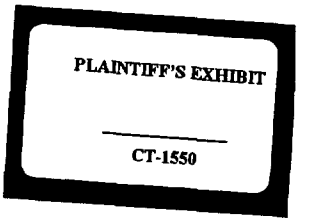
Document 8



LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of the first day of February, 1989, by and between CERTAINTEED CORPORATION, a Delaware corporation, hereinafter referred to as "Lessor", and TEXAS MINING COMPANY, a Texas corporation, hereinafter referred to as "Lessee".

WHEREAS, Lessor and Lessee's predecessor, Heart of Texas Mining Corporation, entered into a lease agreement dated December 31, 1964, which lease agreement was assigned to Lessee with Lessor's consent on September 26, 1975; and

WHEREAS, said lease agreement expired on September 15, 1985 and has been extended on a month-to-month basis by letter dated February 7, 1986; and

WHEREAS, the parties hereto desire to terminate their existing lease agreement and to enter into a new lease agreement on the terms hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Termination of Existing Lease and Options. Lessor and Lessee hereby agree to terminate the existing lease between them with respect to the Premises (as hereinafter defined), including, but not limited to, those provisions in such lease granting Lessee the option to purchase the Premises and granting Lessor the option to purchase Lessee's improvements (the "Improvements") on the Premises.

2. Demised Premises and Use. The Lessor, hereby demises and leases unto the Lessee the following described premises ("Premises") in Riverside County, California:

> A portion of the southwesterly corner of Lessor's property, Riverside County, California, described as follows:
>
> Being a portion of Lots 6, 7 & 9 LaRancheria Esplandida as per map recorded in Book 4, page 77 of Maps, and portion of Zanja Street and portion of 25th Street vacated per resolution recorded in Book 3548, page 235, of Official Records in The County of Riverside, State of California, located in Rubidoux Rancho.
>
> Beginning at a point at the southwest corner of lot 6:
>
> Thence N 53° 11' 12" W, 40.00 feet to the existing fenceline:
> Thence N 53° 11' 12" W, 265.00 feet:
> Thence N 36° 48' 48" E, 360.00 feet:
> Thence S 53° 11' 12" E, 50.00 feet:
> Thence N 36° 48' 48" E, 135.00 feet:
> Thence S 53° 11' 12" E, 133.00 feet:
> Thence S 8° 00' 00" W, 105.00 feet to approximate line of fence:
> Thence S 8° 00' 00" W, 95.80 feet to Westerly property line:
> Thence S 32° 16' 24" W, 320.00 feet to the point of beginning.

comprising approximately 2.922 acres to be occupied and used by Lessee only for the operation of Lessee's grinding facilities.

3. Term. This Lease shall commence as of February 1, 1989 and end on January 31, 1999, unless sooner terminated as hereinafter provided.

4. Rent, Taxes and Utilities.

(a) Lessee shall pay the Lessor as base rent for the Premises the sum of Three Hundred Dollars ($300.00) in

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advance upon the first day of each and every month during the term of this Lease at the offices of Lessor at 2100 Avalon, P.O. Box 706, Riverside, California 92509 (Attention: John Diebold), or at such other address as Lessor may from time to time notify Lessee in writing for such purpose. At any time and from time to time during the term this Lease is in effect, in the event real estate taxes allocable to the Premises increase more than 10% over the real estate taxes allocable to the Premises on December 31, 1988, the base rent provided for herein shall be increased by the amount such real estate taxes have increased by more than 10% of what said taxes were at December 31, 1988. In no event shall the base rent be decreased as a result of a decrease in real estate taxes.

(b) In addition to the base rent specified in Paragraph 4(a), Lessee will pay, as they become due and payable and before they become delinquent, all personal property taxes that may be assessed and become payable upon the Improvements and any personal property installed or maintained by Lessee in the Improvements. Lessee will take any and all steps that are necessary to have the personal property taxes relating to the Improvements and Lessee's other personal property on the Premises assessed separately from the similar taxes upon the adjacent unleased premises of Lessor and the buildings and improvements thereon as well as upon any personal property of Lessor located and maintained thereon. Upon Lessee's failure to pay said personal

property taxes before they become due, the amount of such unpaid taxes plus all interest and penalties thereon shall be and become additional rent payable by Lessee to Lessor and, in the event of the failure of Lessee to so pay said personal property taxes, together with all interest and penalties thereon, within thirty (30) days after they become delinquent, such failure shall become a default of Lessee and Lessor may, at its option, terminate this Lease upon thirty (30) days written notice to Lessee.

