U. S. v. Robert Friedland

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Date	Document Title (type)	Author(s)/Org(s)	Addresee(s)/Org(s)	CC/BCC	Attch	Attch priv?	# Pg inc any attch	Desc.	Type Priv.	Comment
19570514	Report of examination by Field Team Region III (RPT)	D.H. Richter, Geologist, USGS; E.W. Buel, Mining Engineer, BOM (DOI)	not specified	none	Y (4 maps)	2 maps Y (statute, CBI); 2 maps of unpatented and patented mining claims released	49	joint engineering and geological report of proposed Summitville project	CBI, statute	same report in other file; this one has notation "Extra Copy do you want this?"

MINING LEASE

THIS MINING LEASE, entered into as of this 11th day of September, 1974, regardless of the actual times of signing and acknowledgement, between REYNOLDS MINING COMPANY, a limited partnership, of 1704 Security Life Building, Denver, Colorado 80202 (Lessor), and AMERICAN SMELTING AND REFINING COMPANY, a New Jersey corporation (Asarco),

W I T N E S S E T H :

1.1 The Lessor owns the patented and unpatented mining claims described in Schedule 1, attached hereto and made a part hereof. Such mining properties shall be referred to hereinafter as the "Mining Properties." Lessor makes the following representations concerning the Mining Properties:

(a) It is in possession of and believes that it holds a marketable title as to the patented claims and a possessory title as to the unpatented claims which are subject hereto, free and clear of all liens, encumbrances or unrecorded agreements of any kind. It does not warrant its title, however, except as to any claims resulting from those claiming an interest in the Mining Properties, by, through or under the Lessor.

(b) The unpatented mining claims are in good standing to the best of the Lessor's knowledge and belief and the assessment work required by law has been duly performed for the assessment years ending September 1, 1972, and during the prior years that the Lessor has been in possession thereof.

(c) The Lessor is not aware of any litigation, claims or demands made by others with respect to the title

of the Mining Properties; except that

(1) The United States Department of the Interior may claim that W. S. Moore Co., a former lessee, has not fully repaid an O.M.E. loan with respect to a portion of the Mining Properties. W. S. Moore Co. denies that it is so indebted.

(2) The amount of production taxes due on the Mining Properties are the subject of litigation by former lessees. Funds are available for the payment of such taxes when the amount is determined.

(d) The Lessor has the right and authority to execute this Mining Lease and lease the Mining Properties to Asarco.

(e) To the best of the Lessor's belief, no other person, association or corporation has any interest or claim to the Mining Properties, and all prior leases covering them have been terminated or released, with the single exception of a Mining Lease dated August 1, 1973, from Lessor to Joseph B. Matthews which is the subject of an agreement dated ~~August 1~~ July 26, 1974, between Joseph B. Matthews and Asarco.

2.1 Grant of Lease. The Lessor, in consideration of the royalties herein reserved and the covenants to be performed by Asarco, hereby leases, lets and demises to Asarco the Mining Properties together with all fixtures, improvements and facilities on or about such properties and together with all easements, licenses, other privileges and water rights owned by Lessor in connection with the mining, exploration and development of any of said properties, and access to or egress from any of said properties, and together with the right to construct and operate upon the Mining Properties all workings, structures and appliances

that may be necessary or convenient for Asarco's operations under this Mining Lease.

2.2 Term. The term of this Mining Lease shall be twenty (20) years from the date hereof, unless sooner terminated in the manner hereinafter provided. Upon giving notice to Lessor not later than ninety (90) days prior to the end of the initial twenty-year term, Asarco shall have the right to extend this Mining Lease for an additional term of twenty (20) years and so long thereafter as ores, minerals or metals are produced or sold from the Mining Properties on a continuing basis or Asarco continues the payment of production royalties or advances on royalty as provided in Article 3 hereof.

