persons or properties relating to the condition, use or occupancy of the Demised Premises, including the construction, alteration, repair or maintenance of any improvements, or the presence on or release or discharge from the Demised Premises of any Hazardous Substances (except to the extent that Landlord has been proven to have caused such presence, release or discharge); or (iii) Landlord's approval of any designs, site plans, plans, specifications or other matters, **NOTWITHSTANDING THE NEGLIGENCE OR STRICT LIABILITY (WITHOUT REGARD TO FAULT) OF ANY OF THE INDEMNIFIED**

PARTIES except, in the case of each Indemnified Party, to the extent that the Claims are proven to have resulted from the gross negligence or willful misconduct of such Indemnified Party. Maintenance of the insurance referred to in this Article 8 shall not affect Tenant's obligations under this Section 8.04. Without relieving Tenant of its obligations under this Section 8.04, the Indemnified Parties, at their election, may defend or participate in the defense of any Claims with attorneys and representatives of their own choosing. Tenant shall be relieved of its obligation of indemnity to carriers and either paid to Landlord or paid for Landlord's benefit in reduction of any Claims, but nothing contained herein shall entitle Tenant to delay performing its indemnification obligations, or require any Indemnified Party to delay enforcing its indemnification rights, until one or more insurance carriers make such payments to or for the benefit of the Indemnified Parties.

8.05 Subrogation. Landlord hereby waives (on behalf of itself and any Person holding through right of subrogation) any and all rights of recovery, claim, action or cause of action against Tenant, its agents, partners or other equity owners, directors, officers and employees (each a "Tenant Release Party") for any loss or damage that may occur to the Demised Premises Improvements and to Landlord's interest in any other property located on the Demised Premises or the Land, whether real, personal or mixed, and the Land, regardless of cause or origin, **INCLUDING THE NEGLIGENCE OR OTHER MISCONDUCT OF ANY TENANT RELEASE PARTY**, to the extent such loss is covered in whole or in part by insurance. Tenant hereby waives (on behalf of itself and any Person holding through right of subrogation) any and all rights of recovery, claim, action or cause of action against Landlord, its agents, directors, commissioners, officers and employees (each a "Landlord Release Party") for any loss or damage that may occur to the Demised Premises Improvements and to all property of Tenant located on the Demised Premises or the Land, whether real, personal or mixed, and the Demised Premises, regardless of cause or origin, **INCLUDING THE NEGLIGENCE OR OTHER MISCONDUCT OF ANY LANDLORD RELEASE PARTY**, to the extent such loss is covered (or is required under this Lease to be covered) in whole or in part by insurance. Nothing contained in this Section 8.05 is intended or shall be construed to create any liability that would not otherwise exist in the absence of this Section 8.05.

ARTICLE 9 **CASUALTY LOSS**

9.01 Tenant's Obligation to Restore. Should the Demised Premises Improvements be wholly or partially damaged or destroyed by fire or other casualty, Tenant shall:

a. promptly, but in no event later than two (2) Business Days after the occurrence of such destruction, commence and thereafter diligently pursue all steps necessary to secure the Demised Premises Improvements and otherwise make the Demised Premises Improvements safe so as to not result in risk of injury to Persons or damage to other property on the Land, including constructing a fence around the Demised Premises (if necessary for security or safety). The work described in this Section 9.01a is herein called the "Immediate Work".

b. so long as (A) no Event of Default exists, (B) no less than 1 year remains in the Term, and (C) it is feasible to restore the Demised Premises Improvements Tenant shall promptly, but in no event later than thirty (30) days after the occurrence of such damage or destruction, commence and thereafter diligently pursue the repair, replacement, restoration and reconstruction (collectively, the "Restoration Work") of the Demised Premises Improvements to substantially the

form in which the Demised Premises Improvements existed prior to such casualty, with at least as good workmanship and quality as the improvements being repaired, replaced, restored or reconstructed, all in compliance with the provisions of this Article 9 and Section 6.04, and Tenant shall be entitled to use any applicable insurance proceeds for such purpose. The Parties recognize that, depending on the extent of damage or destruction, Restoration Work may require assessing the structural soundness or other condition of the Demised Premises Improvements, preparing plans and specifications, obtaining necessary building permits, negotiating construction contracts, obtaining surety bonds and insurance and obtaining any required approvals from Landlord and the Permitted Mortgagee, if any. All such activities, if diligently pursued, shall be considered part of Restoration Work. Notwithstanding the foregoing, Tenant may determine to make material modifications to the Demised Premises Improvements and not restore the Demised Premises Improvements to substantially the form which existed prior to such casualty but in any event will follow the procedures in Article 6 of this Lease for new construction of Improvements.

c. If (A) an Event of Default exists, (B) less than 1 year remains in the Term, or (C) it is not feasible to restore the Demised Premises Improvements, Tenant shall not be obligated to restore, rebuild or replace the Demised Premises Improvements and this Lease shall terminate as though the date of such destruction was the date of expiration of the Term. In such event, all insurance proceeds shall first be applied to the discharge of the Permitted Mortgagee, if any, and any proceed in excess of the amount necessary to discharge the Permitted Mortgagee shall be applied (i) first to pay the cost of demolishing the Demised Premises Improvements and leveling, cleaning and otherwise putting the Demised Premises in a good, clean and safe order and condition, as provided in Section 6.02, and (ii) any remaining insurance proceeds shall be distributed (A) first to Tenant in an amount equal to the value of Tenant's remaining leasehold interest in the Demised Premises (assuming that this Lease would have expired at the end of the then-current Term) and (B) the balance to Landlord

9.02 Deposit of Funds Where Improvements Are To Be Restored. In the event of destruction or damage by casualty where Tenant is obligated or determines to repair, replace, restore or reconstruct the Demised Premises Improvements, all property damage insurance proceeds shall be deposited with the holder of the Permitted Mortgage; if there is no Permitted Mortgage, such proceeds shall be deposited into an escrow account jointly owned by Landlord and Tenant for disbursement in accordance with this Section 9.02. Any disbursement of funds from said joint escrow account shall require the authorization of both Landlord and Tenant. Such proceeds shall be received, held, and paid out for restoration of casualty damages as follows:

a. The insurance proceeds will be disbursed to Tenant after delivery of evidence reasonably satisfactory to the Permitted Mortgagee, or if there is no Permitted Mortgagee, to Landlord that (i) such repairs, restoration, or rebuilding have been completed and effected in compliance with the Construction Standards, and (ii) no mechanic's and materialman's liens against the Premises have been filed, or all such liens have been paid or bonded around to the satisfaction of Landlord. At the option of Tenant, provided that no Event of Default has occurred and is then continuing, such proceeds shall be advanced in reasonable installments. Each such installment (except the final installment) shall be advanced in an amount equal to the cost of the construction work completed since the last prior advance (or since commencement of work as to the first advance) less statutorily required retainage in respect of mechanic's and materialman's liens. The amount of each installment requested shall be certified as being due and owing by Tenant and Tenant's architect in charge, and each request shall include all bills for labor and materials for which reimbursement is requested and

reasonable satisfactory evidence that no lien affidavit has been placed against the Premises for any labor or material furnished for such work. The final disbursement, which shall be in an amount equal to the balance of the insurance proceeds, shall be made upon receipt of (A) an architect or engineer's certificate of substantial completion as to the work from Tenant's architect or engineer, and (B) reasonably satisfactory evidence that all bills incurred in connection with the work have been paid, and (C) executed final releases of mechanic's liens by the general contractor and any major subcontractors and suppliers.

b. After completion of such repairs, replacement, restoration or rebuilding, any insurance proceeds in excess of the cost of such repairs, replacement, restoration, or rebuilding shall, if required by any Permitted Mortgagee, be applied to payment of its Permitted Mortgage, otherwise any such proceeds shall be paid to Tenant.

c. If the cost of any such repairs, replacement, restoration or rebuilding be estimated by Tenant's architect or engineer (or any independent supervising architect or engineer retained by Landlord or the Permitted Mortgagee, if any) to be in excess of the insurance proceeds, Tenant will, upon request of Landlord or the Permitted Mortgagee, if any, give satisfactory assurance that the funds required to meet such deficiency will be available to Tenant for such purpose, which assurance may include the deposit of the amount of such deficiency in accordance with this Section 9.02.

9.03 Notice of Damage. Tenant shall immediately notify Landlord and any Permitted Mortgagee of any destruction or material damage to the Demised Premises.

ARTICLE 10 **CONDEMNATION**

10.01 Total Taking. Should the entire Demised Premises be taken (which term, as used in this Article 10, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, then (a) this Lease shall terminate as of the date of taking possession by the condemning authority, (b) Rent shall be apportioned and paid to such date of termination, and (c) the award therefor will be distributed as follows: (i) first, to the payment of all reasonable fees and expenses incurred in collecting the award; and (ii) second, the balance of the award shall be equitably apportioned between Landlord and Tenant based on the then respective fair market values of Landlord's Interest (appraised by reference to all relevant factors, including the income stream derivable by Tenant from the Premises for the remainder of the originally stated Term), with any award to Tenant payable to Tenant's Permitted Mortgagees, if any, as their interests may appear. However, if Tenant's portion of the condemnation award is insufficient to repay the Permitted Mortgage, if any, then Landlord's portion of such award shall be reduced by the amount which, when taken together with Tenant's portion, is sufficient to repay the Permitted Mortgage, if any; but in no event shall Landlord be denied the portion of the condemnation award attributable to the fair market value of the Demised Premises (expressly excluding the Demised Premises Improvements) determined as if this Lease were not in effect. If Landlord and Tenant are unable to agree on the respective fair market values of their interest in the Demised Premises, then the matter shall be submitted to arbitration as provided in Section 15.03. After the determination and distribution of the condemnation award as herein provided, this Lease shall terminate.

