

**Development Agreement
by and between the
City of Azusa and Azusa Rock, Inc.**

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into this _____ day of _____, 2010, by and between the CITY OF AZUSA, a California municipal corporation (the "**City**"), and AZUSA ROCK, INC., a California corporation ("**Azusa Rock**" or "**Vulcan**"), a wholly owned subsidiary of Calmat Co., a Delaware corporation, dba Vulcan Materials Company, Western Division, pursuant to the authority of Article 2.5, Chapter 4, Division 1, Title 7 (Section 65864, et seq. of the Government Code) relating to development agreements.

RECITALS

1. In order to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development and to reduce the waste of resources, the Legislature adopted the Development Agreement Statutes (Section 65864, *et seq.* of the Government Code) (the "**Development Agreement Law**").

2. The Development Agreement Law permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement Law, can assure property developers they may proceed with projects assured that approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure such as roads, sewers, schools, fire protection facilities, etc. will be available at the time development projects come on line.

3. This Agreement relates to the mining and reclamation of certain mining properties owned and operated by Vulcan consisting of approximately 270 acres of real property, reflecting the swapped mining sites, (the "**Site**") situated in the City of Azusa, County of Los Angeles, State of California, as set forth in the site map in **Exhibit "A"** ("**Site Map**") and legally described in **Exhibit "B"** ("**Legal Description**").

4. In November 1956, the City Council adopted Resolution No. 3546, which approved a Special Use Permit ("**Azusa Rock SUP**") and created a vested right to mine a portion of the Site as described in such Resolution. In February 1988, in accordance with the requirements of SMARA, the City Council approved a Reclamation Plan (the "**1988 Reclamation Plan**") for the Site pursuant to Planning Commission Resolution No. 2540. In that same year, the City Council reviewed the Azusa Rock SUP and established a twenty five-year term for the SUP with an automatic extension of up to twenty-five additional years until 2038, provided that there was substantial compliance with the terms of the SUP,. Although a portion of the Site is vested for mining operations pursuant to the Azusa Rock SUP, an area consisting of approximately 80 acres situated on the western side of the Site (the "**80-Acre Quarry**"), as set forth in the Site Map, was intentionally not included in the 1988 Reclamation Plan. Instead, the

80-Acre Quarry was designated in the 1988 Reclamation Plan as being for future mining operations.

5. Vulcan now desires to mine the 80-Acre Quarry located within the Site and forfeit all rights to continue further mining on an approximately 80 acre area contiguous to the east side of the Site, all as pursuant to the terms and conditions of the Amended Reclamation Plan attached hereto as **Exhibit "C"** ("**Amended Reclamation Plan**"). In connection therewith, the City acknowledges that it has granted, or will grant, all necessary and convenient entitlements to continue Vulcan's mining operations at the Site for the term of this Agreement and to reclaim the Site, all as pursuant to the provisions set forth herein and provided such entitlements are consistent with local state and federal laws and regulations.

6. In support of the various entitlements in connection with this Agreement, and in accordance with the California Environmental Quality Act ("**CEQA**") and State and City guidelines, the City has certified as adequate and complete a final Environmental Impact Report denominated "**Final Environmental Impact Report (FEIR)**." Except as potentially required for subsequent discretionary entitlements, no further environmental documentation is anticipated for the Project.

7. Having duly considered this Agreement and having held the noticed public hearings, the City finds and declares that the provisions of this Development Agreement are consistent with the maps and text of the City's General Plan.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1

General Provisions

Section 1.1 Definitions. As used in the Agreement, capitalized terms shall have the meanings set forth in this Section unless otherwise expressly provided for elsewhere herein.

(a) "**Assumption Agreement**" means an agreement substantially conforming to the terms and restrictions described in Section 1.4.

(b) "**CEQA**" means the California Environmental Quality Act, Sections 21000, *et seq.*, of the Public Resources Code of the State of California.

(c) "**City Council**" means the duly elected legislative body governing the City of Azusa.

(d) "**Effective Date**" means the date first set forth above in this Agreement.

(e) "**Extraction Tax**" shall have the meaning set forth in Section 2.6.

(f) **"Final Environmental Impact Report (FEIR)"** means a detailed statement prepared under CEQA as defined in Section 15362(c) of the State Environmental Guidelines, a copy of which is attached hereto and incorporated herein as **Exhibit "D"**.

(g) **"General Plan"** means the General Plan of the City of Azusa, including the text and maps, adopted by the City Council in April, 2004.

(h) **"Other Effective Standards"** means all other laws, rules, regulations, plans, ordinances and official policies of the City in effect on the Effective Date governing the permitted uses of land, the timing or implementation of the development of the Site, the density and intensity of use thereof, the design, improvement, construction standards and specifications applicable to the excavation, mining, development and occupancy of the Site (including, without limitation, all on-site and off-site improvements and appurtenances in connection therewith).

(i) **"Planning Commission"** means the duly elected/appointed City Planning Commission to the City of Azusa.

(j) **"Planning Documents"** means, and shall be limited to, this Agreement, the Azusa Rock SUP, the Amended Reclamation Plan, and the Other Effective Standards.

(k) **"Project"** means the excavation, mining, development and reclamation of the Site as specified in Section 2.1 and as provided for in the provisions of this Agreement.

(l) **"Site"** means the real property described in Paragraph 3 of the Recitals above, or the remaining portions thereof after releases from the provisions of this Agreement have been executed as authorized by this Agreement.

Section 1.2 Parties to Agreement. The parties to this Agreement are:

(a) The City of Azusa, a political subdivision of the State of California, exercising general governmental functions and power. The principal office of the City is located at 213 East Foothill Boulevard, Azusa, California 91702.