2.3 Possession and Control of Property. Subject only to the rights specifically retained herein by Lessor, Asarco shall have, and it is hereby given and granted, the right to enter onto and take over immediately the sole and exclusive possession and control of said Mining Properties and the whole and every part thereof, and, during the term of this lease, to remain in the sole and exclusive possession and control thereof, and to investigate, measure, sample, examine, test, develop, work, mine, operate, use, manage, and control the same and the water and water rights appurtenant thereto, and to mine, extract and remove from said property the ores and minerals therein and appurtenant and belonging thereto, and to treat, mill, ship, sell or otherwise dispose of the same and receive the full proceeds therefrom; and to erect, construct, maintain, use and operate thereon and therein buildings, structures, machinery and equipment. The time, nature, location and extent of such or any or all the above activities and mining or milling operations and the cessation and resumption thereof shall be

at the sole discretion of Asarco, and may include, without limitation, open pit, underground, strip, or solution mining methods, together with the right to use so much of the surface as may be necessary, useful or convenient for the enjoyment of all rights herein granted. Asarco may also, if it so elects, use all or part of the leased premises or commit waste thereon in the enjoyment of such rights and may deposit or dump any materials thereon, whether produced therefrom or from other property. The rights, privileges and activities of Asarco hereunder are subject specifically to the provisions of Paragraphs 10 and 11 hereof.

3. Payment of Royalties. Asarco shall pay to Lessor royalties as hereinafter set forth on all ores extracted and sold from the Mining Properties, and in case Lessor owns a less interest in the Mining Properties or any part thereof than the whole, then the royalties herein provided for shall be paid to Lessor only in the proportion which Lessor's actual interest or interests bear to the whole.

(a) Production Royalties:

The production royalty payable by Asarco to Lessor shall be a percentage of net smelter or mint returns received from the sale of all concentrates, minerals, metals and other materials (hereinafter referred to as "production") produced from the Mining Properties. The original percentage royalty to be paid shall be determined by the designed capacity of the mill to be operated on the Mining Properties or in connection therewith expressed in tons of ore per day as follows:

Mill Capacity	Royalty
500 tpd	6 1/2%
2,000 tpd	5 %
5,000 tpd	4 %
10,000 tpd	3 1/2%
15,000 tpd or more	3 %

Royalty in the percentages stated above shall be paid on all production from the Mining Properties from the time of first production through said mill until the first day of March following. Commencing on such first day of March, the percentage royalty to be paid shall be determined by applying the average tons per day of actual production from the Mining Properties, from the date of first production to the following March 1, to the percentage scale of royalties stated above. Thereafter, on the first day of September, and the first day of March, the average daily production from the Mining Properties shall be computed for the preceding six months period and royalty for the following six months period shall be determined and paid on the basis of the percentage royalty scale stated above as the same applies to average daily production during the preceding six months period. Should the designed capacity of the mill to be operated on the Mining Properties or in connection therewith, or the amount of average daily production, be a figure other than one of those listed above, the percentage royalty shall be adjusted in proportion to those shown above, rounded to the nearest quarter percent, provided that mill capacity shall never be less than 500 tons per day.

(b) Advances on Royalties:

(1) Asarco shall pay Lessor advances on royalties, or actual production royalties, whichever is the greater, as follows:

[1] Upon execution of this Mining Lease - $7,500.00.

[2] March 1, 1975 - $10,000.00.

[3] March 1, 1976 - $12,500.00.

[4] March 1, 1977 - $25,000.00.

[5] March 1, 1978, and the first day of March of each year thereafter, except as provided in Subparagraph (2) below - $75,000.00.

(2) If Asarco has not commenced actual production on the Mining Properties on or before March 1, 1984, it shall pay on such date and on March 1, of each succeeding year thereafter until actual production is commenced at a rate of not less than 500 tons per day the sum of $150,000.00 per year as an advance on royalty for such year. Upon the commencement of actual production Asarco may terminate said payment of $150,000.00, subject to the requirement of paying not less than the minimum sums provided hereinabove in subparagraph 3.(b)(1). Such sum of $150,000.00 per year shall not be paid commencing March 1, 1984, if on such date Asarco is actively engaged in the construction of a mill of a design not less than 500 tons per day and actual production commences from such mill on or before March 1, 1985.

(3) All advances on royalties provided for hereinabove shall be deducted by Asarco from fifty percent of the first production royalties payable by Asarco to Lessor hereunder.

(c) Calculation of Net Smelter or Mint Returns:

"Net smelter returns" as used herein, is agreed to mean the amount of the payments received by Asarco from the smelter or other purchaser to which any ore, concentrates, or materials derived from the Mining Properties are delivered for treatment and sale, after deduction has been made for all smelter penalties and charges, freight, and cost of transportation and haulage from the Mining Properties to the smelter or other purchaser. The amounts of

such deductions shall not exceed those which are usual and customary in the mining business for like services. In the event of a dispute between Asarco and the Lessor relating to the application of this subparagraph, the matter shall be settled by arbitration as provided in Article 16 hereof.

