

BEFORE THE ENVIRONMENTAL MANAGEMENT COMMISSION

)
Iluka Resources (NC) LLC,)
)
Petitioner.)
)

STIPULATED FACTS

The Department of Environment and Natural Resources (“DENR”) and Petitioner Iluka Resources (NC) LLC (“Iluka”) stipulate to the following facts for the purposes of this Request for Declaratory Ruling:

1. Iluka is developing a mining and reclamation facility to extract titanium and zircon mineral sands in Halifax County, North Carolina (the “Aurelian Springs Project”). The process of developing the Aurelian Springs Project has included, among other activities, the following:
 - a. Conducting a “pre-feasibility” study to determine the potential for development of the mineral sands deposit;
 - b. Obtaining a conditional use zoning permit from Halifax County;
 - c. Entering into a series of mining leases related to property in Halifax County;¹
 - d. Retaining an engineering firm to prepare an application for a mining permit;
 - e. Meeting and corresponding with representatives of DENR to discuss elements of the mining permit application and the need for dam permits; and

¹ The terms of the mining leases are not publicly available, but each of the leases is summarized in a “Memorandum of Mining Lease” filed with the Halifax County Register of Deeds. An example is attached as Exhibit A.

- f. Submitting to DENR an application for a mining permit.
2. The Aurelian Springs Project will involve the excavation of mineral sands, resulting in the formation of a pit.
3. After the mineral sands are processed to remove the valuable minerals, the remaining “tailings,” consisting of clay, quartz sands, and gravel, will be sluiced back into the pit, where they will settle and be dewatered. At the completion of the mining process, the pit will be filled with tailings material. Iluka will then undertake additional activities to reclaim the mining site, in accordance with a reclamation plan approved by DENR.
4. In order to begin disposing of tailings before mining in the pit is complete, Iluka will construct dams within the pit to isolate sections that can be used as active tailings ponds while mining takes place elsewhere. These “interior” dams will be arranged so that the failure of any dam constructed for that purpose would result only in redistribution of tailings within the pit.² A failure from the material contained in the interior dam alone would not result in the discharge of tailings outside the pit. Other dams may be built on the perimeter of the pit, to contain tailings above the pit crest. Failure of a “perimeter” dam could result in discharge outside of the pit.
5. Before beginning construction on any dam within the pit, Iluka will submit to DENR the forms titled “Data Needed to Determine if a Dam is Governed by the Dam Safety Law of 1967 (as Amended)” and “Hazard Classification Data Form for Dams.”

² For any particular dam, DENR will have the opportunity to confirm the truth of this statement by using a volume study based upon surveyed topography and a proposed grading plan.

6. DENR will evaluate the information submitted by Iluka to determine whether a particular dam falls within an exemption to the Dam Safety Law.

Dated: June 20, 2014

ROY COOPER
Attorney General

HUNTON & WILLIAMS LLP

/s/ with consent of John A. Payne
John A. Payne
Assistant Attorney General
N.C. Bar # 24966
jpayne@ncdoj.gov
NC Department of Justice
Environmental Division
PO Box 629
Raleigh, NC 27602-0629
(919) 716-6600

/s/ Matthew F. Hanchey
Matthew F. Hanchey
N.C. Bar. # 33965
mhanchey@hunton.com
421 Fayetteville St., Suite 1400
Raleigh, NC 27601
(919) 899-3000

BOOK 2357 PAGE 616

Exhibit A



Doc ID: 003382750005 Type: CRP
 Recorded: 10/20/2011 at 01:22:44 PM
 Receipt#: 2011-00002816
 Fee Amt: \$26.00 Page 1 of 5
 Revenue Tax: \$0.00
 Instr# 201100003521
 Halifax, NC
 Judy Evans-Barbee Register of Deeds

BK 2357 PG 616-620

STATE OF NORTH CAROLINA

HALIFAX COUNTY

By: Barbara N. Hux, Deputy
 RF 26.00

Prepared by and returned to: Charles E. Nichols, Jr., Nichols Law PA, Suite 701, 16 W. Martin Street, Raleigh, NC 27601

**MEMORANDUM OF MINING LEASE
 (Parcel Identification Number 0200113)**

This Memorandum of Mining Lease (this "Memorandum") is entered into and made effective as of 15 April, 2011 (the "Effective Date"), by and between: (i) Iluka Resources (NC) LLC, a North Carolina limited liability company ("Iluka"); and (ii) Linda F. Tipton Living Trust dated 08 March 2000 ("Owner").