10.02. Partial Taking. If a portion of the Demised Premises is taken by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, this Lease shall continue in effect as to the remainder of the Demised Premises unless, in Tenant's reasonable judgment, so much of the Demised Premises is so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Demised Premises had thus been taken, and the award therefor shall be distributed as provided in Section 10.01. In the event of a partial taking where this Lease is not terminated, the Base Rent payable during the remainder of the Term after taking of possession by the condemning authority shall be reduced on a just and proportionate basis having due regard to relative value and acreage of the portion of the Demised Premises thus taken as compared to the remainder thereof and taking into consideration the extent, if any, to which Tenant's use of the remainder of the Demised Premises shall have been impaired or interfered with by reason of such partial taking. If Landlord and Tenant are unable to agree as to a just reduction in Base Rent, the matter shall be submitted to arbitration as provided in Section 15.03. In the event of a partial taking where this Lease is not terminated, Tenant shall proceed promptly to restore the remaining portion of the Demised Premises to an integral unit resembling, so far as practicable, the Demised Premises prior to such taking, in the same manner provided in Article 9 for restoration following a casualty, with the provisions relating to Tenant's right to use insurance proceeds for Immediate Work and Restoration Work to apply likewise to Tenant's right to use condemnation awards for such purposes.

10.03 Award on Partial Taking. In the event of a partial taking where this Lease is not terminated, and as a result thereof Tenant will need to restore, repair, or refurbish the remainder of the Demised Premises in order to put them in a usable condition, then (a) the award shall first be apportioned as provided in Section 10.01, considering the respective interests of Landlord and Tenant in the portion of the Demised Premises taken, (b) the portion allocable to Landlord shall be paid to Landlord, and (c) the portion of the award payable to Tenant shall be deposited and disbursed for payment of such restoration, repair and refurbishment work in accordance with the provisions of Section 9.02. If a portion of the Demised Premises is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned as provided in Section 10.01, considering the respective interests of Landlord and Tenant in the portion of the Demised Premises taken.

10.04 Temporary Taking. If the whole or any portion of the Demised Premises shall be taken for temporary use or occupancy, the Term shall not be reduced or affected and Tenant shall continue to pay the Rent in full. Except to the extent Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. In the event of any temporary taking, Tenant shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy extends beyond the expiration of the Term, in which case such award, after payment to Landlord therefrom for the estimated cost of restoration of the Demised Premises to the extent that any such award is intended to compensate for damage to the Demised Premises, shall be apportioned between Landlord and Tenant as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period. If the portion of the award payable to Tenant is made in a lump sum or is payable to Tenant other than in equal monthly installments, Landlord shall have the right to collect such portion thereof as shall be sufficient to meet (a) the payments due to Landlord from Tenant under the terms of this Lease during the period of such temporary use or

occupancy (and the amounts so collected shall be credited to Tenant's obligations hereunder), and (b) the estimated cost of restoration of the Demised Premises, if such taking is for a period not extending beyond the expiration of the Term, which amount shall be made available to Tenant when and if, during the Term, Tenant shall obtain possession and shall proceed to restore the Demised Premises as nearly as may be reasonably possible to the condition existing immediately prior to such taking. To the extent the portion of the award is applicable to subpart (b) of the immediately preceding sentence, such portion of the award shall be disbursed for payment of such repair, restoration and refurbishment in accordance with the provisions of Section 9.02.

10.05 Voluntary Dedication. Tenant shall have no right to voluntarily devote or dedicate any portion of the Demised Premises to public use without Landlord's prior written consent.

10.06 Notice of Taking, Cooperation. Tenant shall immediately notify Landlord and any Permitted Mortgagee of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to Demised Premises. Landlord and Tenant covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

ARTICLE 11

ASSIGNMENT AND SUBLETTING

11.01 Tenant's Right to Assign.

a. Except as permitted in Sections 12.01, Tenant shall not sell, assign, sublease, or otherwise transfer (each being herein referred to as a "Transfer") or mortgage, pledge or otherwise encumber (each being herein referred to as an "Encumbrance" or to "Encumber"), whether voluntarily, involuntarily or by operation of law, its Leasehold Estate, or any portion thereof, without Landlord's prior written consent, which will not be unreasonably withheld, conditioned or delayed which consent will be provided in any event provided that the financial condition, experience, intended use, nature of business activities, and reputation of the Transferee (or its operator) are no less than the financial condition, experience, intended use, nature of business activities, and reputation of the Tenant on the Effective Date, and/or the existence of a then current default of this Lease by Tenant.

b. The term "Transfer" shall also include the occurrence of any of the following only to the extent that these events have the cumulative effect, together with all previous such events or transactions, of transferring all or a majority of the economic benefits of ownership of the Leasehold Estate from the Persons who own, directly or indirectly, the majority of the economic benefits of ownership of the Leasehold Estate on the Effective Date: (i) the merger, reorganization, share exchange, recapitalization, restructuring or consolidation of Tenant or any Person Controlling Tenant or any Person that owns a direct or indirect equity ownership interest in Tenant; (ii) the Transfer of the majority of the direct or indirect equity ownership interests in Tenant or any Person Controlling Tenant or any Direct or Indirect owner; or (iii) any Transfer of any property interest, real or personal, tangible or intangible.

c. The provisions of this Section 11.01 shall not apply to a foreclosure by any Permitted Mortgagee or a conveyance to a Permitted Mortgagee (or its Affiliate) in lieu of foreclosure,

but the provisions of this Section 11.01 shall apply to a subsequent Transfer by a Permitted Mortgagee or its Affiliate to the purchaser at such foreclosure sale.

d. No Transfer or Encumbrance, regardless of whether Landlord has consented to such Transfer or Encumbrance, shall release Tenant from liability for the performance of all of Tenant's obligations under this Lease for the period prior to the date of Transfer and upon satisfaction of all Tenant's then due financial obligations for the period prior to the date of Transfer, Tenant shall no longer be responsible for any obligations, covenants, representations or warranties or other liabilities under this Lease and will be fully released and discharged (without the necessity of further acts by Landlord) from any and all liabilities, covenants, obligations, representations or warranties arising under or in connection with this Lease from and after the date of Transfer.

e. Prior to making any Transfer for which Landlord's consent is required, Tenant shall provide to Landlord the following: (i) the name of the proposed Transferee and all direct or indirect owners of equity ownership interest of the Persons Controlling the Transferee; (ii) financial information regarding the proposed Transferee and the Persons Controlling the Transferee, including balance sheets, income statements and the like; (iii) information detailing the proposed Transferee's intended use of the Demised Premises, including, without limitation, any business plan and improvement construction plans; (iv) a complete copy (unexecuted) of the proposed assignment or sublease and other contractual documents; and, (v) such other information as Landlord may reasonably request. Notwithstanding the foregoing, if the Transferee is a public entity, Tenant will provide Landlord with publicly filed financial information for such Transferee and shall not be obligated to provide any information on the Persons Controlling the Transferee.

f. For any transfer of any direct or indirect equity ownership in Tenant that does not require Landlord's consent, Tenant shall give notice to Landlord identifying the Transferor, the Transferee and the interest transferred no later than ten (10) business days after such transfer has occurred.

g. If the aggregate consideration paid to Tenant (solely with respect to this Lease and not for the sale of the business or all or a portion of Tenant itself or otherwise) for an assignment, transfer or sublease exceeds that payable by Tenant under this Lease (prorated according to the transferred interest), Tenant shall pay Landlord 50% of such excess. Tenant shall pay Landlord for Landlord's share of any excess within thirty (30) days after Tenant's receipt of such excess consideration. If any uncured event of default exists under this Lease (or a condition exists which, with the passage of time or giving of notice, would become an event of default), Landlord may require that all sublease payments be made directly to Landlord, in which case Tenant shall receive a credit against Rent in the amount of any payments received, but not to exceed the amount payable by Tenant to Landlord.

11.02 Assignment by Landlord. Landlord may, without Tenant's consent, Transfer or Encumber all or any part of its Landlord's Interest, including its interest in this Lease, and Tenant shall attorn to any transferee of Landlord's Interest provided such Transferee shall be bound by this Lease and shall enter into a non-disturbance and attornment agreement with Tenant containing only commercially reasonable terms and conditions. As used in this Lease, "Landlord" shall mean only the fee owner of the Demised Premises at the time in question, and in the event of any Transfer of title to the Demised Premises, the Transferor shall automatically be released from all of the obligations of the Landlord under this Lease accruing from and after the date of such Transfer, and

all of such obligations accrued prior to the date that such Transferor became the Landlord, provided that the Transferee shall assume and be responsible for all obligations of "Landlord", including those accruing prior to the Transfer of Landlord's Interest, during the time that such Transferee is the Landlord hereunder. The covenants and obligations of Landlord contained in this Lease shall be binding on Landlord, its successors and assigns, only during and in respect to their respective successive periods of ownership, except to the extent provided in this Section 11.02.

ARTICLE 12 TENANT'S FINANCING

12.01 Tenant's Right to Encumber.

a. Provided that no Event of Default has occurred and is then continuing, Tenant shall have the right, from time to time, to mortgage the Leasehold Estate with a deed of trust, mortgage or other lien instruments to secure borrowings of Tenant, subject to the provisions of this Article 12. Any such mortgage, deed of trust and/or other lien instruments and the indebtedness secured thereby are herein collectively referred to as a "Permitted Mortgage" and the holder or other beneficiary thereof is herein referred to as the "Permitted Mortgagee". In the event there is more than one Permitted Mortgage at one time, then all of the provisions of this Lease providing any rights or protections for the Permitted Mortgagee (including the provisions of Section 12.03) shall be solely for the benefit of and enforceable by the Permitted Mortgagee with respect to the Permitted Mortgage having first lien priority (as determined by Landlord in good faith by review of such title information as Landlord, in its sole discretion, deems appropriate). The Permitted Mortgage shall not encumber or affect in any way the Landlord's Interest.

b. Tenant's right to grant a Permitted Mortgage is subject to the following additional conditions:

(i) No later than thirty (30) days after the execution and delivery of a Permitted Mortgage, Tenant shall have delivered to Landlord a written notice stating the existence of the Permitted Mortgage and the name and address of the Permitted Mortgagee for purposes of notice.