"Net mint returns" as used herein, is agreed to mean the amount of payments received by Asarco from the United States Mint or other authorized bullion purchaser, after deduction has been made for all postage, express, insurance and other handling charges incurred in connection with the shipment of such bullion from the said Mining Properties to said purchaser.

(d) Commingling of Ore.

Asarco may commingle ore from the Mining Properties with ore from other properties, either before or after concentration or beneficiation, so long as the weight and grade, both of the ore removed from the Mining Properties and of all other ore with which ore from the Mining Properties is commingled, are determined by Asarco prior to commingling. Asarco shall then use that weight and grade data to allocate net smelter or mint returns from the commingled ore between the Mining Properties and the other properties from which the other commingled ore was removed. All such weight, grade and allocation calculations by Asarco shall be done in a manner recognized by the mining industry as practical and sufficient at that time. If such commingling makes it impractical, in Asarco's judgment, for Asarco to determine which amounts of the above-described costs and expenses are directly attributable

to ore removed from the Mining Properties, Asarco may allocate all such expenses on a straight-line, per-ton basis among all ores that give rise to those expenses, in accordance with acceptable accounting standards. Any dispute between the parties with reference to the application of this paragraph shall be determined by arbitration as hereinafter provided in Article 16.

(e) Settlements.

Subject to Asarco's right to recoup advance royalties, production royalty settlements shall be made by Asarco on or before the 25th day of each and every calendar month during the term of this lease for all ores from the Mining Properties that were sold during the preceding calendar month. Each settlement shall be accompanied by a copy of the settlement sheet, smelter returns, or other document showing the proceeds received that month by Asarco for ore removed from the Mining Properties.

(f) Disputes Regarding Royalties.

Lessor shall be deemed to have waived any right it may have had to object to the royalty settlement made by Asarco for any calendar month, unless Lessor notifies Asarco in writing of such objection within twelve (12) months after the month in question. If Lessor and Asarco are unable to resolve the question by agreement within thirty (30) days after Asarco's receipt of Lessor's notice, the dispute shall be resolved by arbitration, in accordance with the provisions of Article 16.

4. Work Requirements.

Asarco shall expend the following sums during the following periods for any of the purposes specified in Article 2.3 hereof, in, upon or for the benefit of the Mining Properties:

(1) Effective date of Agreement to March 1, 1975 - $25,000.00, which shall include 2,000 feet of core or other drilling which shall be conducted at sites determined by Asarco in its sole discretion.

(2) March 1, 1975 to March 1, 1976 - $30,000.00, which shall include the drilling of one 3,000 foot core hole at a site to be determined by Asarco in its sole discretion.

(3) March 1, 1976 to March 1, 1977 - $50,000.00.

(4) March 1, 1977 to March 1, 1978 - $75,000.00.

(5) March 1, 1978 to March 1, 1979 - $100,000.00.

(6) March 1, 1979 to March 1, 1980, and each like period thereafter until the Mining Properties are placed in production - $50,000.00.

Work by Asarco in excess of that required in any period up to and including the period ending March 1, 1979, may be carried forward and applied to the work required in the following period. Thereafter work performed by Asarco in any period in excess of that required for the period may be carried forward and applied to the work required in the following three annual periods.

5. Tailings and Residue. Subject to the payment of royalties under Article 3 above, all tailings and other residues resulting from the milling or other beneficiating of the ores produced from the Mining Properties shall be the sole and exclusive property of Asarco; provided, however, that upon termination of this lease, any such material as is not removed from the Mining Properties within the period specified in Article 15 shall then become the property of lessor.

6. Cross-Mining Rights. Asarco is hereby granted the right, if it so desires, to mine or remove from the Mining Properties any merchantable ores, non-merchantable ores, waste, water and other materials existing therein or thereon or in any part thereof, through or by means of shafts, openings or pits which may be sunk or made upon adjoining or nearby

property owned or controlled by Asarco, and may stock-pile any merchantable ores, non-merchantable ores, waste, or other materials and/or concentrated products of ores or materials from the Mining Properties or any part thereof, upon stock-pile grounds situated upon any such adjoining or nearby property; and Asarco may, if it so desires, use the Mining Properties and any part thereof and any shafts, openings, pits and stock-pile grounds sunk or made thereon for the mining, removal and/or stock-piling of any merchantable ores, non-merchantable ores, waste, water and other materials and/or concentrated products of ores or materials from any such adjoining or nearby property, or for any purpose or purposes connected therewith, not, however, preventing or interfering with the mining or removal of ore from the Mining Properties.