For and in consideration of, and subject to, the terms, provisions, covenants, and conditions set forth in that certain Mining Lease (the "Lease") made and entered into as of the date first above written by and between the parties hereto, which Lease, and its terms, provisions, covenants, and conditions are incorporated herein as if fully set forth, Owner leased, and does hereby lease, unto Iluka certain lands located in Halifax County, State of North Carolina, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"), together with all rights, privileges, and easements appurtenant to the Property, for any lawful purpose including such uses as Iluka may deem necessary or convenient in the conduct of its operations.

The Initial Term of the Lease is fifteen (15) years with two additional automatic ten (10) year extensions. The Lease contains no options to purchase the Property.

This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease provisions and in the event of a conflict between this Memorandum and the Lease, the Lease shall control.

This Memorandum may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be one agreement. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original.

DocNo: 00965-L-1017

-1-

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Mining Lease to be executed as of Effective Date.

ILUKA RESOURCES (NC) LLC

By: Iluka (USA) Investments, Inc.

By: [Signature]

Name: Matthew B. Blackwell

Title: President

STATE OF NORTH CAROLINA

COUNTY OF HALIFAX

I certify that the following person(s) personally appeared before me this day, and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____
- A credible witness has sworn to the identity of the principal(s);

Each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Print Names of person(s) signing document here
Matthew B. Blackwell

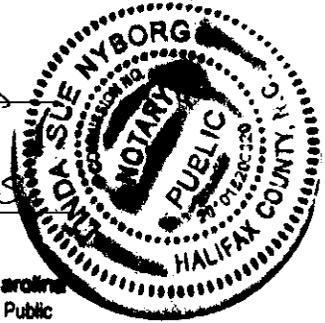
Date: 15 April 2011

UNOFFICIAL

Notary Public: [Signature]

Printed Name: Linda Sue Nyborg

My Commission Expires: 05-26-2015



Halifax County, North Carolina
Linda Sue Nyborg - Notary Public
Commission No 201015200020
My Commission Expires 5/26/2015

[Owner]

By: Linda F. Tipton, Trustee

Name: Linda F. Tipton, Trustee

By: Maurice E. Tipton Jr.

Name: Maurice E. Tipton, Jr., Trustee

STATE OF NORTH CAROLINA

COUNTY OF HALIFAX

I certify that the following person(s) personally appeared before me this day, and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a North Carolina Drivers license # 7516744 and B196577
- A credible witness has sworn to the identity of the principal(s);

Each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Print Names of person(s) signing document here
Linda F. Tipton, Trustee
Maurice E. Tipton, Jr., Trustee

Date: 12 April 2011 and
13 April 2011

Notary Public: Linda Sue Nyborg

Printed Name: Linda Sue Nyborg

My Commission Expires: _____

Halifax County, North Carolina
Linda Sue Nyborg - Notary Public
Commission No. 201015200020
My Commission Expires 5/28/2015

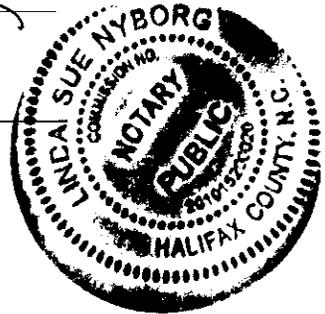


EXHIBIT A
TO
MEMORANDUM OF LEASE
(Parcel Identification Number 0200113)