(b) Azusa Rock, Inc., a California corporation, which owns in fee the Site. Vulcan's principal office for the purpose of this Agreement is located at 3200 San Fernando Road, Los Angeles, California, 90065.

Section 1.3 Incorporation of Recitals and Exhibits. This Agreement, including the Recitals set forth above and the exhibits attached hereto, collectively constitute the entire agreement and understanding of the parties regarding the subject matter hereof. All exhibits are incorporated herein by this reference.

Section 1.4 Assignment and Assumption. Vulcan acknowledges that the qualifications and identity of Vulcan are of particular importance and concern to the City. Vulcan further recognizes and acknowledges that the City has relied and is relying on the specific qualifications and identity of Vulcan in entering into this Agreement with Vulcan and, as a consequence, Vulcan shall have the right to sell, assign, or transfer this Agreement with all of its rights, title

and interests therein to a third party at any time during the term of this Agreement provided that such purchaser, assignee or transferee can (1) satisfactorily demonstrate to City, in City's reasonable discretion, successful experience in the development, ownership, operation, and management of the Project and (2) expressly assumes in writing all of the obligations of Vulcan under this Agreement with respect to the Site or such portion thereof sold, assigned or transferred. Vulcan shall provide the City with written notice of any sale, assignment or transfer of all or any portion of the Site at least thirty (30) days in advance of such action and Vulcan's notice shall include documentation sufficient to enable City to make the determination described herein. City shall notify Vulcan of City's determination within fifteen (15) days of receipt of sufficient documentation. Express written assumption by such purchaser, assignee or transferee of the terms and conditions of this Agreement with respect to the Site or such portion thereof sold, assigned or transferred shall relieve and release Vulcan of such obligations so expressly assumed provided that Vulcan is given a written release by City, which release shall be provided by City upon the full satisfaction of the following: (1) City's approval of the purchaser, assignee or transferee; (2) the purchaser, assignee or transferee provides City with security equivalent to any security previously provided by Vulcan to secure performance of its obligations herein; (3) documentation proving Vulcan no longer has a legal or equitable interest in all or any part of the property subject to the purchase, assignment or transfer; (4) Vulcan has provided City with an assignment and assumption agreement in compliance with the terms of this Section 1.4 and (5) City confirmation that Vulcan is not then in default under this Agreement. Any sale, assignment or transfer not made in strict compliance with this Section shall constitute a default by Vulcan under this Agreement. Notwithstanding the failure of any purchaser, assignee or transferee to execute the agreement contemplated herein, the burdens of this Agreement shall be binding upon such purchaser, assignee or transferee, but the benefits of this Agreement shall not inure to such purchaser, assignee or transferee until and unless an assignment and assumption agreement is executed and City approval of the purchaser, assignee or transferee is granted. City acknowledges that certain sales or transfers are a normal process and City shall not unreasonably withhold its approvals hereunder.

The foregoing restrictions on assignment shall not apply the granting of easements or dedications to any appropriate governmental agency or utility.

Section 1.5 Covenants Running with the Land. Provided the terms of Section 1.4 are complied with, each and every purchaser, assignee or transferee of an interest in the Site, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Site, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of Vulcan contained in this Agreement, as such duties and obligations pertain to the portion of the Site sold, assigned and transferred to it.

Section 1.6 Vulcan's Representation and Warranty Regarding Vested Rights. Notwithstanding anything to the contrary set forth herein, in consideration of City entering into this Agreement and the rights granted hereunder, Vulcan represents and warrants that Vulcan acknowledges that it is forfeiting certain entitlement rights to mine in exchange for others and it shall not seek to prove vested rights or expand vested rights for the Site beyond those expressly set forth in this Agreement. Vulcan further represents and warrants that it does not currently

own and does not intend to acquire any additional real property in the City for the purpose of obtaining additional rights to mine. Vulcan hereby represents and warrants that it will not, except as expressly provided for in this Agreement and the related land use entitlements, file any land use application in the future for the purpose of expanding canyon or hillside mining operations within the City. The foregoing restriction against the filing of applications for future mining rights shall not apply to operations concerning the entirety of the Reliance Pit.

ARTICLE 2

Project and Development

Section 2.1 The Project. Vulcan is the owner of the Site and operator of mining activities thereon. The parties intend that the Site be excavated, mined, developed and reclaimed, including but not limited to any timeframes in connection therewith, pursuant to the terms and conditions set forth in this Agreement and the Planning Documents (the "**Project**").

Section 2.2 Project is a Private Undertaking. It is agreed between the parties that the Project is a private development, that neither party is acting as the agent of the other in respect hereunder, that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement, and that City has no interest therein except as authorized in the exercise of its governmental functions. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Vulcan is that of a governmental entity regulating the development of private property and the owner of such property.

Section 2.3 Consistency With General Plan. As set forth in greater detail in the Amended Reclamation Plan, the City Council expressly found that the approvals of the Project and all other entitlements related thereto are consistent with the text and maps of the General Plan.

Section 2.4 Vested Right to Mining. During the term of this Agreement, Vulcan shall have the vested right to excavate, mine and develop the Site in accordance with the terms and conditions of the Planning Documents. Mining operations shall be permitted to continue on the Site pursuant to the Planning Documents. Vulcan shall continue to be entitled to prospect for, mine for, excavate, process, mill and carry away all material bearing rock, sand and/or gravel from the Site, except for the approximately 80 acre area contiguous to the east side of the Site to which Vulcan acknowledges that they have voluntarily relinquished a vested right to mine, and to carry on all other activities in furtherance thereof, for the purpose of manufacturing and producing any and every kind of building materials and other articles composed in whole or in part, of rock, sand or gravel to the extent provided in the Planning Documents and subject to the representation and warranty in Section 1.4.