7. Vertical Boundary Planes. In consideration of Asarco's execution of this mining lease, and the reciprocal benefits received by reason of the terms of this Article, by the Lessor and Asarco and by other claim owners in the above-described area from whom Asarco has obtained or shall hereafter obtain leases or agreements, the Lessor and Asarco hereby agree with each other and with all other claim owners in said area from whom Asarco now has or shall hereafter obtain leases or other agreements containing this or a similar Article, with respect only to ores and minerals lying below an elevation of 500 feet below the portal of the Reynolds Tunnel (located on the Mining Properties), that any and all ores and minerals within the surface boundaries extended downward vertically of any claim so held under lease or agreement by Asarco, or now or hereafter owned by Asarco, shall belong to such claim and none other, and Asarco shall be required to account only to the owner of such claim for ores mined and

removed by its therefrom. As to the other claims or property adjoining or adjacent to the demised premises, this lease is intended to and does hereby grant to Asarco, subject to the terms hereof, the full rights of possession and enjoyment in and to the Mining Properties and all ore and minerals therein and appurtenant thereto and all extra-lateral rights thereof as provided by law. The Lessor grants the rights and privileges contained in this Paragraph 7. subject specifically to the condition that the other claim owners in the area described above shall agree with Asarco and shall grant to the Lessor the same reciprocal benefits with respect to their properties and the same rights and privileges as are granted by the Lessor in accordance with this Paragraph 7.

8. Records and Inspection. Asarco's maps and records of all mining operations upon the Mining Properties pertinent to the computation of royalties, shall be available for Lessor's inspection upon request, but not more often than once each calendar quarter; provided, however, that Lessor may make more frequent inspections, but only if it pays to Asarco 130% of Asarco's actual cost incurred in supplying its personnel for each such inspection; and the Lessor may enter said property at all reasonable times for the purpose of inspecting the same, and Asarco shall facilitate such inspection in every reasonable way, but Lessor shall enter upon said Mining Properties at Lessor's own risk and so as not to hinder unreasonably the operations of Asarco; and the Lessor shall indemnify and hold harmless Asarco from any damage, claim or demand by reason of injury to or the presence of the Lessor or the Lessor's agents, representatives, licensees, or guests or any of them on the demised premises or approaches thereto. Upon cancellation

or termination of this Mining Lease for any reason whatsoever in accordance with the terms hereof one copy of all of Asarco's maps, geological data, engineering data, geological and engineering reports, and other factual and operating data shall be promptly delivered to the Lessor.

9. Taxes.

(a) Asarco shall pay before they are delinquent all general property taxes assessed against the Lessor's ownership in the Mining Properties during the term of this lease, beginning with and prorated from this date. Asarco shall also pay, before they are delinquent, all taxes levied or assessed against any and all personal property, machinery and equipment placed upon said Mining Properties by Asarco during the term of this lease. As to production, severance and all other taxes that are now or may be hereafter levied and computed on the basis of or the amount of value of ores produced from the Mining Properties, Lessor and Asarco shall each bear their prorata share, provided the prorata share of Lessor shall be determined by multiplying the gross amount of production royalties paid unto Lessor during the taxing period by the applicable tax rate, the balance of the tax being Asarco's prorata share. If Lessor fails to pay taxes chargeable solely to Lessor or its prorata share of taxes when due, Asarco may at its option pay Lessor's prorata share of taxes as herein defined and deduct said payment or payments from royalty due or to become due unto Lessor hereunder.

(b) If Asarco assigns this Mining Lease, either in its entirety or a part thereof in accordance with the terms and provisions hereof, then to assure the payment of such taxes, there shall be deducted from net smelter returns on all materials produced and sold from the Mining Properties, before any royalties are computed, two percent (2%) of the value thereof, for the purpose of a tax reserve fund for paying such

taxes. Said two percent deduction shall be paid to the Lessor by the smelter or other ore purchasing agency and the same shall be held by the Lessor as a trust fund in its hands for the payment, when due, of such taxes. Any surplus remaining in said tax fund accumulated in the year for which the taxes were levied, after the payment of taxes, shall be equitably and ratably apportioned and paid, on the basis of the prorata share of such taxes to be paid by the Lessor and such assignee, as the interest of the respective parties hereto may at said time appear. If upon the termination of this lease and the payment of all taxes there remain sums in said tax fund, the same shall be equitably and ratably apportioned and paid among the parties. At any time after two years from the time the Mining Properties subject hereto or any of them are placed in production, it is determined that 2% of the value of such production exceeds the probable amount of taxes to be paid from such fund or is insufficient to pay such taxes, then said 2% deduction shall be reduced or increased in such amount as may reasonably be expected to pay the taxes which are to be paid therefrom. If the parties so agree, the monies placed in such tax reserve fund shall be deposited in such manner, if possible, to derive interest therefrom and the interest shall become a part of the tax reserve fund.