(ii) The Permitted Mortgagee shall be a bank, savings association, insurance company, pension fund or other institutional lender which, typically provides investment funding for similar type projects ("Institutional Lender"). Tenant will provide landlord with information specifying the funding sources for Landlord to approve such sources, such approval not to be unreasonable withheld, conditioned or delayed. If the Permitted Mortgage has been originated by an Institutional Lender, the Permitted Mortgage may be securitized in a bona fide securitization transaction regardless of whether the holders of indirect beneficial interests in the Permitted Mortgage would constitute Institutional Lenders, so long as the servicing agent for the Permitted Mortgage is a bona fide servicing agent.

(iii) The Permitted Mortgage or a recorded ancillary document (collectively, the "Mortgage Documents") must permit Tenant to use insurance proceeds and condemnation awards for Restoration Work as provided in this Lease, with such additional reasonable procedures for disbursement as the Permitted Mortgagee shall require; provided, however, that the Mortgage Documents need not permit Tenant to use insurance proceeds and condemnation awards

for Restoration Work (other than the Immediate Work) if Tenant is in default under the Mortgage Documents.

(iv) The Permitted Mortgage must contain the Landlord protective provisions described in Section 12.02.

12.02 Landlord Protective Provisions. The Permitted Mortgage shall expressly provide for the following rights, which rights are solely for the benefit of and enforceable by Landlord and are not for the benefit of, and may not be enforced by, Tenant:

a. The Permitted Mortgagee shall not accelerate maturity of the Permitted Mortgage or foreclose any lien securing payment thereof until a notice specifying the default under the Permitted Mortgage giving rise to such right of acceleration or foreclosure (a "Mortgage Default") has been received by Landlord and Landlord has failed to cure the Mortgage Default within sixty (60) days after Landlord's receipt of such notice of default. Any payments made and other things done by Landlord to cure the Mortgage Default shall be fully effective to prevent acceleration of maturity or foreclosure as if done by Tenant. Any amount expended by Landlord in curing or attempting to cure such Mortgage Default shall be paid by Tenant to Landlord upon demand, together with interest thereon at the Interest Rate from the date of each such expenditure until the date paid in full. Landlord has the option, but not the obligation, to cure any such Mortgage Default, and after commencing the cure of any such Mortgage Default may cease further actions to so cure.

b. The Permitted Mortgagee shall not foreclose the Permitted Mortgage or accept a deed in lieu of foreclosure unless notice of such foreclosure or deed in lieu of foreclosure has been given to Landlord no less than sixty (60) days in advance of such event.

12.03 Mortgagee Protective Provisions. If Tenant encumbers the Leasehold Estate with a Permitted Mortgage in compliance with this Article 12, for so long as the Permitted Mortgage in question remains in effect the following shall apply:

a. There shall be no cancellation, termination (other than termination in accordance with this Lease, including this Section 12.03, following the occurrence of an Event of Default) or material modification of this Lease without the prior written consent of the Permitted Mortgagee. Landlord shall not accept any surrender of this Lease (other than in connection with a termination in accordance with this Lease, including this Section 12.03, following the occurrence of an Event of Default) without the prior written consent of the Permitted Mortgagee. The modifications made without its consent, other than a termination of this Lease or of Tenant's right to possession following the occurrence of an Event of Default so long as Landlord has complied with the provisions of this Section 12.03.

b. If an Event of Default should occur hereunder:

(i) Landlord will deliver to the Permitted Mortgagee a copy of each notice of Tenant's default under this Lease if Landlord intends that such default is to serve as the basis for an Event of Default. Landlord shall not terminate this Lease or Tenant's right to possession hereunder until a notice specifying the Event of Default has been received by the Permitted Mortgagee and the Permitted Mortgagee has failed to cure the Event of Default within the time periods herein provided. Any payments made and other things done by the Permitted Mortgagee to cure the Event of Default

shall be fully effective to prevent termination of this Lease or termination of Tenant's right to possession as if done by Tenant. The time period for cure is twenty (20) days after the Permitted Mortgagee's receipt of notice of the Event of Default; provided, however, that if a non-monetary Event of Default can be cured but by its nature cannot be cured within such twenty (20) day time period, and if the Permitted Mortgagee has commenced curing such event of Default within such time period and thereafter diligently pursues such cure to completion, such twenty (20) day cure period shall be extended for the period of time necessary for the Permitted Mortgagee to cure such Event of Default; provided further, that (A) the time period for curing the failure to commence and thereafter diligently pursue the Immediate Work (by commencing and thereafter diligently pursuing such work) shall be ten (10) days after Permitted Mortgagee's receipt of notice of such failure, and (B) the Permitted Mortgagee shall not have any right to cure Tenant's failure to perform the balance of the Restoration Work if the Permitted Mortgagee has elected to apply the insurance proceeds to discharge the Permitted Mortgage rather than permitting Tenant to use the insurance proceeds for such Restoration Work. The Permitted Mortgagee has the option, but not the obligation, to cure any such Event of Default, and after commencing the cure of any such Event of Default may cease further actions to so cure.

(ii) If the Event of Default is a non-monetary default that the Permitted Mortgagee cannot reasonably cure without being in possession of the Premises, then for so long as the Permitted Mortgagee is diligently and with continuity attempting to secure possession of the Premises (whether by foreclosure or otherwise, but subject to the provisions of this Article 12), provided the Permitted Mortgagee cures any monetary default as well as any other defaults that are reasonably susceptible of then being cured by the Permitted Mortgagee, Landlord shall allow the Permitted Mortgagee such time as may be reasonably necessary under the circumstances to obtain possession of the Premises in order to cure such Event of Default, and during such time Landlord shall not terminate this Lease or Tenant's right to possession of the Premises.

c. If the Lease is terminated for any reason other than expiration of the stated Term, then the Permitted Mortgagee shall have the right and option, exercisable by delivering notice to Landlord not later than twenty (20) days after receipt from Landlord of written notice of such termination (which notice Landlord agrees to give) to elect to receive, in its own name or in the name of its Affiliate (which shall have an amount of equity capital no less than that of Tenant of the Effective Date), a new lease of the Premises for the unexpired balance of the Term on the same terms and conditions as herein set forth, having the same priority as this Lease, and Landlord agrees to execute such new lease provided such Permitted Mortgagee shall undertake forthwith to remedy any uncured Event of Default reasonably susceptible by its nature of being remedied by such Permitted Mortgagee, including the payment of any amount due hereunder. Upon the execution of such new lease, Landlord and the new tenant named therein shall prorate income and expenses relating to the facility effective as of the date of termination of this Lease as if the tenant named in the new Lease had succeeded to the interest of Tenant under this Lease as of the effective date of such termination; provided, however, that Landlord shall not be obligated to account to the tenant named in the new lease for any income or revenue from the facility not actually delivered to Landlord in connection with such termination. In addition to the new lease, Landlord shall execute and deliver to the tenant named therein such deeds, bills of sale, assignments and other instruments as may be necessary to convey, assign and otherwise transfer to the tenant under the new lease, AS IS, without warranty of title or any other warranty or representation of any type, but with confirmation of no prior conveyance or assignment by Landlord, all of Landlord's right, title and interest in and to the Demise Premises

Improvements that may have reverted to Landlord on account of the termination of this Lease, including without limitation any subleases.

d. No Permitted Mortgagee shall be or become liable to Landlord as an assignee of this Lease until such time as such Permitted Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interests of Tenant under this Lease or shall actually take possession of the Demised Premises, and upon such Permitted Mortgagee's assigning such rights and interests to another party or upon relinquishment of such possession, as the case may be, such Permitted Mortgagee shall have no further such liability:

e. Nothing contained in this Section 12.03 shall prevent Landlord's pursuing monetary damages or injunctive relief relating to Tenant's default.

The provisions of this Section 12.03 are solely for the benefit of and enforceable by the Permitted Mortgagee and are not for the benefit of, and may not be enforced by, Tenant.

ARTICLE 13 **EVENT OF DEFAULT AND REMEDIES**

13.01 **Warranty of Peaceful Possession.** Landlord covenants that Tenant, prior to the occurrence of an Event of Default, shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Demised Premises during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease, any matter of record in Victoria County, Texas and Applicable Law. Landlord agrees to warrant and forever defend Tenant's right to such occupancy, use, and enjoyment and the title to the Demised Premises against the claims of any and all Persons whomsoever may lawfully claim the same, or any part thereof, by, through or under Landlord or any matter of record in Victoria County, Texas, and any matters that a proper survey would reveal, but not otherwise, subject only to provisions of this Lease and Applicable Law.