Section 2.5 Reclamation. Mining operations on the Site shall cease and the Site shall be reclaimed and filled by Vulcan in accordance with the terms and conditions of the Amended Reclamation Plan and this Agreement.

(a) **Reclamation Obligation.** In the event the reclamation obligations set forth in the

Amended Reclamation Plan cannot be satisfied Vulcan and City shall follow the procedures set forth herein:

(1) Vulcan shall notify City in writing of any scientific, technical and geotechnical factors or events preventing the fulfillment of the reclamation obligations described above. Vulcan shall submit this notification to City within fifteen (15) days of Vulcan's determination that the reclamation obligations described above cannot be satisfied.

(2) Upon City's request, Vulcan shall submit documentation to City supporting such factor or event, the form, substance and detail of which shall be subject to City's reasonable request and determination.

(3) City shall review Vulcan's submitted documentation and, within forty-five (45) days of receipt, shall determine, in its reasonable discretion, whether to grant a reasonable period of time to Vulcan to cure and commence the reclamation obligations by submitting an application to both the City and the State for an amended reclamation proposal or deem Vulcan to be in violation of the Planning Documents and Vulcan shall pay City liquidated damages in the amount of \$1,000,000. City and Vulcan acknowledge that it is extremely difficult and impractical to ascertain the amount of damages that would be suffered by the City in the event the reclamation obligations could not be fulfilled. Having made diligent but unsuccessful attempts to ascertain the actual damages that the City would suffer, the City and Vulcan agree that a reasonable estimate of the City's damages in such event is the figure set forth above in this Section 2.5(a)(3). Vulcan shall provide the liquidated damages amount to City within forty-five (45) days of City's written demand.

(b) Alternative Reclamation. In the event the reclamation obligations in connection with the Amended Reclamation Plan cannot be satisfied per 2.5(a) above and City demands liquidated damages in accordance with 2.5(a)(3) above, then:

(1) Vulcan shall, if required by State law, cease its mining activities until a New Reclamation Plan is approved by the City and the State.

Section 2.6 (2) The parties acknowledge that the financial assurances bond for the New Reclamation Plan posted by Vulcan with City and the Department of Conservation (the "New Reclamation Bond") may differ in amount from the financial assurances bond posted in connection with the Amended Reclamation Plan (the "Old Reclamation Bond") due to decreased costs of implementing the New Reclamation Plan as compared to micro-benching. If the New Reclamation Bond amount is lower than the Old Reclamation Bond amount, Vulcan shall pay City, within 30 days of obtaining the bond on the New Reclamation Plan, an amount equal to fifty percent of the difference between the bond premium paid by Vulcan to obtain the Old Reclamation Bond minus the bond premium paid by Vulcan to obtain the New Reclamation Bond. Public Benefit and Extraction Tax.

(a) Intent. The parties acknowledge and agree that the development of the Site will result in substantial public needs and further acknowledge and agree that this Agreement confers substantial private benefits on Vulcan that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public as provided herein to

balance the private benefits conferred on Vulcan by providing more fully for the satisfaction of the public needs resulting from the Project.

(b) Advance Payment and Annual Minimum Tax. Upon the final approval and the granting by the City to Vulcan of all land use entitlements necessary for Vulcan to excavate, mine, reclaim and develop the entirety of the Site during the term of this Agreement, all as pursuant to the Planning Documents (as used in Article 3 of this Agreement, the "**Entitlements**"), including the expiration of all City applicable appeal or City reconsideration periods, Vulcan will make a **one time advance prepayment of Extraction Taxes** to the City in the amount of One Million and Five Hundred Thousand Dollars (\$1,500,00.00) (the "**Advance Payment**"). For purposes of this Agreement, the term "Extraction Tax" shall mean the tax imposed by the City pursuant to Section 18-706 ("Rock, Sand Gravel Extraction") of Chapter 18B of the Azusa Municipal Code. The Advance Payment shall be made by Vulcan within thirty (30) days following the City's providing of written notice to Vulcan in a form satisfactory to Vulcan that the aforementioned final approval and Entitlements have been granted. The parties acknowledge and agree that in the event a Court orders, in part or in whole, the reversal of the Entitlements then City shall refund the Advance Payment to Vulcan within forty-five (45) days of Vulcan's written demand. In addition to the Advance Payment, Vulcan shall make minimum annual **prepayments to the City for Extraction Taxes** in the amount of Five Hundred Thousand Dollars (\$500,000.00) per calendar year during the term of this Agreement (the "**Annual Minimum Tax**"), subject to the provisions set forth elsewhere in this Section 2.6. The Annual Minimum Tax for each calendar year shall be due and payable by Vulcan on January 31st of the calendar year immediately thereafter. The parties acknowledge that no Annual Minimum Tax shall be due or payable for the calendar year during which the Advance Payment is made by Vulcan. Further, the parties acknowledge that no Annual Minimum Tax shall be due or payable for the calendar year immediately following the calendar year during which the Advance Payment was made by Vulcan to the extent that the Advance Payment was paid on a day after January 31 of the applicable calendar year.

(c) Excavation/Mining Tax Credit. To the extent that the Annual Minimum Tax in a given year exceeds the amount of Extraction Tax actually due from Vulcan to the City for such year, the excess shall be deemed to be a prepayment credited against Vulcan's future payment of Extraction Taxes. If, however, the Annual Minimum Tax in a given year is less than the amount of Extraction Tax actually due from Vulcan to the City for such year, seventy-five percent (75%) of the excess over the Annual Minimum Tax would be credited by the amount of any cumulative prepayments of the Advance Payment and the Annual Minimum Tax previously advanced by Vulcan until all such cumulative prepayments have been applied.