10. Obligations of Asarco. Asarco agrees as follows with respect to its operations hereunder:

(a) To conduct its operations in a prudent and miner-like manner in accordance with good industry practice and applicable laws and regulations; and shall indemnify, protect, defend and hold harmless the Lessor from any claims, demands or liability arising from its operations hereunder.

(b) To perform all necessary assessment work upon the unpatented mining claims held under this mining lease

and to file in the Lessor's name all proofs of labor required by law. Asarco agrees that if it locates or acquires permits, rights, or leases from the federal or state government, covering any vacant and unlocated lands in an area lying within one mile from the exterior boundary of any portion of the mining properties, it shall do so in the name of the Lessor and such claims or permits, rights or leases shall become a part of and subject to this mining lease. If a royalty on any material must be paid to the government thereunder in an amount which is equal to or in excess of the royalty provided for in this mining lease, then Asarco shall be excused from paying a royalty on such material to the Lessor hereunder. If the royalty on any material to be paid to the government is less than that provided herein to be paid to the Lessor, then Asarco shall pay to the Lessor a royalty thereon in the amount of the difference between the royalty provided for herein and the royalty to be paid to the government. Under no curcumstances shall Asarco be required to pay nor the Lessor be entitled to receive under the provisions of this subparagraph a royalty in excess of the basic royalty rates provided for in Paragraph 3.(a) of this mining lease. Asarco shall not be required to perform assessment work upon unpatented mining claims if this lease is terminated or surrendered prior to June 1, of any given assessment year; it being provided that work performed by Asarco or any of its agents may be used by the Lessor in complying with its assessment requirements for such year.

(c) To post and keep posted on the mining properties a notice that Asarco holds possession pursuant to a lease and that it is solely responsible for the payment of all obligations incurred by its operations.

(d) To pay when due all claims for work done, services rendered, or materials furnished to the mining properties, except those which it disputes in good faith.

(e) To keep the Mining Properties free from any liens, provided always that Asarco may contest the appropriateness of any claim and refuse to make payment until all methods of protest have been exhausted or abandoned, and any lien filed during such protest shall not consitute a default if the amount finally determined to be due and owing is promptly paid.

(f) To protect, defend and hold harmless the Lessor from liability and expense in case of accident or injury on the Mining Properties arising out of its operations, except for any accident or injury caused by the sole negligence of the Lessor or other persons acting by, through or under the Lessor.

(g) To maintain at all times workmen's compensation insurance pursu ant to the laws of Colorado and to comply with state or federal laws and regulations pertaining to employment; and to maintain (and furnish copies to the Lessor if required) liability insurance in amounts customary in the mining industry for a like operation.

(h) To furnish to the Lessor, not less than quarterly, progress reports on its activities on the Mining Properties and a report of monies expended to the extent that Lessor may determine compliance with Article 4. hereof.

11. Force Majeure. If Asarco is unable to perform any of the terms or covenants of this lease by reason of damage or delay resulting from disaster, labor disturbances, shortage of labor, strikes, lockouts, force majeure or act of God, or from any regulations or restrictions of any governmental agency, or on account of any eventuality beyond the reasonable control of Asarco, including state and federal environmental statute or regulation, Asarco shall be excused from performance during the period of such prevention and the time for performance shall be extended by the period of such prevention. The provisions of this paragraph shall not excuse payment of production royalties or advances on royalty which are otherwise due under the terms of this mining lease.