(c) Lessor will make its water supply for its property adjacent to the Premises available to Lessee without cost or charge but only for use by Lessee for nonmanufacturing purposes and Lessee will be permitted to tap into Lessor's water line for water for such nonmanufacturing purposes.

(d) Except as set forth in (c) above, Lessee shall pay when due all charges for gas, electricity, sewer and water service used on the Premises.

5. No Representations by Lessor. Lessee has examined and knows the condition of the Premises covered by this Lease and acknowledges that no representation as to the condition or location thereof has been made by Lessor or any representative of Lessor prior to or at the execution and delivery of this Lease.

6. Additional Improvements. Lessee may not construct any additional buildings or improvements on the Premises, except for such improvements which are associated

with the production or sale of pulverized sand, without the prior written consent of Lessor which shall not be unreasonably withheld.

7. Fence. Lessee has erected and will continue to maintain during the term of this Lease, at its sole expense, a fence on the boundary line between the Premises and the premises of the Lessor immediately adjacent thereto, which fence is and will continue to be during the term of this Lease the same as the fence that is presently erected on Lessor's adjacent property. Lessee will also, at its expense, maintain the landscaping of the Premises in keeping with the landscaping maintained on Lessor's adjacent property.

8. Compliance with Laws. At all times during the term of this Lease Lessee, at its sole expense, will comply with all federal, state and local laws, codes, regulations, and ordinances applicable to its use of the Premises and its business conducted thereon, including, but not limited to, all law, codes, regulations and ordinances relating to environmental protection. Lessee will comply with all of Lessor's procedures, rules and regulations (including, but not limited to, environmental audit procedures) instituted by Lessor to insure that Lessor's ownership of the Premises is in compliance with all laws, codes and regulations.

9. Liens. Lessee will not at any time during the term of this Lease permit any mechanic's lien or other

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liens to be placed upon the Premises or any part or portion thereof and, in case of the filing of any such lien, Lessee will promptly pay or discharge the same. If default in payment or discharge thereof shall continue for thirty (30) days after written notice thereof from Lessor to Lessee, Lessor shall have the right and privilege, at Lessor's option, of paying or otherwise discharging the same or any portion thereof without inquiry as to the validity thereof and any amounts paid in connection therewith, including expenses and interest, shall be so much additional rental hereunder due from Lessee to Lessor and shall be repaid to Lessor immediately upon the rendition of a bill therefor.

10. Insurance.

(a) Lessee will, at its expense during the term of this Lease, maintain a reasonable amount of insurance against fire and extended coverage hazards covering the Premises and upon the personal property installed and maintained by Lessee in the Improvements. Reasonable insurance, as mentioned in the preceding sentence shall mean eighty percent (80%) of insurance to value.

(b) Lessee will, at its expense during the term of this Lease, maintain comprehensive general liability insurance in an amount of not less than $1,000,000 for one person, and not less than $1,000,000 for one accident with once or more responsible insurance companies licensed to do business in the State of California and reasonably acceptable to Lessor, protecting Lessor and Lessee against

liability to any employees or servants of Lessee and to any other person or persons whomsoever arising out of or in connection with the occupation, use, or condition of the Premises under this Lease.

(c) Lessee will obtain and deliver to Lessor certificates showing the issuance and maintenance of the insurance referred to in this paragraph.

11. Indemnification. Lessee will protect and save and keep Lessor forever harmless and indemnified against and from any penalty or damage or charges imposed for any violation of any laws or ordinances, whether occasioned by the misconduct or neglect of the Lessee or those holding under Lessee, and Lessee will at all times protect, indemnify, save and keep harmless the Lessor against and from any and all claims, loss, cost, damage or expense arising out of or from any accident o r other occurrence on or about the Premises, causing injury to any person or property whomsoever or whatsoever and will protect, indemnify, save and keep harmless the Lessor against and from any and all claims and against and from any and all loss, cost, damage or expense arising out of any failure of Lessee in any respect to comply with and perform all of the requirements and provisions hereof.

12. Default by Lessee. In the event Lessee fails to perform any of Lessee's obligations and agreements specified in this Lease and such failure shall continue uncured for a period of thirty (30) days after written

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notice of Lessee's default has been delivered to Lessee, Lessor may immediately re-enter the Premises by force or otherwise, without any liability to Lessee, take possession of the Premises and remove all persons and property therefrom, and may elect to either terminate this Lease or relet the Premises, and receive rent therefor, applying the same first to the payment of such expenses as Lessor may incur in the re-letting and then to the outstanding rent due under this Lease and the fulfillment of Lessee's obligations hereunder. The balance, if any, shall be paid to Lessee who shall remain liable for any deficiency. Lessor's failure to enforce any provision or any other provision of this Lease in the future.