(d) Ceiling. Notwithstanding anything herein to the contrary, a ceiling in the amount of **Five Million Dollars (\$5,000,000.00)** (the "**Tax Ceiling**") shall apply to the **cumulative prepayment of the Advance Payment** and the Annual Minimum Tax, such that at any year during which such cumulative prepayment to the City exceeds the Tax Ceiling, Vulcan shall only pay the amount of the Extraction Tax due to the City that year, subject to Vulcan's right of credit pursuant to Section 2.6(b).

(e) Termination.

(1) In the event that Vulcan ceases mining operations at the Site and abandons the Site, pursuant to a written surrender of all land use entitlements, Vulcan shall have no further obligations or liabilities to pay any Annual Minimum Tax. Any remaining prepayments of the Advance Payment and the Annual Minimum Tax that have not been credited to Vulcan pursuant to Section 2.6(b) hereof shall be deemed to have been forfeited by Vulcan. Such event shall not release Vulcan from the reclamation obligations set forth herein and shall not limit the City's rights and remedies set forth herein.

(2) In the event that Vulcan ceases mining operations at the Site due to any act (or failure to act) on the part of the City that is not the result of a breach by Vulcan of its obligations hereunder, including but not limited to the expiration of this Agreement, Vulcan shall have no further obligations or liabilities to pay any Annual Minimum Tax. Any remaining prepayments of the Advance Payment and the Annual Minimum Tax that have not been credited to Vulcan pursuant to Section 2.6(b) hereof shall be immediately returned in full by the City to Vulcan. Such event shall not release Vulcan from the reclamation obligations set forth herein and shall not limit the City's rights and remedies set forth herein.

(3) In the event that Vulcan ceases mining operations at the Site for reasons beyond either party's control, Vulcan shall have no further obligations or liabilities to pay any Annual Minimum Tax. Fifty percent (50%) of any remaining prepayments of the Advance Payment and the Annual Minimum Tax that have not been credited to Vulcan pursuant to Section 2.6(b) hereof shall be returned in full by the City to Vulcan, payable over the applicable period of time set forth below, measured from the date Vulcan ceases mining operations:

If 50% of prepaid balance is:	Term for repayment is:
Less than \$100,000	One Year
\$100,001 - \$600,000	Three years
\$600,000 - \$1,000,000	Four years
\$1,000,001 - \$1,750,000	Five years
\$1,750,001 - \$2,500,000	Six years

Payments would be required in quarterly installments, and would include interest on the unpaid balance at an annual rate of prime plus two (2) percent.

Such event shall not release Vulcan from the reclamation obligations set forth herein and shall not limit the City's rights and remedies set forth herein.

Section 2.7 Overburden. Vulcan shall pay the City a fee of \$0.055 (five and ½ cents) per ton for all overburden extracted or removed from the Site. Notwithstanding the immediately foregoing statement, Vulcan shall have no obligation whatsoever to pay the overburden fee if Vulcan is under contract to use the overburden to fill the Kincaid or Reliance Pits located solely

within Azusa's boundaries. Vulcan shall pay the overburden fee quarterly no later than thirty (30) days following the end of each calendar quarter.

Section 2.8 Timing of Excavation and Mining. The parties acknowledge that the most efficient and economic excavation and mining of the Site depends upon numerous factors, such as market orientation and demand, interest rates, competition, and similar factors, and that generally it will be most economically beneficial to the parties hereto to have the rate of development of the Site determined by Vulcan. Accordingly, the timing and sequencing of the excavation and mining are solely the responsibility of Vulcan and, except as expressly set forth herein and in the Planning Documents, the City shall not impose, by ordinance, resolution, initiative or otherwise, any restrictions on such timing and sequencing of the excavation and timing of the Site.

Section 2.9 Pricing Discount. Vulcan shall, upon request from the City, provide City with a ten (10) percent discount on aggregate product purchased for City projects. The discount shall apply to the Average Selling Price of like aggregate products sold by Vulcan during the immediately preceding three (3) calendar months so long as the aggregate product is shipped within 120 days from the date the price quote is provided by Vulcan to the City.

Section 2.10 Funding City Programs. Upon the final approval and the granting of the land use entitlements necessary for Vulcan to excavate, mine, reclaim and develop the entirety of the Site, Vulcan shall make a one-time payment of Seventy-Five Thousand (\$75,000) Dollars for a scholarship program. In addition, Vulcan shall pay \$0.05 (five cents) per ton sold to support City programs, including scholarships, River Park grants and library construction, the amount and percentage of which shall be determined in the City Council's sole and absolute discretion. ("**City Program Payments**"). Vulcan shall pay the City Program Payments quarterly no later than thirty (30) days following the end of each calendar quarter.

Section 2.11 Right of Notice to Purchase Water Rights. The parties acknowledge that Vulcan is the owner of certain water rights (the "Water Rights"), pursuant to the judgment of the Superior Court of California, County of Los Angeles in *Upper San Gabriel Valley Municipal Water District v. City of Alhambra et al.* (Case No. 924128). Vulcan previously agreed with the City of Irwindale ("Irwindale") (a) that if any portion of land intended for future development in Vulcan's Durbin or Reliance sites are transferred to a third party, Vulcan shall assure the water supply needs of such land are met, which may include a transfer of the Water Rights, and (b) to provide Irwindale with a right of notice whereby Vulcan shall notify Irwindale at least ten (10) days before a sale or other transfer of the Water Rights to a third party, other than a transfer pursuant to 2.11(a) above. Vulcan and City agree that City shall have a right of notice before a sale or other transfer of the Water Rights to a third party, other than a sale or transfer to a third party in accordance with 2.11(a) above. Should Vulcan desire to sell or otherwise transfer any portion of the Water Rights, Vulcan shall notify City at least ten (10) days before any offer of the Water Rights to a third party. Within such time, City may offer to purchase, lease or otherwise acquire the Water Rights, or any portion thereof, and Vulcan shall negotiate in good faith with City regarding such sale or transfer, provided that Vulcan shall have no obligation to sell the Water Rights to City.