All that certain tract or parcel of land together with any improvements thereon lying and being situate in Butterwood and Faucetts Townships, Halifax County, North Carolina, and being more particularly described as follows: BEGINNING at a point marked by a nail in the northeastern right of way of N.C. State Road No. 1001 (Justice Branch Road) which is a corner common to this property and property conveyed to Cabot Lee Crawley by deed recorded in Book 1783, page 485, Halifax Public Registry; thence along the Cabot Lee Crawley property line the three following courses and distances: N. 6° 39' 11" E. 152.18 feet to a point marked by a 1" iron; N. 75° 14' 12" E. 557.35 to a point marked by a 1" iron; and N. 06° 34' 36" E. 319.39 feet to a point marked by a sweet gum in an old fence, which is S. 85° 41' 35" E. 2.29 feet from a 3/4" iron, said point being a corner common to Cabot Lee Crawley, S. C. Crawley, Jr., Fred Duke and Marsha Fleming; thence along the Fleming property line the four following courses and distances: S. 85° 41' 35" E. 934.31 feet to a point marked by a 3/4" iron; S. 86° 56' 09" E. 567.14 feet to a point marked by a 3/4" iron; S. 81° 40' 09" E. 240.60 feet to a point marked by a 3/4" iron; and S. 77° 56' 46" E. 354.79 feet to a point marked by 3/4" iron or near the center of Spring Branch, which point is also S. 13° 19' 25" E. 145.33 feet from a 3/4" iron; thence along the center of Spring Branch which is the property line between this property and properties of S. C. Crawley, Jr., Joc H. Briggs, Sr., and formerly Stephen Williams the 108 following courses and distances: S. 77° 56' 46" E. 10.00 feet; S. 14° 50' 59" W. 24.30 feet; S. 61° 31' 38" E. 29.00 feet; S. 06° 26' 06" W. 25.60 feet; S. 57° 52' 32" E. 32.39 feet; S. 04° 34' 05" E. 40.29 feet; S. 42° 43' 17" W. 45.45 feet; S. 20° 07' 25" E. 57.20 feet; S. 77° 18' 32" E. 43.22 feet; S. 47° 49' 05" E. 29.48 feet; S. 10° 20' 44" E. 51.14 feet; S. 58° 33' 40" E. 50.24 feet; S. 12° 29' 00" E. 42.47 feet; N. 59° 03' 00" E. 32.04 feet; S. 33° 25' 36" E. 87.10 feet; S. 66° 30' 40" E. 32.23 feet; S. 08° 20' 14" E. 25.50 feet; N. 82° 09' 41" E. 32.05 feet; S. 37° 19' 18" E. 37.70 feet; S. 65° 16' 02" E. 34.03 feet; S. 17° 52' 20" E. 38.40 feet; S. 56° 27' 26" E. 34.15 feet; S. 33° 43' 42" W. 30.90 feet; S. 25° 46' 06" E. 30.43 feet; S. 82° 30' 20" E. 95.94 feet; S. 35° 31' 04" E. 29.59 feet; S. 85° 44' 14" E. 24.12 feet; N. 30° 13' 14" E. 26.02 feet; N. 83° 59' 18" E. 13.54 feet; S. 13° 33' 11" W. 57.00 feet; S. 60° 46' 58" E. 19.24 feet; N. 58° 39' 35" E. 35.08 feet; S. 30° 45' 21" E. 6.14 feet; S. 32° 00' 52" W. 26.01 feet; S. 18° 01' 35" E. 29.21 feet; S. 07° 49' 33" W. 49.13 feet; S. 25° 46' 40" E. 66.85 feet; S. 13° 37' 46" W. 27.48 feet; S. 30° 32' 25" E. 32.45 feet; S. 15° 47' 32" W. 34.13 feet; S. 70° 56' 28" E. 19.40 feet; N. 60° 10' 50" E. 22.30 feet; S. 29° 44' 14" E. 38.29 feet; S. 58° 51' 05" E. 44.99 feet; S. 87° 05' 07" E. 75.03 feet; S. 61° 44' 09" E. 23.33 feet; S. 88° 51' 49" E. 36.07 feet; N. 36° 58' 04" E. 23.02 feet; S. 85° 14' 04" E. 29.96 feet; S. 23° 19' 45" E. 45.66 feet; N. 79° 24' 22" E. 31.58 feet; S. 14° 21' 16" E. 53.20 feet; S. 