13. Termination of Lease.

(a) This Lease may be terminated prior to January 31, 1999, by either party, such termination to be effective on the next anniversary of the date of execution of this Lease; provided that the terminating party gives the other party written notice of such intent to terminate early no later than one hundred eighty (180) days prior to the date of termination as permitted herein.

(b) Lessee will, at the termination of this Lease, whether by lapse of time or otherwise (except as provided for in Paragraph 12 of this Lease) yield up immediately possession to Lessor, and failing to do so will pay as liquidated damages for such time as possession is withheld the sum of One Hundred Dollars ($100.00) per day; provided,

however, that should this Lease be terminated by lapse of time or otherwise (including such events of default as are set forth in Paragraph 12 herein) then and in such event, Lessee shall nevertheless have the right and privilege to enter upon the Premises and remove therefrom all of Lessee's Improvements, machinery, equipment, facilities and other property from the Premises, provided that such removal is accomplished within six (6) months from the date of such termination and further provided that during such period while such Improvements and equipment are being removed, Lessee pays to Lessor the rental provided for in Paragraph 4 hereof. During such time as the Improvements and equipment are being removed, Lessee may continue in possession. If Lessee has failed to remove its Improvements and equipment within such six (6) month period, then the Improvements and equipment remaining thereon shall become the property of Lessor.

(c) Notwithstanding the reason for termination, at the termination of this Lease, Lessee shall deliver up the Premises in good repair and condition, with only reasonable wear and tear excepted.

(d) Notwithstanding anything contained above to the contrary, thirty (30) days prior to the commencement of the last year of the Lease term Lessor shall provide Lessee with notice of its intention not to renew this Lease for any reason in order to provide the least amount of disruption of Lessee's business activities and to afford Lessee an

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eighteen (18) month period of time pursuant to the terms of this Section 13 to find a new location for its plant and equipment.

14. Notices. Any notice, demand or other communication which either party hereto may be required or desire to serve upon the other shall be deemed to have been sufficiently served if made in writing and mailed by United States Registered or Certified Mail and addressed, in the case of the Lessor, to the Lessor at 2100 Avalon, P.O. Box 706, Riverside, California 92509, Attention: John Diebold; and, in the case of the Lessee, to the Lessee at 1000 Oglebay Norton Drive, Post Office Box 429, Brady, Texas 76825, Attention: Vice President unless, in either case, the party to whom such notice, demand or communication is addressed shall have previously specified to the other another address for such purpose.

15. Non-Assignability; Miscellaneous. This Lease shall not be assigned or subleased in whole or part by Lessee without the prior written consent of Lessor, which shall not unreasonably be withheld. This Lease shall be binding upon the respective parties hereto and their permitted successors and assigns. This Lease contains the entire agreement of the parties hereto with respect to the subject matter hereof and no representations, inducements, promises or agreements, oral or written, between the parties not embodies herein, shall be of any effect. This Lease

supersedes any prior lease agreement between the parties hereto with respect to the Premises.

16. Notice of Plant Closure or Sale of Premises. In the event Lessor intends to cease operating its plant located on its property adjacent to the Premises, or if Lessor desires to sell its property including the Premises, Lessor, as a matter of courtesy, will provide Lessee written notice of same one hundred eighty (180) days prior to such event.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed on its behalf by its President of one of its Vice Presidents and its corporate seal to be hereunto affixed and attested by its Secretary or one of its Assistant Secretaries, all as of the day and year first above written.

Lessor:

ATTEST:

CERTAINTEED CORPORATION

By:_____
Secretary

By:_____
Vice President

Lessee:

ATTEST:

TEXAS MINING COMPANY

By:_____
Assistant Secretary

By:_____
Vice President/General Manager

COMMONWEALTHH OF PENNSYLVANIA)
) ss
COUNTY OF CHESTER)

On this _____ day of _____, in the year 1989, before me, _____, a Notary Public, duly commissioned and sworn, personally appeared _____, known to be a Vice President of CertainTeed Corporation, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____

NOTARY PUBLIC

My Commission Expires _____

STATE OF)
) ss
COUNTY OF)

On this _____ day of _____, in the year 1989, before me, _____, a Notary Public, duly commissioned and sworn, personally appeared _____, known to be a Vice President of Texas Mining Company, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____

NOTARY PUBLIC

My Commission Expires _____