12. Cancellation by the Lessor. The Lessor, subject to the force majeure provisions hereof, may give written notice to Asarco stating a specific violation or violations of this Mining Lease and giving notice of intention so to do cancel and annul this Mining Lease. Unless Asarco shall within sixty (60) days after said written notice may be mailed or delivered, cease such violation and otherwise remedy the matter or matters in which it is in default, this Mining Lease shall terminate absolutely and without further notice of any kind from the Lessor. A failure on the part of Asarco to make any royalty or other monetary payment due hereunder within fifteen (15) days from the time that written notice is given to Asarco of such failure, in the absence of a dispute in good faith between Asarco and the Lessor with respect to the payment thereof, shall result in an automatic termination of the lease without further notice. Such cancellation shall become inoperative if within such fifteen (15) day period Asarco makes the monetary payment for which such notice is given. If

Asarco disagrees that such default occurred, it shall so advise the Lessor in writing within thirty (30) days after receipt of the notice of default. If, within fifteen (15) days thereafter, the parties have not resolved the dispute by mutual agreement, the issue of whether or not a default occurred shall then be submitted to arbitration under Article 16 below. If the arbitration decision should be that a default has in fact occurred, then the notice provision hereinabove in this paragraph provided for shall be considered to be fully effective as of the date of the decision.

13. Termination by Asarco. Notwithstanding any provision herein to the contrary, Asarco may at any time upon thirty (30) days written notice, cancel and terminate this lease in its entirety. Upon total cancellation and termination of this lease, Asarco shall be under no further obligation of whatsoever kind or nature to the Lessor except for the making of payments which have already accrued at the date of such cancellation and termination, and for the payment of Asarco's proportion of the aforesaid property taxes accrued while this lease was in effect. Work requirements for the periods commencing March 1, 1974, and March 1, 1975, under the provisions of Article 4, shall accrue on March 1, 1974. All other work requirements shall cease upon the date such notice is given. The obligation of Asarco to make advances on royalty under the provisions of Article 3.(b)(1) and (2) shall accrue on March 1, 1974. If Asarco shall have included any part of the Mining Properties in a "producing group" for assessment purposes, and taxes based on such assessment shall have been levied but shall not have been paid at the time of cancellation and termination, Asarco shall pay such taxes before they are delinquent.

14. Surrender of Property. In the event of a valid cancellation or termination of this lease, Asarco shall

surrender to the lessor peaceable possession of the Mining Properties and at the written request of Lessor shall deliver to the Lessor a written relinquishment hereof.

15. Removal of Equipment. Asarco shall have and is hereby given and granted twelve (12) months after a valid cancellation or termination of this mining lease to remove from the Mining Properties all buildings, structures, warehouse stocks, merchandise, materials, tools, hoists, compressors, engines, motors, pumps, transformers, electrical accessories, metal or wooden tanks, pipes and connections, rails, mine cars and any and all machinery, trade fixtures, and equipment erected or placed in or upon said property by it, provided that such right of removal shall not extend to foundations and mine timbers in place unless Lessor shall have given his, its or their previous written consent thereto. If Asarco is hampered by snowdrifts, washouts, inclement weather, or other climatic conditions, from completing the removal of said property and equipment within the time specified, then the Lessor agrees to extend the time by a reasonable period if requested by Asarco. If Asarco intends to sell any of the items named above which it is entitled to remove from the premises it shall give to the Lessor the first right of refusal to purchase the same at the same price at which Asarco is willing to sell to bonafide purchasers ready, willing and able to buy such items.

16. Arbitration of Disputes. Any controversy or claim arising out of or from this lease, or breach thereof, shall be settled by arbitration by a panel of three arbitrators in accordance with the rules then obtaining of the American Arbitration Association. Lessor and Asarco shall each select an arbitrator and the two arbitrators so selected shall select the third. If the two arbitrators are unable to agree on the

third arbitrator within fifteen (15) days after their appointment, the third arbitrator shall be appointed by the American Arbitration Association. Either the Lessor or Asarco may enter judgment on the award of the arbitrators in any court of competent jurisdiction. The administrative fee and other service charges of such arbitration shall be paid by the losing party.

17. Title. The Lessor shall, within thirty days after execution of this lease, furnish Asarco with all data relative to the title of the Mining Properties in its possession, such as abstracts, title opinions, or other relevant data, and Asarco shall have three (3) months after receipt thereof to examine the same and accept or reject title to all of the claims. In the event Asarco rejects title to such claims, the Lessor shall have six (6) months in which to cure at its own expense defects noted by Asarco in rejection of said title. At the end of said six (6) months period, in the event said defects are not cured by the Lessor, Asarco may then waive said defects and either at its election cure title at its sole option and cost or terminate this lease and be relieved of all further obligations including work commitments and advance royalties. In the event that Asarco elects to cure defects not corrected by the Lessor, it may recover from fifty percent (50%) of future production royalty payments the cost thereof to a maximum of $2,500.00. Any costs to Asarco in excess of $2,500.00 shall be its sole responsibility. In the event Asarco elects to terminate for failure of title, it shall make all payments due to the date of termination.