ARTICLE 14 **EVENT OF DEFAULT AND REMEDIES**

14.01 **Event of Default.** Each of the following shall be deemed an "Event of Default" by Tenant hereunder and a material breach of this Lease:

a. Whenever Tenant shall fail to pay any installment of Rent or any other sum payable by Tenant to Landlord, or any assignee, subcontractor or agent of Landlord, under this Lease or other agreement directly related to Tenant's operations at the Port of Victoria, on the date upon which the same is due to be paid, and such default shall continue for ten (10) days after Tenant shall have been given a written notice specifying such default; provided, that after two (2) notices of default have been given in any calendar year with respect to Tenant's failure to pay any installment of Rent, any subsequent failure to pay any installment of Rent during the balance of such calendar year shall constitute an Event of Default without any requirement of notice of such failure being given to Tenant;

b. Whenever Tenant shall fail to promptly commence and thereafter diligently pursue performance of the Immediate Work and Tenant shall fail to remedy the same (by commencing and thereafter diligently pursuing such work) within fifteen (15) days after Tenant shall have been given a written notice specifying such default;

c. Whenever Tenant shall fail to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept, performed or observed by Tenant (including the covenants, agreements, terms or provisions contained herein that are to be kept or performed by the owner or lessee of the Demised Premises) other than with respect to payment of Rent or other liquidated sums of money and as provided in Section 14.01b above, and Tenant shall fail to remedy the same within thirty (30) days after Tenant shall have been given a written notice specifying such default; provided, however, that if a non-monetary default can be cured but by its nature cannot be cured within such thirty (30) day time period, and if Tenant has commenced curing such default within such time period and thereafter diligently pursues such cure to completion, such thirty (30) day cure period shall be extended for the period of time necessary for Tenant to cure such default;

d. Whenever an involuntary petition shall be filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or whenever a receiver of Tenant, or of all or substantially all of the property of Tenant, shall be appointed without acquiescence, and such petition or appointment is not discharged or stayed within thirty (30) days after the happening of such event; or

e. Whenever Tenant shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or seek relief under any other law for the benefit of debtors.

14.02 Remedies. If an Event of Default occurs, then subject to the rights of any Permitted Mortgagee as provided in Section 12.03, Landlord may at any time thereafter prior to the curing thereof and without waiving any other remedies hereunder or available to Landlord at law or in equity (Landlord's remedies being cumulative), do any one or more of the following:

a. Landlord may terminate this Lease by giving Tenant written notice thereof, in which event this Lease and the Leasehold Estate and all interest of Tenant and all parties claiming by, through, or under Tenant shall automatically terminate upon the effective date of such notice; and Landlord, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Demised Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof. In the event of such termination, Tenant shall be liable to Landlord for all Rent accrued to the date of termination and damages in an amount equal to (i) the discounted present value of the amount by which the Rent reserved hereunder for the remainder of the stated Term exceeds the then net fair market rental value of the Demised Premises for such period of time, plus (ii) all expenses incurred by Landlord in enforcing its rights hereunder, including but not limited to attorneys' fees, court costs, and other such expenses.

b. Landlord may terminate Tenant's right to possession of the Demised Premises and enjoyment of the rents, issues, and profits therefrom without terminating this Lease or the Leasehold Estate, and reenter and take possession of the Demised Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof, and lease, manage, and operate the facility and collect the rents, issues, and profits therefrom all for the

account of Tenant, and credit to the satisfaction of Tenant's obligations hereunder the net rental thus received (after deducting therefrom all reasonable costs and expenses of repossessing, leasing, managing, and operating the facility). If the net rental so received by Landlord is less than the amount necessary to satisfy all of Tenant's obligations under this Lease, Tenant shall pay to Landlord on demand the amount of such deficiency together with interest at the Interest Rate, and Landlord may bring suit from time to time to collect such deficiency. If the net rental so received by Landlord exceeds the amounts necessary to satisfy all of Tenant's obligations under this Lease, nevertheless Landlord shall retain such excess. In no event shall Landlord be liable for failure to so lease, manage, or operate the Demised Premises or collect the rentals due under any subleases and any such failure shall not reduce Tenant's liability hereunder. If Landlord elects to proceed under this Section 14.02b, Landlord may at any time thereafter elect to terminate this Lease as provided in Section 14.02a.

14.03 Landlord's Default. If (a) Landlord fails to make any payment of money required to be paid by Landlord to Tenant or any third party under this Lease on the date upon which the same is due to be paid, and such default shall continue for ten (10) days after Landlord shall have been given a written notice specifying such default; or (b) Landlord fails to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept, performed or observed by Landlord (other than payment of money) and Landlord shall fail to remedy the same within thirty (30) days after Landlord shall have been given a written notice specifying the same; provided, however, that if a non-monetary default can be cured but by its nature cannot be cured within such thirty (30) day time period, and if Landlord has commenced curing such default within such time period and thereafter diligently pursues such cure to completion, such thirty (30) day cure period shall be extended for the period of time necessary for Landlord to cure such default; then in such event Tenant may enforce the performance of this Lease and collect damages by any method provided by law or equity except as otherwise expressly provided herein; provided, however, that Tenant shall not take any action to enforce the performance of this Lease and collect damages until thirty (30) days thereafter has passed with such default remaining uncured (plus such additional time period as provided in clause (b) above with respect to cure by Landlord). Notwithstanding the foregoing provisions of this Section 14.03, Tenant shall have no right to terminate this Lease, except as otherwise provided herein. No clause or provision contained in this Lease is meant to be, or shall be construed or interpreted to be a waiver of any immunity rights Landlord may possess under the laws of the State of Texas by virtue of its existence as a governmental entity.

14.04 Time is of the Essence. Whenever in this Lease a date, time period or other similar requirement or limitation is provided, time is of the essence.

ARTICLE 15
MISCELLANEOUS

15.01 Notices. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (a) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section 15.01; or (b) delivering the same to the party to be notified in person or through a reliable courier service. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidence by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses and facsimile numbers of the parties hereto shall, until changed, be as follows:

Landlord: Victoria County Navigation District

1934 FM 1492
Victoria, Texas 77905
ATTN: Executive Director

With copies to: Law Office of Duane G. Crocker, P.C.
121 S. Main Street, Suite 300 (77901)
P.O. Box 2661
Victoria, Texas 77902

Tenant: Zinc Resources, LLC
109 N Post Oak Ln Ste 415
Houston, Texas 77024

The parties hereto shall have the right from time to time to change their respective addresses and/or facsimile numbers for purposes of notice hereunder by giving ten (10) days advance notice to such effect in accordance with the provisions of this Section 15.01.

15.02 Performance of Other Party's Obligations. If either Party fails to perform or observe any of its covenants, agreements, or obligations hereunder for a period of thirty (30) days after notice of such failure is given by the other Party, then the other Party shall have the right, but not the obligation, as its sole election (but not as its exclusive remedy), to perform or observe the covenants, agreements, or obligations which are asserted to have not been performed or observed at the expense of the failing Party and to recover from the failing Party all reasonable costs and expenses incurred in connection with attempting to do so, together with the interest thereon at the Interest Rate from the date expended until repaid. Notwithstanding the foregoing, if either Party determines, in its reasonable good faith judgment that an emergency, involving imminent danger of injury or death to persons or damage to property in excess of \$50,000.00, exists due to the other Party's failure to observe or perform its covenants, agreements, and obligations hereunder, then such Party may immediately perform or observe the covenants, agreements, and obligations which give rise to such emergency at the expense of the failing Party and recover from the failing Party all costs and expenses incurred in connection with attempting to do so, together with interest thereon at the Interest Rate from the date expended until repaid. Any performance or observance by a Party pursuant to this Section 15.02 shall not constitute a waiver of the other Party's failure to perform or observe. In performing its self-help rights, the applicable Party shall perform in a commercially reasonable manner.

15.03 Arbitration.

a. This section shall only apply where express provision is made in this Lease for settlement of a dispute or determination of a matter by arbitration.

b. If either Party wishes to settle a dispute or determine a matter by arbitration (where express provision is made in this Lease for such settlement or determination by arbitration), such matter shall be resolved by binding arbitration in accordance with the provisions of this Section 15.03 and shall be self-administered in accordance with the American Arbitration Association pursuant to its rules of commercial arbitration. Any claimed default based upon such dispute shall be deemed suspended until the dispute is resolved, provided that the Party claimed to be in default is proceeding diligently with the arbitration; provided, however, nothing contained in this Section 15.03 shall suspend the obligation of Tenant to pay Rent hereunder.

c. Landlord and Tenant may agree on an arbitrator, and in such event, such arbitrator's decision shall be final and binding on Landlord and Tenant and shall be specifically enforceable in any court having jurisdiction. If Landlord and Tenant are unable to agree on an arbitrator, Landlord and Tenant shall each appoint an arbitrator, and such two arbitrators shall select, within fifteen (15) days after the appointment of such second arbitrator, a third arbitrator. The decision of a majority of the three arbitrators shall be final and binding on Landlord and Tenant and shall be specifically enforceable in any court having jurisdiction.

d. If (i) either Landlord or Tenant fails to appoint an arbitrator within ten (10) days after receiving notice from the other Party that such other Party has appointed an arbitrator, or (ii) the first two arbitrators fail to appoint a third arbitrator within the aforesaid fifteen (15) day period, or (iii) any Person appointed as an arbitrator by or on behalf of either Landlord or Tenant shall die, fail to act, resign or become disqualified and the Party by or on behalf of whom such arbitrator was appointed shall fail to appoint a substitute arbitrator within ten (10) days after being requested to do so by the other Party, the arbitrator in question will be appointed by the District Courts of Victoria County, Texas, subject to the rules of such courts regarding recusal of judges. Each Party shall bear and pay the cost of the arbitrator appointed by (or for) it, and the cost of the third arbitrator shall be borne and paid equally by Landlord and Tenant. If the presiding judge of the applicable court does not appoint the third arbitrator within forty-five (45) days, then such arbitrator shall be appointed within fifteen (15) days thereafter in accordance with the rules of the American Arbitration Association, but subject to the requirements herein for the appointment of arbitrators.

e. All arbitration proceedings shall be held in Victoria, Victoria County, Texas. If a hearing is scheduled, Landlord and Tenant shall be given reasonable advance notice of the time and place of any arbitration hearing and both shall have the right to be present, heard and represented by counsel. The arbitrators shall not have the right to add to or subtract from or otherwise change the terms and provisions of this Lease, and their determination shall be consistent and in accordance with the terms and provisions of this Lease.