Section 2.12 Open Space Dedications . Vulcan shall make an offer to dedicate to the City of Duarte an easement for open space purposes for the purpose of providing the public access to Fish Canyon Falls. Vulcan shall also dedicate to the City of Azusa an easement for open space for the purpose of expanding the existing Fish Canyon Falls Trail Head. Upon completion of reclamation of the East Mine Area (as defined in the Draft Environmental Impact Report dated December 2009), Vulcan shall construct a trail to Fish Canyon Falls on the east side of Fish Creek, and dedicate to the City an easement for trail and open space purposes over the trail. Additionally, Vulcan shall dedicate to the City an easement for open space and Trail Head purposes on the portion of the Site closer to the new trail.

Section 2.13 Right of First Offer to Purchase East Mine Area. In the event Vulcan in its sole discretion elects to sell the East Mine Area to an unrelated and unaffiliated third party, City will have a right of first offer to purchase the East Mine Area, as follows:

(a) If Vulcan elects to sell the East Mine Area, Vulcan shall deliver notice to City of the price, terms and conditions under which Vulcan would be willing to sell the East Mine Area. If City is interested in purchasing the East Mine Area, City shall have thirty (30) days after receiving Vulcan's notice within which to notify Vulcan in writing that City accepts Vulcan's offer to sell the East Mine Area for the price and upon the same other terms and conditions set forth in Vulcan's notice, in which event Vulcan and City shall proceed with the purchase and sale of the East Mine Area pursuant to such provisions. If City does not so accept Vulcan's offer within such thirty (30) days, then Vulcan may sell the East Mine Area to any unrelated and unaffiliated buyer substantially on the terms and conditions set forth in Vulcan's notice.

(b) The right of first offer set forth herein (i) is personal to City and shall not be assigned or transferred, and (ii) shall not apply to any sale, lease or transfer of the East Mine Area or any interest therein by Vulcan to any entity which is related to or affiliated with Vulcan.

Section 2.14 PM10 Particulate Monitor.

Upon final approval and the granting by the City of Azusa to Vulcan of all Planning Documents necessary for Vulcan to excavate, mine, reclaim and develop the Site, including the expiration of all appeals or reconsideration periods, Vulcan shall fund the purchase of one (1) PM10 particulate monitor not to exceed \$15,000 to measure regional ambient concentrations of PM10 within the City of Azusa. The funding of the PM10 monitor device is contingent on the following conditions:

- 1) The monitoring device shall be used for the sole purpose of measuring ambient PM10 levels within the City of Azusa to aid in the assessment of the regional basin air quality, and at all times must be located in the City of Azusa.
- 2) The PM10 monitor device shall be of the same type and manufacturer as that currently in use and operated by the South Coast Air Quality Management District (SCAQMD) at the existing Azusa Monitoring Station located at 803 North Loren Avenue, Azusa, CA 91702 (SCAQMD Air Quality Station Number 060370002).
- 3) The PM10 monitor shall be purchased and maintained by the SCAQMD.
- 4) Selection of the location for placement and operation of the PM10 monitoring device shall conform to all USEPA designated reference or equivalent methods and station siting criteria as required by applicable Federal Code of Regulations.

- 5) The exact location for the placement and operation of the PM10 monitoring device must be mutually agreeable to City and Vulcan, and upon consultation with the SCAQMD.

Section 2.15 Termination of Mining in 2038.

Notwithstanding anything to the contrary set forth herein, in consideration of City entering into this Agreement and the rights granted hereunder, Vulcan represents and warrants that Vulcan shall cease all mining operations and activities in the City of Azusa on or before January 1, 2038; provided, however that this requirement shall not apply to operations concerning the Reliance Pit

ARTICLE 3

Entitlement and Permit Processing, Inspections

Section 3.1 City Approvals. During the term of this Agreement, the City covenants to be bound to permit such uses on the Site to the extent permitted by the Planning Documents and not prohibited by state and/or federal rules and regulations. The City agrees to in good faith review and process all applications for entitlements and land use and building approvals, including, but not limited to, conditional use permits, zoning changes, variances, development plans, subdivision improvement plans and agreements, building plans and permits, specifications, landscape plans, grading plans and permits, parcel maps, tentative subdivision maps, final subdivision maps (including phased final subdivision maps), amendments to maps, lot line adjustments, resubdivisions, use permits and certificates of occupancy reasonably necessary to accomplish the goals, objectives, policies and plans described in the Planning Documents (collectively “**City Approvals**”), to the extent such City Approvals have not already been granted and to the extent such City Approvals are consistent with local state and/or federal laws and regulations. City Approvals shall include any applications, permits and approvals required to complete the infrastructure and improvements necessary to excavate, mine, develop and reclaim the Site in accordance with the Planning Documents, including, without limitation, those related to (i) clearing the Site, (ii) grading the Site, (iii) construction of roads, storm drainage facilities, sewer facilities, and other utility facilities and connections, and (iv) construction of water treatment and delivery facilities and storage tanks. subject to the limitations set forth in the Planning Documents.

Section 3.2 Timely Processing. The aforementioned City Approvals and any environmental review required thereon shall be reviewed and processed by the City on a timely basis; provided that applications for such approvals are submitted to the City during the term of this Agreement; and provided further that Vulcan is not in default under the terms and conditions of this Agreement and that such environmental review complies with state and/or federal laws and regulations. The City agrees to hire and/or retain appropriate personnel and consultants to process all City Approvals in an timely manner. In particular, and without limitation thereof:

(a) **Building Permits.** The City shall process and approve all commercial, official or industrial building permit applications within forty-five (45) days of submission by Vulcan of completed plans, subject to the restrictions set forth herein. The City shall inform Vulcan, upon request of Vulcan, of the necessary submission requirements for each application for a building

permit or other entitlement for use in advance and review said application and schedule the application for review by the appropriate authority within the times set forth in this Article, provided that Vulcan shall be responsible for knowing and complying with generally applicable government polices and regulations applicable to the proposed permit or entitlement.