18. Acquisition of Other Lands. If, during the term of this mining lease, Asarco or Lessor acquires any privately owned mining ground or interest in mining ground of any

nature whatsoever located in an area within two miles of the exterior boundary of the Mining Properties it shall promptly notify the other party of such acquisition and the terms thereof. If such acquisition is made by Lessor, Asarco shall have the right to have the acquired property included in the terms of this lease by giving notice to Lessor within thirty (30) days of receipt of notice of the acquisition. If such acquisition is made by Asarco, Lessor shall have the right to purchase the interest acquired by Asarco at Asarco's cost by tendering to Asarco its costs within thirty (30) days of the date of such notice of acquisition whereupon such acquired property shall become subject to this mining lease and Asarco shall convey said property to Lessor.

19. Assignment. Asarco shall have the right to assign all or any portion of the Mining Properties to any financially able party or parties provided that all conditions of this lease shall be binding upon the assignee and he accepts liability therefor in writing and the Lessor is notified of such assignment and receives written acceptance of liability. No conveyance, assignment or transfer affecting the mineral rights on the Mining Properties or the mineral production therefrom shall be made except subject to the terms and conditions of this mining lease.

20. Use of Surface by the Lessor. The Lessor after written notification to Asarco and in the absence of Asarco protesting that such matters will interfere with its exploration, development and operation of the Mining Properties, may undertake the following actions notwithstanding the provisions of this lease.

(a) It may reclaim or cause to be reclaimed old lumber from unused buildings on the Mining Properties and keep the proceeds from the sale thereof for its own account.

(b) It may sell any buildings, machinery, scrap and salvage presently on the Mining Properties.

(c) It may enter into a contract for the use of that portion of the Mining Properties lying on the northeast side of Wightman Fork as a possible winter recreational facility; it being provided, however, that any such contract shall provide that such recreational facility shall in no manner interfere with the use of the Mining Properties by Asarco under the terms and conditions thereof.

21. Filing on Additional Water Rights. As provided above, Asarco shall have the full and exclusive right to use all water and water rights connected with or appurtenant to the Mining Properties. If through operations hereunder Asarco develops additional water, then the Lessor may appropriate or claim such additional water as its own property and such additional water shall at all times be subject to the exclusive use of Asarco hereunder.

22. Shallow Target. The parties agree that the Mining Properties have potential for both shallow and deep ore deposits. Should Asarco delineate a small surface deposit which it does not choose to develop and should the Lessor produce a party desiring to develop said shallow deposit subject to Asarco's rights hereunder, Asarco agrees to negotiate in good faith with such party toward the subleasing of said shallow deposit upon terms that would fully protect any operations or planned operations by Asarco upon the Mining Properties.

23. Notices. Any notices required or permitted to be given to the Lessor hereunder shall be considered as delivered forty-eight (48) hours after the same shall have been deposited in the United States mail, duly registered, with postage thereon prepaid. All notices given hereunder

shall be addressed to the respective addresses given below:

If to Lessor:

Reynolds Mining Company
1704 Security Life Building
Denver, Colorado 80202

If to Asarco:

American Smelting and Refining Company
Attention: Mining Department
120 Broadway
New York, New York 10005

and

American Smelting and Refining Company
Northwestern Mining Department
Post Office Box 440
Wallace, Idaho 83873

Said addresses for receiving notices may be changed by either party upon two (2) days previous notice to the other party.

24. Inurement. These presents shall inure to the benefit of and be binding upon the respective heirs, successors and assigns of the parties hereto.

25. Construction. Titles to the respective articles hereof shall not be deemed a part of this lease but shall be regarded as having been used for convenience only.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above-written.

REYNOLDS MINING COMPANY,
a limited partnership

Brad G. Moore

Bryan C. Moore

John Zimmer

AMERICAN SMELTING AND REFINING COMPANY

ATTEST:

Secretary

By

President

STATE OF COLORADO)
) ss.
City and County of Denver)

The foregoing instrument was acknowledged before me this 3rd day of September, 1974, by BRAD G. MORSE, ANSON C. MOORE and JOHN H. TIPPIT, partners of REYNOLDS MINING COMPANY.

Witness my hand and official seal.

Notary Public

My commission expires
November 7, 1974

STATE OF New York)
) ss.
County of New York)

The foregoing instrument was acknowledged before me this 12th day of September, 1974, by R. L. Hennebach, President of AMERICAN SMELTING AND REFINING COMPANY.