15.04 Modification and Non-Waiver. No variations, modifications, or changes herein or hereof shall be binding upon any Party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent. No waiver by either Party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by Landlord of any Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any Party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving Party.

15.05 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of Texas.

15.06 Number and Gender. Pronouns, wherever used herein, and of whatever gender shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate.

15.07 Estoppel Certificate. Landlord and Tenant shall execute and deliver to each other promptly, upon any request therefor by the other Party, or by any Permitted Mortgagee, a certificate addressed as indicated by the requesting Party and stating:

- a. whether or not this Lease is in full force and effect;
- b. whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;
- c. whether or not there are any existing defaults hereunder known to the Party executing the certificate, and specifying the nature thereof;
- d. whether or not any particular Article, Section, or provision of this Lease has been complied with within the immediately preceding year to the knowledge of the Party executing the certificate; and
- e. such other matters as may be reasonably requested.

15.08 Severability. If any provision of this Lease or the application thereof to any Person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

15.09 Attorney Fees. If litigation or arbitration is ever instituted by either Party to enforce, or to seek damages for the breach of, any provision hereof, the prevailing Party therein shall be promptly reimbursed for the other Party for all attorneys' fees reasonably incurred by the prevailing Party in connection with such litigation. Any provision in this agreement allowing for the award and/or recovery of attorney's fees is intended to expressly authorize an award of reasonable and necessary attorneys' fees, to be binding upon Landlord and Tenant, and to meet the requirements of § 271.159 of the Texas Local Government Code.

15.10 Surrender of Premises; Holding Over. Upon termination or expiration of this Lease, Tenant shall peaceably quit, deliver up, and surrender the Demised Premises, except as otherwise specifically provided in Section 9.01, in good order, repair, and condition. Upon such termination or expiration Landlord may, without further notice, enter upon, reenter, possess, and repossess itself of the Demised Premises by force, summary proceedings, ejectment, or otherwise, and may dispossess and remove Tenant from the Demised Premises and may have, hold, and enjoy the demised Premises and all rental and other income therefrom, free of any claim by Tenant with respect thereto. If Tenant does not surrender possession of the Demised Premises at the end of the Term, such action shall not extend the Term, Tenant shall be a tenant at sufferance, and during such time of occupancy Tenant

shall pay to Landlord, as damages, an amount equal to twice the amount of Rent that was being paid immediately prior to the end of the Term. Landlord shall not be deemed to have accepted a surrender of the Demised Premises by Tenant, or to have extended the Term, other than by execution of a written agreement specifically so stating.

15.11 Relation of Parties. It is the intention of Landlord and Tenant to hereby create the relationship of landlord and tenant, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make Landlord and Tenant partners or joint venturers or to render either Party hereto liable for any obligation of the other.

15.12 Force Majeure.

a. As used herein, "Force Majeure" shall mean, with respect to the applicable Force Majeure Party, the occurrence of any of the following: (i) strikes, lockouts or picketing (legal or illegal); (ii) a temporary taking as provided in Section 10.04; (iii) pandemic, riot, civil commotion, insurrection and war; (iv) fire or other casualty, accidents, acts of God or public enemy; (v) natural disaster directly impacting the Land and/or Demised Premises; (vi) application of any Applicable Law to the extent that such application was not reasonably foreseeable by the Party claiming the right to an extension of time as a result of an event of Force Majeure (the "Force Majeure Party"); of (vii) any other event which prevents or delays the performance by the Force Majeure Party of any of its obligations imposed upon it hereunder and the prevention or cessation of which event is beyond the reasonable control of the Force Majeure Party. However, in no event shall any of the following be deemed to constitute Force Majeure: (A) failure to obtain financing for, failure to refinance, or cessation of disbursements under financing for, the purchase, construction, demolition, repair or ownership of the Demised Premises Improvements; (B) lawsuits among parties comprising Tenant; (C) inability to pay when due monetary sums; or (D) the acts or omissions of the contractor, subcontractors or suppliers of the Force Majeure Party or any other Person acting by, through or under the Force Majeure Party.

b. If a Force Majeure Party shall be delayed, hindered or prevented from performance of any of its obligations hereunder (other than to pay Rent or other monetary sum) by reason of Force Majeure, the time for performance of such obligation shall be extended on a day-to-day basis for each day of actual delay, provided that the following requirements are complied with by the Force Majeure Party: (i) the Force Majeure Party shall give prompt written notice of such occurrence to the other Party, and (ii) the Force Majeure Party shall diligently attempt to remove, resolve or otherwise eliminate such event, and minimize the cost and time delay associated with such event, keep the other Party advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, neither Party shall be relieved by any event of Force Majeure from its obligation to pay Rent or other monetary sum hereunder.

15.13 Non-Merger. Notwithstanding the fact that fee title to the Demised Premises and to the Leasehold Estate may, at any time, be held by the same Person, there shall be no merger of the Leasehold Estate and fee estate unless the respective owners thereof (and all Permitted Mortgagees) execute and file for record in the Office of the County Clerk of Victoria County, Texas a document expressly providing for the merger of such estates.

15.14 Entireties. This Lease constitutes the entire agreement of the Parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. However, any other agreements entered into between Landlord and Tenant of even date herewith are not merged herein and shall remain in effect.

15.15 Limitation on Landlord's Liability. Notwithstanding anything to the contrary contained herein, (i) Landlord's liability, if any, for failure to perform any of its obligations hereunder or otherwise relating to the Demised Premises is hereby expressly limited to Landlord's interest in and to the Demised Premises, and (ii) should Landlord fail to pay any sum required to be paid by Landlord hereunder, or fail to perform any obligation required to be performed by Landlord hereunder, any judicial proceedings brought by Tenant against Landlord shall be limited to proceeding against Landlord's rights and interest in and to the Demised Premises, and no attachment, execution, or other writ or process shall be sought, issued, or levied upon any assets, properties (including the Land and any improvements thereon), or funds of Landlord, other than against Landlord's interest in and to the Demised Premises. No provision contained in this Agreement shall be interpreted in any manner as a waiver of any rights or protections against suit and/or liability, including, without limitation, any sovereign immunity protection which Landlord may possess or enjoy by virtue of its status and existence as a governmental entity in the State of Texas. Landlord is a governmental authority subject to the requirements of the Texas Open Meetings Act and the Texas Open Records Act (Tex. Rev. Civ. Stat. Ann. arts. 6252-17 and 17a, Vernon Supp. 1989), and as such Landlord is required to disclose to the public (upon request) this Lease and certain other information and documents relating to the consummation of the transactions contemplated hereby. In this regard, Tenant agrees that the disclosure of this Lease or any other information or materials related to the consummation of the transactions contemplated hereby to the public by Landlord as required by the Texas Open Meetings Act, Texas Open Records Act, or any other legal requirement will not expose Landlord (or any party acting by, through or under Landlord) to any claim, liability, or action by Tenant.

15.16 Recordation. Landlord and Tenant will, at the request of either Party, promptly execute an instrument in recordable form constituting a memorandum of this Lease, which shall be filed for record in the Office of the County Clerk of Victoria County, Texas, solely to give record notice of the existence of this Lease. No such memorandum shall in any way vary, modify or supersede this Lease. Except in connection with actual litigation between the Parties, this Lease shall not be filed for record.

15.17 Successor and Assigns. This Lease shall constitute a real right and covenant running with the Demised Premises, and, subject to the provisions hereof pertaining to Tenant's rights to Transfer, sublet, or Encumber, this Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Whenever a reference is made herein to either Party, such reference shall include the party's permitted successors and assigns.

15.18 Inspection. Landlord shall have the right, but not the obligation, to enter upon the Demised Premises at all reasonable times to inspect same. For purposes of this Section 15.18, except in the case of an Emergency, "reasonable times" means during normal business hours. Except in the case of an Emergency, Landlord shall not unreasonably disturb any Person in possession or Tenant's operations in connection with such inspections. No consent of Tenant shall be required for any visual inspection. Tenant shall not unreasonably withhold, delay or condition Landlord's right to make any

inspection that is more than a visual inspection (e.g., invasive testing). If Landlord reasonably believes that a violation of Article 16 or any Environmental Law has occurred at the Demised Premises, or if Landlord has received a notice from a Governmental Authority alleging any violation of any Environmental Law at the Demised Premises, Landlord shall have the right to make such inspections as Landlord shall reasonably require. Any such inspection, and the repair of any damage to the Demised Premises Improvements caused by any such inspection, shall be at Landlord's cost and expense unless a violation by Tenant of Article 16 or of any Environmental Law has occurred, in which event Tenant shall be responsible for such cost and expense.

15.19 No Third Parties Benefitted. Except as herein specifically and expressly otherwise provided with regard to notices, opportunities to cure defaults, opportunities to extend the Term, and any right to execute a new lease (if applicable), and certain other enumerated rights granted to the Permitted Mortgagee, the terms and provisions of this Lease are for the sole benefit of, and may be enforced only by, Landlord and Tenant, and no other Persons whatsoever (including any direct or indirect equity owner in Tenant) is intended to benefit herefrom or shall have any right to enforce this Lease.

15.20 Survival. Any terms and provisions of this Lease pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Lease, including indemnification obligations relating to events or conditions that occur or exist prior to such expiration or termination, shall survive the expiration or termination of this Lease.