(b) Inspections. The City agrees it will perform all required inspections called for by Vulcan within two (2) working days following the written request for inspection by Vulcan. In the event City is unable to perform required inspections within such timeframe, City shall immediately notify Vulcan of an alternative inspection date, which shall occur within seven (7) working days of Vulcan's written request.

Section 3.3 Cooperation Between the City and Vulcan. The City agrees to cooperate with Vulcan in securing all permits which may be required by the City, and Vulcan agrees to cooperate with City in submitting documentation to support approval of all permits which may be required by the City. The parties shall provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement.

Section 3.4 Duty to Grant and Implement. The parties acknowledge and agree that City is restricted in its authority to limit certain aspects of its police power by contract and that this Agreement reserves to City all such power and authority that cannot be so restricted, including but not limited to the ability to adopt regulations that may be in material conflict with this Agreement but that are reasonably necessary to protect the residents of the City or the immediate community from a condition perilous to their health or safety; provided, however that this Section shall not be interpreted to empower the City to adopt anti-mining regulations that are specific to Vulcan or other mining companies operating in the City. The City's obligation to grant and implement the City Approvals set forth above shall not infringe upon the City's right to withhold such City Approvals for failure to conform to any of the Planning Documents, including the Other Effective Standards, or if such City Approval is prohibited by state and/or federal rules and regulations. If the City rejects an application for a City Approval, it shall provide, in good faith, a detailed list of the grounds for its rejection, along with a description of specific and reasonable measures ("**Measures to Correct**") to correct each basis for rejection. Such Measures to Correct may take into account the economic viability of Vulcan instituting such Measures to Correct however, economic viability alone shall not deem Measures to Correct as unreasonable or in bad faith. . If Vulcan resubmits its application incorporating all the Measures to Correct, the City shall approve Vulcan's application.

Section 3.5 No Conflicting Enactments. This Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, statute, ordinance, or other measure or limitation enacted by the City or any agency of the City after the Effective Date that conflicts with this Agreement except as permitted and reserved in Section 3.4, 3.6 and 3.7. In the event that county, state, or federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such county, state or federal laws or regulations; provided however that this Agreement shall remain in effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. Except as necessary

to protect the citizens of the City from an immediate adverse health or safety risk or as otherwise permitted and reserved in Section 3.4, 3.6 and 3.7, if an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, by referendum, or otherwise, that relates to any aspect of the excavation, mining or reclamation of the Site, including, without limitation, the type, building standards, timing or sequencing of such development, the City agrees that such ordinance, resolution or other measure shall not apply to the Site or the excavation, mining or reclamation of the Site. Without limiting the foregoing, except as otherwise provided in the Planning Documents and as permitted and reserved in Section 3.4, 3.6 and 3.7, the City agrees that no moratorium (whether relating directly to the excavation, mining, building of improvements, the ability to connect to water, sewer or other services or indirectly impairing the vested right to develop under this Agreement) or other limitation (whether relating to the rate, timing or sequencing of development) not in effect as of the Effective Date affecting subdivision maps, building permits or other entitlements to use that are approved or are to be approved, issued or granted within the City, or portions of the City, shall apply to the Site or the development of improvements. To the maximum extent permitted by law, the City agrees to use its best efforts to prevent any such ordinance, measure, moratorium, or other limitation from invalidating or prevailing over all or any part of this Agreement, and the City agrees to cooperate with Vulcan in a reasonable and best faith manner in order to keep this Agreement in full force and effect. Except as permitted and reserved in Section 3.4, 3.6 and 3.7, the City shall not support or adopt any initiative, referendum, moratorium, ordinance, or policy, or take any other action, if such support, adoption, or other action would violate the intent of this Agreement. Vulcan reserves the right to challenge any such ordinance or other measure in a court of law should it become necessary to protect the development rights vested in the Site pursuant to the Planning Documents.

Section 3.6 State and Federal Laws. As provided in California Government Code Section 65869.5, and notwithstanding any other provisions of this Agreement, this Agreement shall not preclude the application to the Site of changes in the City laws, regulations, plans or policies, to the extent that such changes in the City laws, regulations, plans or policies are specifically mandated and required to be applied to the Site by changes in state or federal laws or regulations.

Section 3.7 Further Consistent Discretionary Actions. Nothing in this Article shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with its adopted rules, regulations and policies which require the City officials or officers to exercise discretion.

Section 3.8 City Release. The City hereby releases and absolutely and forever discharges Vulcan, its officers, agents and employees from any and all claims, demands, warranties, debts, obligations, liabilities, costs, fees, attorneys' fees, expenses, rights of action and causes of action, of any kind or character whatsoever, whether in equity, at law or administrative in nature, whether actually or constructively known or unknown by the City or claimed or not claimed but could have been claimed by the City up through the Effective Date hereof in connection with Vulcan's occupation or use of the Site ("Released Claims"). The foregoing shall not, however, be construed to release Vulcan from any executory duty under this Agreement including, without limitation, the duty of reclamation. In connection with the release outlined in this Section, the

City waives and relinquishes any rights and benefits it may have under California Civil Code 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

City's Initials _____

Vulcan's Initials _____

In connection with such waiver and release, the City acknowledges that it is aware that it may discover claims that are presently unknown or unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to the Released Claims and/or the Site. Nonetheless, the City intends, through this Agreement, to fully, finally and forever settle and release all such matters and all claims relative to the Released Claims.