Witness my hand and official seal.

Notary Public

My commission expires:

ANNA T. McDONOUGH
Notary Public, State of New York
No. 24-2613265
Qualified in Kings Co.
Cert. Filed in New York Co.
Commission Expires March 30, 1975

EXHIBIT "A"

Summit Mining District (Patented Claims)

Golden Queen Lode Mining Claim	Survey No.	61
Little Annie Lode Mining Claim	Survey No.	63
Del Norte Lode Mining Claim	Survey No.	64
Margaretta Lode Mining Claim	Survey No.	65
Little Ida Lode Mining Claim	Survey No.	67
San Juan Placer Mining Claim	Survey No.	68
North 800 ft. Little Jessie Lode Mining Claim	Survey No.	71
Peterson Placer Mining Claim	Survey No.	74
Brandt Placer Mining Claim	Survey No.	75
Bobtail Lode Mining Claim	Survey No.	325
Oding Lode Mining Claim	Survey No.	475
Snow Bank Lode Mining Claim	Survey No.	604
Moltke Lode Mining Claim	Survey No.	607
Golconda Lode Mining Claim	Survey No.	319
Tunnel Lode Mining Claim	Survey No.	320
Bos Lode Mining Claim	Survey No.	321
Nick Lode Mining Claim	Survey No.	713
Game Cock Lode Mining Claim	Survey No.	716
Garfield Lode Mining Claim	Survey No.	910
Bay State Lode Mining Claim	Survey No.	896
Little Hattie Lode Mining Claim	Survey No.	977
Sheridan Lode Mining Claim	Survey No.	892
Columbia Lode Mining Claim	Survey No.	890
Home Stake Lode Mining Claim	Survey No.	898
Eureka Lode Mining Claim	Survey No.	889
Jubilee Lode Mining Claim	Survey No.	891
Parole Lode Mining Claim	Survey No.	608
Pay Streak Lode Mining Claim	Survey No.	893
Logan Lode Mining Claim	Survey No.	897
Bayard Lode Mining Claim	Survey No.	894
Great Independence Lode Mining Claim	Survey No.	609
Golden Vault Lode Mining Claim	Survey No.	610
Iowa Lode Mining Claim	Survey No.	895
Jennie Placer Mining Claim	Survey No.	1097
C. B. & Q. Placer Mining Claim	Survey No.	798
I. & C. C. Placer Mining Claim	Survey No.	611
Highland Mary Lode Mining Claim	Survey No.	606
Highland Mary No. 2 Lode Mining Claim	Survey No.	16314
South Columbia Lode Mining Claim	Survey No.	16323
Aurora Lode Mining Claim	Survey No.	16324
Vanner Lode Mining Claim	Survey No.	16324
Pittsburgh Lode Mining Claim	Survey No.	16324
Dexter Lode Mining Claim	Survey No.	77
Aztec Lode Mining Claim	Survey No.	621A
Gray Eagle Lode Mining Claim (1/6th interest)	Survey No.	532
Little Nellie Lode Mining Claim (1/6th interest)	Survey No.	62
Spar Placer Mining Claim	Survey No.	5736

Summit Mining District (Patented Claims cont.)

Rio Grande Placer Mining Claim	Survey No.	5737
Denver Placer Mining Claim	Survey No.	5738
Electric Placer Mining Claim	Survey No.	6413
Chicago Lode Mining Claim 2/3	Survey No.	1153
Eighth Wonder Lode	Survey No.	82
Golden Star No. 2 Lode Mining Claim	Survey No.	83
Missionary Lode Mining Claim	Survey No.	124

Summit Mining District (Unpatented Claims)

S. C. M. I. Lode Mining Claims Nos. 1 to 30
No Good Lode Mining Claim
Confusion Lode Mining Claim
G. & P., G & P. No 1 and G. & P. No. 2 Lode Mining Claims
Century of Progress Lode Mining Claim
Last Piece Lode Mining Claim (location certificate recorded April 30, 1968, as Reception No. 233536)
Century of Progress (lode or placer)
Pickens (lode or placer)
2 G. & P. Placers
Electric Mill Site (location certificate recorded August 22, 1934, in Book 192 at page 198)

The Southeast Quarter (SE 1/4) of Section 17; and the Northeast Quarter (NE 1/4) of Section 29, all in Township 37 North, Range 4 East.