15.21 Use of Landlord's Name. Tenant shall not use Landlord's name in any advertising or promotional material relating to the Premises without Landlord's prior written consent, but Tenant may make reference to this Lease and to Landlord in legally operative documents, as Tenant shall deem reasonably necessary.

15.22 Interest. If any Rent or other amount required to be paid by one Party to the other Party pursuant to this Lease is not paid when due, such amount shall bear interest at the Interest Rate from the date due until the date paid in full.

15.23 Limit on Damages. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION 15.23, NOTWITHSTANDING ANYTHING IN THIS LEASE OR UNDER LAW OR EQUITY TO THE CONTRARY, EXCEPT FOR INTEREST CHARGEABLE HEREUNDER NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR FOR ANY LOST REVENUES OR PROFITS ARISING OUT OF THIS LEASE OR RELATING TO THE PREMISES, INCLUDING THE NEGLIGENCE OF THE PARTY AGAINST WHOM THE CLAIM WOULD BE MADE.

15.24 Broker. Landlord and Tenant represent and warrant each to the other that such Party has not dealt with any broker in connection with this Lease and that, insofar as such Party knows, no broker negotiated this Lease or is entitled to any commission in connection herewith. Landlord and Tenant each agree to indemnify the other Party for any losses, costs or damages (including reasonable attorneys' fees) incurred by the other Party as a consequence of the breach or falsity of the representations and warranties of such Party under this Section 15.24.

ARTICLE 16
HAZARDOUS SUBSTANCES

16.01 Use of Hazardous Substances. Except as expressly authorized under the definition of "Hazardous Substances," Tenant shall not cause or permit any Hazardous Substance to exist or otherwise be brought, kept or used in or about the Demised Premises or the Land or any improvements thereon by Tenant, its agents, employees, contractors or invitees (collectively, the "Tenant Representatives"), and neither Tenant nor any of the Tenant Representatives shall use, generate, produce, store, Release or otherwise cause or permit the occurrence or continued existence of any Hazardous Substances in, on, under or about the Demised Premises or to be transported to or from the Premises, *except in strict compliance with applicable Environmental Laws*. Tenant and Tenant Representatives shall, at their own expense, procure, maintain in effect, and comply with all conditions of all permits, licenses, registrations, exemptions, and other governmental and regulatory approvals required under Environmental Laws for any Hazardous Substances in, on, under, to or from or about the Demised Premises.

16.02 Remediation of Hazardous Substances. (a) As between Landlord and Tenant and specifically excluding any Hazardous Substances exposure or contamination to the extent proven to have been caused by Landlord, if any actual or suspected exposure to, or contamination arising from, Hazardous Substances occurs at any time, or if Tenant or any Tenant Representative causes, whether by action or failure to act, any exposure or contamination of the Land or any improvements thereon from Hazardous Substances ("Tenant Responsible Contamination"), Tenant and/or Tenant Representatives, at their sole cost and expense, shall promptly and diligently remove and, as applicable, remediate such Hazardous Substances from, at, or under the Demised Premises or the Land or improvements thereon, or the groundwater underlying the Demised Premises or the Land, in strict compliance with applicable Environmental Laws and in accordance with the prevailing industry standards. Tenant shall, at its sole cost and expense, develop, implement, and document in writing regular monitoring of the Demised Premises for the possible presence or Release of, or exposure to, any Tenant Responsible Contamination. In the event any actual or suspected Tenant Responsible Contamination is identified Tenant shall: (i) promptly (but no later than three (3) business days of such identification) notify Landlord of such actual or suspected contamination and the location thereof; and (ii) arrange no later than five (5) business days of such identification for a third party, independent inspection of the Demised Premises and any potentially affected portions of the Land by a well-qualified (and, as necessary, licensed) environmental consultant to confirm whether the Tenant Responsible Contamination exists, which inspection will be performed at Tenant's sole cost and expense no sooner than five (5) days but no later than ten (10) days after Tenant notifies Landlord in writing of such planned inspection. Neither Tenant nor any Tenant Representative shall take any required remedial action in response to any Tenant Responsible Contamination in or about the Demised Premises or the Land or improvements thereon, or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant Responsible Contamination, without first notifying Landlord at least five (5) days in advance of Tenant's intention to do so and affording Landlord the opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interest with respect thereto.

a. If Tenant does not promptly and diligently take all steps to prepare any remediation plan required for any Tenant Responsible Contamination, obtain all necessary approvals for such remediation plan, and thereafter commence and perform the required remediation within

thirty (30) days after Landlord has approved Tenant's remediation plan and all other required approvals and consents have been obtained (subject to extension due to delays cause by Force Majeure), and thereafter continue to diligently prosecute such remediation to completion in accordance with the approved remediation plan, Landlord, at its option (but without any obligation to do so), may cause such remediation to be accomplished, and Tenant shall reimburse Landlord immediately upon demand for all amounts paid by Landlord, together with interest on such amounts at the Interest Rate from the date incurred until the date paid in full.

b. Tenant shall promptly deliver to Landlord copies of all hazardous waste manifests, and otherwise deliver such information and supporting documentation to Landlord as Landlord may reasonably require, to evidence the proper management, transport and disposal of all Hazardous Substances removed from the Demised Premises, the Land or any improvements thereon as part of Tenant's remediation of any Tenant Responsible Contamination.

c. Any cleanup, removal or other remediation of Tenant Responsible Contamination must be completed in its entirety at or before the expiration or termination of this Lease.

16.03 Disposal of Hazardous Substances. Tenant shall cause all Hazardous Substances removed from the Demised Premises or the Land as part of the required remediation of any Tenant Responsible Contamination to be removed, contained, and transported solely by duly licensed hauler to duly licensed facilities for final disposal of such Hazardous Substances.

16.04 Notice of Hazardous Substance Matters. Each party (herein the "Notifying Party") shall immediately notify the other Party ("Recipient") in writing of (a) any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Demised Premises pursuant to any Environmental Law; (b) any claim made or threatened by any Person against the Notifying Party or the Demised Premises relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances resulting from operations or activities on or about the Demised Premises; and (c) any report made to any Governmental Authority arising out of or in connection with any Hazardous Substances in, on, under, Released, or removed from the Demised Premises, including any complaints, notices, warnings or asserted violations in connection therewith, all on receipt by the Notifying Party of actual knowledge of any of the foregoing matters. The Notifying Party shall deliver to the Recipient as promptly as possible, and in any event within ten (10) days after the Notifying Party first receives or sends the same, copies or all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof.

EXECUTED as of the date and year first above written.

LANDLORD:

VICTORIA COUNTY NAVIGATION DISTRICT

By: _____
Name: Robby Burdge
Its: Chairman

TENANT:

ZINC RESOURCES, LLC

By: _____
Name: _____
Its: _____

SCHEDULE 1.01

DEFINITIONS; TERMINOLOGY

1.01 Definitions. As used in the Lease, each of the following terms shall have the following meaning:

“Additional Rent” has the meaning set forth in Section 4.03.

“Adjustment Date” has the meaning set forth in Section 4.01a(iii).

“Affiliate” means, when used with reference to a specified Person, any Person who directly or indirectly Controls, is Controlled by or is under common Control with the specified Person. “Affiliate” shall also include (i) any Person which owns, directly or indirectly (including through one or more intermediaries), fifty percent (50%) or more of any class of voting security or equity interests of such specified Person, (ii) any Subsidiary of such specified Person and (iii) any Subsidiary of a Person defined in clause (i). Notwithstanding the foregoing however, the officers, directors, trustees and individuals in similar capacities with respect to any Person shall not be considered “Affiliates” of such Person merely on account of such Person’s status as an officer, director, trustee or other similar position or capacity; and further, a stockholder shall not be considered an “Affiliate” merely on account of its status as a stockholder.

“Applicable Law” means, collectively, all applicable federal, state and local statutes, ordinances, codes, rules, regulations and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority having jurisdiction over any of the Parties or the Demised Premises. Applicable Law includes Environmental Laws.

“Approved Plans” means the plans and specifications described in Exhibit B attached hereto, as the same may be amended from time to time with Landlord’s consent, which consent shall not be unreasonably withheld, conditioned or delayed, except as otherwise provided herein.

“BLS” has the meaning set forth in Section 4.01a(iii)

“Base Month” has the meaning set forth in Section 4.01a(iii).

“Base Rent” has the meaning set forth in Section 4.01.

“Building” has the meaning set forth in the recitals.

“Building Improvements” has the meaning set forth in the recitals.

“Business Days” shall mean any day other than Saturday, Sunday, and other days on which banks in Victoria, Texas are customarily closed for business.

“Claims” has the meaning set forth in Section 8.04.

“Commencement Month” means the calendar month in which the Effective Date occurs.

“Comparison Month” has the meaning set forth in Section 4.01a(iii).

“Construction Standards” has the meaning set forth in Section 6.04a.

“Control” (including the correlates of “Controlled” and “Controlling”) means the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of the specified Person, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

“Demised Premises” has the meaning set forth in the recitals.

“Demised Premises Improvements” has the meaning set forth in the Recitals.

“Direct or Indirect Equity Owner” means each Person that owns a direct or indirect equity ownership interest in Tenant.

“Effective Date” has the meaning set forth in the Preamble.

“Encumbrance” or “Encumber” has the meaning set forth in Section 11.01a.

“Environmental Laws” means all laws, statutes, codes, ordinances, orders, interpretations, rules and regulations of any Governmental Authority applicable to Landlord, Tenant or the Demised Premises relating to human health or the environment, including the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 *et seq.* (“RCRA”); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC Section 9601 *et seq.* (“CERCLA”); the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*, the Federal Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*, the Texas Solid Waste Disposal Act, Chapter 361 of the Texas Health & Safety Code, all as now or hereafter amended, as well as all regulations promulgated thereunder and any common law or any other rule of law of any Governmental Authority applicable to Landlord, Tenant or the Demised Premises and relating to human health or the environment.