Section 3.9 Vulcan Release Vulcan, for itself, its successors and assignees, hereby releases City, its officers, agents and employees from any and all claims, demands, actions or suits of any kind or nature arising out of any liability, known or unknown, present or future, including but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth and Fourteenth Amendments to the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon City because it entered into this Agreement or because of the terms of this Agreement. In connection with the release outlined in this Section, Vulcan waives and relinquishes any rights and benefits it may have under California Civil Code 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

City's Initials _____

Vulcan's Initials _____

In connection with such waiver and release, Vulcan acknowledges that it is aware that it may discover claims that are presently unknown or unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to the claims or liability set forth in this Section 3.9. Nonetheless, Vulcan intends, through this Agreement, to fully, finally and forever settle and release all such matters and all claims relative to the claims and liability set forth in this Section 3.9. The provisions of Section 3.9 shall survive termination of this Agreement.

Section 3.10 Challenge to Existing Land Use Approvals/Vulcan Release. By accepting the benefits of this Agreement, Vulcan, on behalf of itself and its successors in interest, hereby expressly agrees not to sue or otherwise challenge any land use approval affecting the Site and in effect as of the Effective Date. Such agreement and covenant includes, without limitation, the covenant against any direct suit by Vulcan or its successor in interest, or any participation,

encouragement or involvement whatsoever that is adverse to City by Vulcan or its successor in interest, other than as part of required response to lawful orders of a court or other body of competent jurisdiction. Vulcan hereby expressly waives and releases, on behalf of itself and its successors in interest, any claim or challenge to any land use approval affecting the Site and in effect as of the Effective Date. In connection with the waiver and release outlined in this Section, Vulcan waives and relinquishes any rights and benefits it may have under California Civil Code 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

City's Initials _____

Vulcan's Initials _____

In connection with such waiver and release, Vulcan acknowledges that it is aware that it may discover claims that are presently unknown or unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to the claims or liability set forth in this Section 3.10. Nonetheless, Vulcan intends, through this Agreement, to fully, finally and forever settle and release all such matters and all claims relative to the claims and liability set forth in this Section 3.10. The provisions of Section 3.10 shall survive termination of this Agreement.

ARTICLE 4

Default

Section 4.1 General Provisions. Subject to extensions of time by mutual consent in writing, failure or delay by either party to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be cured. During any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to California Government Code Section 65868 and any regulations of the City implementing said Government Code Section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Sections 65865, 65867, and 65868 and City regulations implementing said sections by the City within thirty (30) calendar days.

Following consideration of the evidence presented in said review before the City, either party alleging the default may give written notice of termination of this Agreement to the other party.

Evidence of Vulcan's default may also arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code Section 65865. If the City reasonably determines in good faith that Vulcan is not in substantial compliance with this Agreement following the completion of the normally scheduled periodic review, the City may give written notice of termination of this Agreement specifying in said notice the alleged nature of the default, and corrective actions in which said default may be cured. Thereafter, Vulcan will then endeavor to cure said default at the earliest possible time.

Section 4.2 [INTENTIONALLY OMITTED]

Section 4.3 Default by Vulcan/Withholding of Permits. The City may, at its discretion, refuse to issue a permit, if Vulcan has failed and refuses to complete any requirement enumerated therefore in accordance with the terms of this Agreement. No permit shall be issued or permit application accepted if the permit applicant owner controls any property subject to this Agreement and if such applicant or any entity or person controlling such applicant is in default of the terms and conditions of this Agreement as determined pursuant to Section 4.1.

Section 4.4 Vulcan Default Limited to Property/Entity; Several Obligations of Owners. Notwithstanding anything to the contrary herein contained, no default by Vulcan hereunder in performance of a covenant or obligation with respect to a particular portion of the Site shall constitute a default applicable to any other portion of the Site, and any remedy arising by reason of such default shall not be applicable to any other portion of the Site, and any remedy arising by reason of such default shall be applicable solely to the portion of property where the default has occurred. Similarly, the obligations of Vulcan and any third party to whom a portion of the Site is assigned or transferred pursuant to Section 1.4 above shall be several and no default hereunder in performance of a covenant or obligation by Vulcan or such assignee or transferee shall constitute a default by the other party, and any remedy arising by reason of such default shall be solely applicable to the defaulting party and the portion of the Site owned thereby.

Section 4.5 Default by the City. In the event City is in material default under the terms of this Agreement, the City agrees that Vulcan shall not be obligated to proceed with or complete the Project or any phases thereof, other than the reclamation obligation, nor shall resulting delays in Vulcan's performance constitute grounds for termination or cancellation of this Agreement.

Section 4.6 Cumulative Remedies of Parties. In addition to any other rights or remedies, either party may institute legal or equitable proceedings to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein (including, without limitation, the timely processing and approval of any City Approvals), to enjoin any threatened or attempted violation of the provisions of this Agreement or to seek damages from any other party as a result of any breach or alleged breach of such party's obligations hereunder.

ARTICLE 5 Delay and Extension of Times of Performance. The City agrees that the time within which Vulcan shall be required to perform any act under this Agreement shall be

extended if the delay is caused by factors outside the good faith control of Vulcan, including, but not limited to, delays due to war, insurrections, acts of terrorism, strikes, walkouts, riots, floods, unusually severe weather, earthquakes, fires, casualties, acts of God, governmental restrictions, acts or measures taken by the City in violation of this Agreement or the Planning Documents, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation enacted by the state or federal government, or any other similar causes beyond the control of Vulcan or without the fault of Vulcan. An extension of time for such cause shall be granted in writing by the City for the period of the delay or longer, as may be mutually agreed upon.