“Event of Default” has the meaning set forth in Section 14.01.

“Force Majeure” has the meaning set forth in Section 15.12a.

“Force Majeure Party” has the meaning set forth in Section 15.12a.

“Full insurable value” has the meaning set forth in Section 8.01a.

“Governmental Authorities” has the meaning set forth in Section 5.01.

“Governmental Authority” has the meaning set forth in Section 5.01.

“Hazardous Substances” means any of the following: (i) any “hazardous waste,” “solid waste,” “hazardous material,” “hazardous substance,” “toxic substance,” “pollutant,” or “contaminant” as those or similar terms are defined or regulated under any Environmental Laws; (ii)

any mold, mildew, fungus, or other potentially dangerous organisms ("Mold"); (iii) asbestos (whether or not friable) and asbestos-containing materials; (iv) any volatile organic compounds, including oil and petroleum products; (v) any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to health, safety or welfare of any person or to the environment, including any polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; (vi) radon gas; (vii) any other substance the presence of which on the Demised Premises is prohibited by any Environmental Laws; and (viii) any other substance which by any Environmental Laws requires special handling or notification of any Governmental Authority in its collection, storage, treatment, or disposal. However, for the purposes of the covenants, but not the indemnification obligations, set forth in this Lease, the term "Hazardous Substances" shall not include small quantities of materials, chemicals or substances normally used in connection with the use, management, operation, or ownership of a facility similar to Tenant's provided that such materials, chemicals or substances are generated, produced, stored, handled, used transported and disposed in a safe and prudent manner in strict compliance with all Environmental Laws.

"Immediate Work" has the meaning set forth in Section 9.01a(i).

"Imposition Trustee" has the meaning set forth in Section 5.03.

"Impositions" has the meaning set forth in Section 5.01.

"Improvements" has the meaning set forth in the recitals.

"Indemnified Parties" has the meaning set forth in Section 8.04.

"Index" has the meaning set forth in Section 4.01a(iii).

"Interest Rate" means an annual rate of interest equal to the lesser of (i) five percent (5%) above the "Prime Rate" as announced from time to time by *The Wall Street Journal*, or if such publication ceases to exist or report a "Prime Rate", five percent (5%) per annum above the prime rate or reference rate announced from time to time by JPMorgan Chase Bank, N.A. (or any successor thereto) or such other major national banking institution selected by Landlord, or (ii) the maximum contract rate of interest then permitted by Applicable Law.

"Land" has the meaning set forth in the Recitals.

"Landlord" has the meaning set forth in the Preamble and Section 11.02.

"Landlord Release Party" has the meaning set forth in Section 8.05.

"Landlord's Interest" means Landlord's fee title to the Demised Premises, Landlord's reversionary interest in the Demised Premises and Demised Premises Improvements, Landlord's right to receive payment of Rent and Landlord's other rights under this Lease.

“Landlord’s Tariffs” means the tariffs, rates, charges, and/or fees established and published from time to time by Landlord for the use of the Port of Victoria’s facilities.

“Lease” has the meaning set forth in the Preamble.

“Lease Year” has the meaning set forth in Section 3.01.

“Leasehold Estate” means the leasehold estate and Tenant’s other rights created by this Lease, including Tenant’s ownership interest in the Demised Premises Improvements during the Term.

“Notifying Party” has the meaning set forth in Section 16.04.

“Party” or “Parties” has the meaning set forth in the Preamble.

“Permitted Mortgage” has the meaning set forth in Section 12.01(a).

“Permitted Mortgage” has the meaning set forth in Section 12.01(a).

“Person” means any individual, corporation, partnership, limited liability company or other entity of any kind.

“Premises” means the Demised Premises, any Easement Areas, Demised Premises Improvements, and any Easement Area Improvements.

“Recipient” has the meaning set forth in Section 16.04.

“Release” means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing.

“Rent” has the meaning set forth in Section 4.03.

“Restoration Work” has the meaning set forth in Section 9.01(a).

“Schedules” has the meaning set forth in Section 1.02 of Section 1.01.

“Site Plan” has the meaning set forth in the Recitals.

“Subsidiary” means, with respect to any Person, any corporation or other entity of which more than fifty percent (50%) of (i) the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether or not at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) or (ii) other equity interest comparable to that described in the preceding clause (i) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries, or by one of more other Subsidiaries.

“Substantially Completed” means, with respect to the Demised Premises Improvements, the design engineer, the General Contractor and Tenant certify to Landlord that (i) the Demised Premises

Improvements have been substantially completed; (ii) Tenant has received all permits and approvals from all applicable Governmental Authorities to occupy and operate the Demised Premises Improvements; and (iii) the Demised Premises Improvements have commenced commercial operations.

"Tenant" has the meaning set forth in the Preamble. Upon an assignment of this Lease permitted in accordance with the terms of this Lease, the assignee ("Transferee") will thereupon succeed to the rights and obligations of, and become, the "Tenant" for purposes of this Lease.

"Tenant Parties" has the meaning set forth in Section 8.04.

"Tenant Release Party" has the meaning set forth in Section 8.05.

"Tenant Representatives" has the meaning set forth in Section 8.04.

"Tenant Responsible Contamination" has the meaning set forth in Section 16.02.

"Term" has the meaning set forth in Section 3.01.

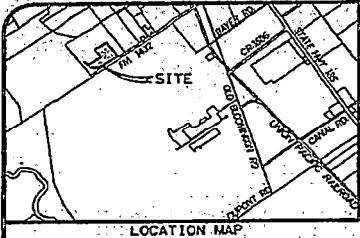
"Transfer" has the meaning set forth in Sections 11.01a and 11.01b.

"Transferee" has the meaning set forth in the definition of "Tenant".

"Transferor" means the Person making the Transfer.

1.02 Terminology. The terms defined in this Schedule 1.01 shall apply throughout the Lease. All references in the Lease to "Section" or "Article" shall refer to the section or article of the Lease in which such reference appears, unless otherwise expressly stated. All references to "Schedules" shall mean the schedules attached to the Lease. All references to "Exhibits" shall mean the exhibits attached to the Lease. All such Schedules and Exhibits are incorporate in the Lease by this reference. All references to herein, hereof, hereto, hereunder or similar terms shall be deemed to refer to the entire Lease. As used in this Lease, the term "including" shall mean "including but not limited to." The headings of Articles and Sections in and Exhibits to the Lease shall be for convenience only and shall not affect the interpretation hereof. If Landlord or Tenant ceases to be a partnership, all references herein to Landlord's or Tenant's partners shall thereafter be deemed to be references to Landlord's or Tenant's other equity owners.

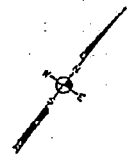
1.03 Interpretation. Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. Reference to any agreement means such agreement as amended or modified and in effect from time to time in accordance with the terms thereof. This Lease was negotiated between Landlord and Tenant with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Lease to be construed or interpreted against either Party shall not apply to any construction or interpretation hereof.



BEING A 25.00-ACRE TRACT OF LAND SITUATED IN THE DIEGO GARCIA SURVEY, ABSTRACT 39, VICTORIA, VICTORIA COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 117.01-ACRE TRACT OF LAND AS CONVEYED FROM RUTH S. EMMONS TO VICTORIA COUNTY NAVIGATION DISTRICT BY DEED DATED JULY 12, 1970 AND RECORDED IN VOLUME 759, PAGE 219 OF THE DEED RECORDS OF VICTORIA COUNTY, TEXAS.

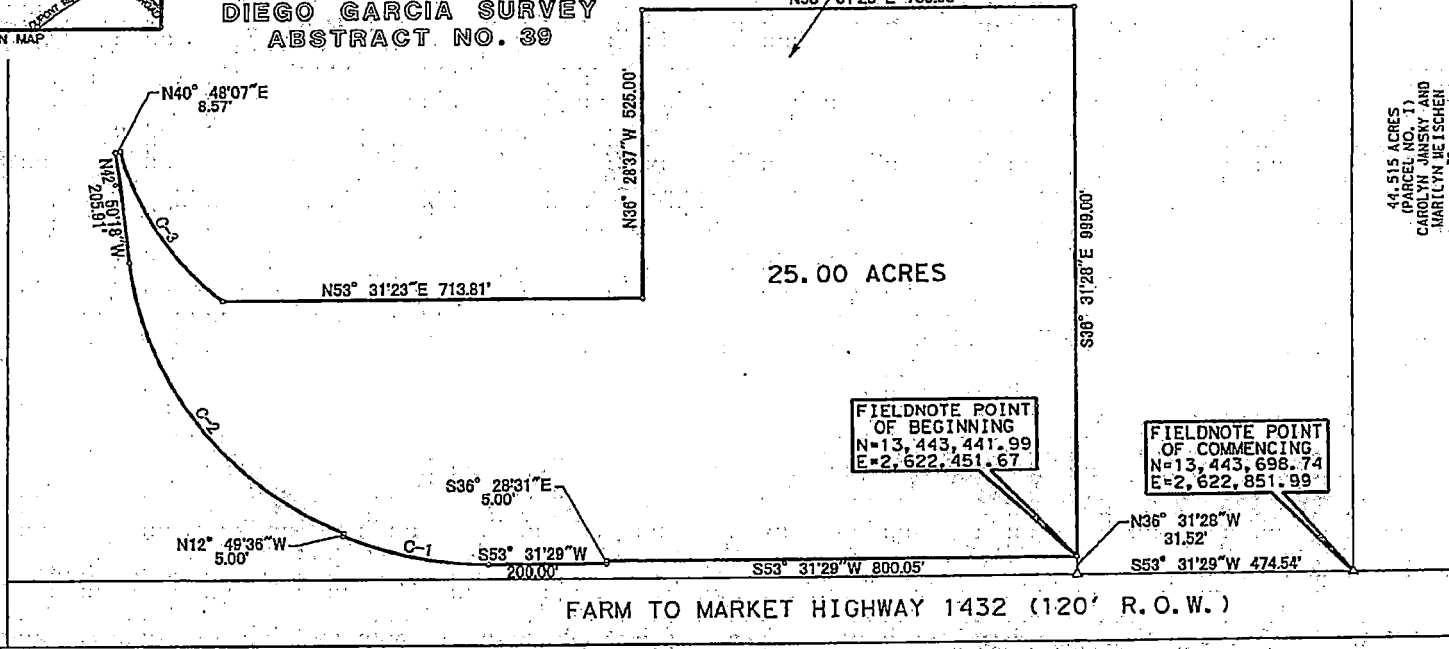
**DIEGO GARCIA SURVEY
ABSTRACT NO. 39**

117.01 ACRES
RUTH S. EMMONS
TO
VICTORIA COUNTY NAVIGATION DISTRICT
DATED: JULY 12, 1970
VOLUME 759, PAGE 219
DEED RECORDS



44.515 ACRES
(PARCEL NO. 1)
CAROLYN JANSKY AND
MARILYN HEISCHEN
TO
VICTORIA COUNTY NAVIGATION DISTRICT
VOLUME 1608, PAGE 896
DEED RECORDS

TRACT III
40.27 ACRE EASEMENT
TO
VICTORIA COUNTY NAVIGATION DISTRICT
UNITED STATES OF AMERICA
VOLUME 636, PAGE 439
DEED RECORDS
(IDENTIFICATION NO. 1005E)



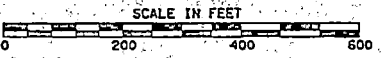
NOTE:

- A LEGAL DESCRIPTION OF EVERY DATE HEREIN ACCOMPANIES THIS EXHIBIT DRAWING.
- ALL BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (2011) NAD83 GEOID 12B. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY THE COMBINED ADJUSTMENT FACTOR OF 1.000130.

288.8342 ACRES
ETHEL WEAVER EVANS, ET AL
TO
E. I. DUPONT de NEVOURS & CO., INC.
VOLUME 830, PAGE 152
DEED RECORDS

CURVE DATA

CURVE NO.	RADIUS	DELTA	ARC LENGTH	CHORD
C-1	617.27'	23° 38'54"	264.77'	S65° 20'56" W 252.97'
C-2	612.27'	59° 59'19"	641.05'	N72° 49'57" W 612.18'
C-3	496.67'	38° 20'47"	332.41'	S68° 22'16" E 326.24'



- △ = CALCULATED POINT
- = SET 5/8 INCH DIAMETER IRON ROD WITH YELLOW PLASTIC CAP - STAMPED CIVILCORP

Civilcorp
401 ALBINE ROAD, SUITE 300, VICTORIA, TEXAS 77901
TEL: 409-575-1000 FAX: 409-575-1013

DATE: 07/14/21
DRAWN BY: MPH
JOB NO.: 2104902
F.L.D. BK. NO.: 1-1A
SCALE: 1" = 200'
SHEET 1 OF 1

LEASE EXHIBIT
25.00 ACRES

**LEASE TRACT
25.00 ACRES**

**THE STATE OF TEXAS)
COUNTY OF VICTORIA}**

Being a 25.00 acre tract of land situated in the Diego Garcia Survey, Abstract No. 39, Victoria County, Texas, and being a portion of that certain 117.01 acre tract of land as conveyed from Ruth S. Emmons to Victoria County Navigation District (VCND) by deed dated July 12, 1970 and recorded in Volume 759, Page 219 of the Deed Records of Victoria County, Texas, said 25.00 acre tract of land being more fully described by metes and bounds as follows:

COMMENCING from a point for the East corner of said 117.01 acre VCND tract, (coordinate value of Northing: 13,443,698.74', Easting: 2,622,851.99'), same being in the northwest right-of-way line of Farm to Market Highway 1432 (120' R.O.W.);

THENCE, South 53°31'29" West, with the southeast line of said 117.01 acre VCND tract and the northwest right-of-way line of said Farm to Market Highway 1432, a distance of 474.54 feet to a point;

THENCE, North 36°31'28" West, leaving said right-of-way line and crossing said 117.01 acre VCND tract, a distance of 31.52 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the southeast corner and **POINT OF BEGINNING** of the herein tract (coordinate value of Northing: 13,443,441.99', Easting: 2,622,451.67');

THENCE, crossing said 117.01 acre VCND tract the following Thirteen (13) calls:

- 1) South 53°31'29" West, a distance of 800.05 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an interior corner of the herein described tract;
- 2) South 36°28'31" East, a distance of 5.00 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;
- 3) South 53°31'29" West, a distance of 200.00 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the beginning of a curve to the right;
- 4) Along said curve to the right with a radius of 617.27 feet, a central angle of 23°38'54", an arc length of 254.77 feet, and a chord which bears South 65°20'56" West, a distance of 252.97 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the non-tangent end of said curve to the right and an exterior corner of the herein described tract;
- 5) North 12°49'36" West, a distance of 5.00 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an interior corner of the herein described tract and the beginning of a non-tangent curve to the right;
- 6) Along said curve to the right with a radius of 612.27 feet, a central angle of 59°59'19", an arc length of 641.05 feet, and a chord which bears North 72°49'57" West, a distance of 612.16 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the tangent end of said curve to the right;

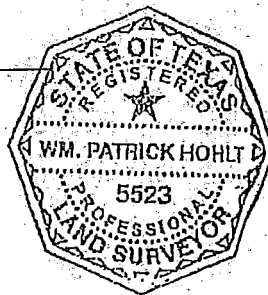
- 7) North 42°50'18" West, a distance of 205.91 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;
- 8) North 40°48'07" East, a distance of 8.57 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract and the beginning of a non-tangent curve to the left;
- 9) Along said curve to the left with a radius of 496.67 feet, a central angle of 38°20'47", an arc length of 332.41 feet, and a chord which bears South 68°22'16" East, a distance of 326.24 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the non-tangent end of said curve to the left and an interior corner of the herein described tract;
- 10) North 53°31'23" East, a distance of 713.81 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an interior corner of the herein described tract;
- 11) North 36°28'37" West, a distance of 525.00 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;
- 12) North 53°31'23" East, a distance of 735.98 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;
- 13) South 36°31'28" East, a distance of 999.00 feet to the **POINT OF BEGINNING, CONTAINING** within these metes and bounds 25.00 acres of land more or less,

All bearings are based on the Texas Coordinate System, South-Central Zone (4204) NAD83. All distances and coordinates shown are surface and may be converted to grid by dividing by the combined adjustment factor of 1.000130.

A survey drawing of even date herewith accompanies this legal description.

The foregoing Fieldnote Description is based on an actual survey made under my supervision in July 2021 and is true and correct to the best of my knowledge and belief and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the lease agreement.

Wm. Patrick Hohlt
 Wm. Patrick Hohlt 7/14/21
 Registered Professional Land Surveyor
 Texas No. 5523
 TXSURV Firm #100576-00



2104902-FN LEASE TRACT

EXHIBIT B
DESCRIPTION OF APPROVED PLANS

[Description to be Added]

EXHIBIT C
FORM OF MEMORANDUM

MEMORANDUM OF GROUND LEASE

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF VICTORIA §

THAT, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Victoria County Navigation District, whose address is 1934 FM 1432, Victoria County, Victoria, Texas 77905, (hereinafter referred to as "Lessor"), has entered into, executed and delivered an unrecorded Ground Lease ("Lease"), in favor of Zinc Resources, LLC ("Lessee"), whose address is 109 N. Post Oak Ln., Ste. 415, Houston, Texas 77024, effective as of _____, 2021 ("effective date"), covering and affecting certain real property owned by Lessor and to which Lessor leased and let to Lessee the following described real property ("Property") located in Victoria County, State of Texas:

Being a 25 acre lease situated in the Diego Garcia Survey, Abstract No. 39, Victoria County, Texas, said 25 acres being a portion of a 460.17 acre tract of land conveyed to the Victoria County Navigation District, said 25 acre lease being more fully described by metes and bounds as set forth on the attached Exhibit "A".

Lessor by this Lease, hereby leases and lets unto Lessee the exclusive right to possession (as defined therein) to the real property described, during the term of the Lease, and among other rights set forth therein, the right to construct and maintain for Lessee's use and operations such facilities as are provided for in the Lease and the right of ingress and egress in, on, and over the Property.

This Memorandum of Ground Lease is executed by Lessor and placed of record in the County in which the Property is located for the purpose of placing all persons on notice of the existence of the Lease, which Lease is not being placed of record. The Lease is for a primary term of ten (10) years, with four (4) possible extension periods of ten (10) years each from and after the effective date thereof, subject to all terms and provisions set forth in said Lease, reference to the original Lease is here made for all purposes. The Lease, with all of its terms, covenants and other provisions is incorporated into this Memorandum for all purposes.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2021.

By: _____
Name: Robby Burdge
Its: Chairman

By: _____
Name: _____
Its: _____

STATE OF TEXAS §

COUNTY OF VICTORIA §

This instrument was acknowledged before me on this _____ day of _____, 2021, by Robby Burdge, Chairman of the Victoria County Navigation District.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §

COUNTY OF VICTORIA §

This instrument was acknowledged before me on this _____ day of _____, 2021, by _____ (name), _____ (title), of Zinc Resources, LLC.

NOTARY PUBLIC, STATE OF TEXAS