Dispute Resolution

Except as provided herein, no civil action or other motion to enforce the provisions herein with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced until the matter has been submitted to the Los Angeles office of Judicial Arbitration & Mediation Services, Inc. ("JAMS") for mediation. Any party may commence mediation by providing to JAMS and the other party or parties involved in the dispute a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings. In the event that the parties are unable to agree upon a mediator within the greater of 10 days or the period of time allowed by JAMS for them to select a mediator, JAMS will provide a list of three available retired judges and each party may strike one; provided that, if more than two parties are involved in the mediation, JAMS will provide a list with a number of judges equal to the number of parties involved in the mediation. The remaining judge (or if there are more than one, the one selected by the administrator of the Los Angeles office of JAMS) will serve as the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Any party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, none of the parties may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. The provisions of this Clause may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

The dispute resolution procedures provided for above, shall not apply to an action by the City to secure the payment of money owed to the City pursuant to Section 2.5 and 2.6 of this Agreement.

ARTICLE 6

Term and Termination

Section 6.1 Term of Agreement. This Agreement shall commence upon the Effective Date, and shall continue in full force and effect until December 31, 2038, unless extended or terminated earlier as provided herein. Upon the expiration of the term of this Agreement, this Agreement may be extended under such terms and conditions as the parties hereto may mutually agree. Following the expiration of the term or extension thereof, or if sooner terminated pursuant to the provisions herein, this Agreement shall have no force and effect, subject, however, to post-termination obligations, if any, of the parties as set forth herein. Notwithstanding the foregoing, with respect to Vulcan's obligations hereunder, Vulcan shall be deemed to have been relieved and released from such obligations with respect to any portion of the Site for which a release has been obtained by Vulcan pursuant to Section 1.4 herein.

Section 6.2 Termination. City may terminate or modify this Agreement for any failure of Vulcan to perform any material duty or obligation of Vulcan under this Agreement, or to comply in good faith with the terms of this Agreement; provided, however, City may terminate or modify this Agreement pursuant to this Section only after following the procedures set forth in Section 4.1.

Section 6.3 Effects Upon Termination on Vulcan's Obligations. Upon the proper termination of this Agreement by the City, such termination shall not affect any of Vulcan's obligations to comply with the City's General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlements approved with respect to the Site including but not limited to the reclamation obligations.

Section 6.4 Effects Upon Termination on City's Obligations. Upon the proper termination of this Agreement by Vulcan, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the portion of the Site affected by such termination (provided vesting of such entitlements, conditions or fees may then be established for such portions of the Site pursuant to then existing planning and zoning law) and the City shall no longer be limited, by this Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such portion.

ARTICLE 7

Miscellaneous

Section 7.1 Notices. Notices, demands, correspondence, and other communication to the City and Vulcan shall be sufficiently given if dispatched by prepaid first-class mail to the principal offices of the parties as designated in Section 1.2. Notice to Vulcan shall be to the attention of the General Counsel. Notice to the City shall be to the attention of the Planning Commission. Notices to Vulcan's successors in interest shall be required to be given by the City only for those successors in interest who have given the City written notice of their address for such notices.

The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 7.2 Expenses and Costs. Unless a separate agreement is duly executed by both Vulcan and the City, and only to the extent as set forth in such separate agreement, each party hereto shall be solely responsible for such party's own expenses and costs, including attorneys' fees, incurred in connection with the analysis, negotiation and preparation of this Agreement.

Section 7.3 Applicable law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and Venue shall be in Los Angeles County. In any litigation, arbitration, proceeding, legal action, claim or demand by which one party seeks to enforce any provision hereof, the prevailing party, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees, costs and expenses incurred in connection therewith, notwithstanding whether any formal complaint was filed or action prosecuted. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation.

Section 7.4 Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provisions of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of California which became effective after the Effective Date, the remaining provisions shall continue in full force and effect. Provided, however, notwithstanding the foregoing, if Vulcan determines such provision or provisions are material to its entering into this Agreement, then Vulcan, in its sole and absolute discretion, may elect to terminate this Agreement by giving written notice to the City.

Section 7.5 Amendment to Agreement. This Agreement may be amended only by mutual consent of the parties in writing, in accordance with the provisions of Government Code Section 65868, provided that: any amendment which relates to the term, permitted uses, intensity of use, height and size of proposed buildings, or provisions for reservation and dedication of land shall require a public hearing before the parties may execute an amendment. Unless otherwise provided by law, all other amendments may be executed without a noticed public hearing. This Agreement may also be amended, subject to the provisions of Government Code Section 65868 and Section 1.4 above, between a party who has acquired a portion of the Site from Vulcan and the City as to the portions of the Site then owned by such party.

Section 7.6 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the Los Angeles County Recorder by the Clerk of the City Council within ten (10) days after the City enters into the Agreement, in accordance with Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement, or if the City terminates or modifies this Agreement for Vulcan's failure to comply in good faith with the terms and conditions of this Agreement, the City Clerk shall have notice of such action recorded with the Los Angeles County Recorder.

Section 7.7 Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party to this Agreement, challenging this Agreement or any provision herein, the parties agree to cooperate with each other in good faith as Vulcan fulfills its obligations pursuant to the terms of the Planning Documents to defend and indemnify the City from claims or lawsuits.

IN WITNESS WHEREOF, this Agreement was executed by the parties thereto on the dates set forth below.

**CITY OF AZUSA,
a political subdivision
of the State of California**

**AZUSA ROCK, INC.
a California corporation**

By: _____
Mayor, City of Azusa

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

City Clerk

APPROVED AS TO FORM:

City Attorney

LIST OF EXHIBITS

- Exhibit "A" Site Map
- Exhibit "B" Legal Description
- Exhibit "C" Amended Reclamation Plan
- Exhibit "D" Final Environmental Impact Report (FEIR)