06° 29' 30" W. 23.48 feet; S. 21° 57' 42" W. 24.50 feet; S. 19° 43' 30" E. 59.10 feet; S. 37° 22' 07" E. 44.53 feet; S. 44° 44' 31" E. 26.71 feet; N. 86° 09' 38" E. 32.55 feet; S. 22° 18' 25" E. 17.00 feet; N. 71° 14' 56" E. 61.14 feet; S. 01° 00' 19" W. 44.28 feet; N. 68° 26' 45" E. 19.78 feet; S. 64° 28' 50" E. 42.79 feet; S. 20° 06' 58" E. 37.29 feet; S. 13° 16' 85" W. 31.82 feet; S. 18° 35' 26" E. 27.79 feet; S. 30° 47' 12" W. 45.60 feet; S. 53° 55' 04" E. 44.69 feet; S. 07° 49' 02" W. 17.33 feet; S. 64° 54' 09" E. 30.42 feet; N. 73° 25' 52" E. 72.08 feet; S. 76° 50' 53" E. 61.69 feet; S. 03° 36' 50" E. 42.38 feet; S. 70° 40' 16" E. 45.84 feet; S. 03° 28' 16" E. 36.56 feet; S. 65° 24' 07" W. 28.03 feet; S. 03° 48' 02" E. 18.52 feet; S. 58° 37' 35" E. 35.53 feet; S. 05° 39' 10" E. 30.76 feet; S. 25° 20' 23" E. 29.80 feet; S. 60° 51' 17" W. 34.64 feet; S. 15° 19' 37" E. 35.10 feet; S. 13° 44' 27" W. 21.01 feet; S. 70° 18' 10" E. 14.44 feet; N. 79° 41' 10" E. 14.01 feet; S. 16° 48' 16" E. 41.94 feet; S. 62° 34' 21" E. 42.40 feet; N. 57° 15' 54" E. 18.15 feet; S. 15° 03' 22" E. 25.05 feet; S. 75° 44' 09" E. 74.64 feet; S. 17° 29' 08" E. 16.93 feet; S. 32° 49' 51" W. 31.45 feet; S. 44° 57' 58" E. 27.67 feet; S. 34° 55' 09" E. 20.44 feet; S. 53° 00' 35" E. 56.35 feet; S. 14° 44' 45" E. 44.40 feet; S. 52° 15' 33" E. 39.90 feet; S. 24° 01' 46" W. 33.22 feet; S. 56° 53' 39" E. 74.31 feet; S. 54° 29' 19" W. 29.12 feet; S. 97° 30' 05" E. 51.44 feet; S. 55° 51' 52" E. 37.90; S. 52° 15' 12" W. 52.72 feet; S. 41° 06' 08" E. 38.01 feet; S. 31° 28' 09" W. 45.51 feet; S. 80° 49' 16" W. 25.23 feet; S. 53° 07' 47" E. 40.18 feet; S. 30° 15' 00" W. 10.00 feet; to a point marked by a 1" iron which is a corner common to this property and property of formerly Stephen Williams and R. P. Watson; thence S. 30° 15' 00" W. 80.39 feet along the Watson property line to a point marked by a 2" sweet gum on the right of way of N.C. State Road No. 1001; thence S. 30° 15' 00" W. 34.47 feet to a point in the centerline of said state road; thence S. 30° 15' 00" W. 80.39 feet to the centerline of the old road which is a common corner for this property and property conveyed to the C. Alan Bell Trust pursuant to deed recorded in Book 1522, page 606, Halifax Public Registry; thence along the centerline of the old road the nine following courses and distances: N. 36° 58' 09" W. 251.80 feet; N. 30° 59' 35" W. 202.71 feet; N. 40° 43' 48" W. 390.11 feet; N. 51° 32' 25" W. 164.15 feet; N. 72° 22' 20" W. 264.99 feet; N. 76° 23' 25" W. 174.31 feet; N. 80° 54' 52" W. 385.03 feet; N. 95° 16' 45" W. 341.82 feet; and N. 79° 33' 10" W. 355.50 feet to a point which is a common corner to this property, property of Rebecca Taylor and Tract "B" on the plat hereinafter referenced; thence N. 19° 00' 37" E. 162.65 feet along the line of said Tract "B" to a point in the centerline of N.C. State Road No. 1001; thence along the centerline of said state road the twelve following courses and distances: N. 47° 29' 49" W. 74.65 feet; N. 44° 05' 04" W. 80.02 feet; N. 43° 01' 35" W. 123.37 feet; N. 43° 09' 39" W. 298.49 feet; 43° 36' 12" 108.86 feet; N. 43° 09' 52" W. 155.70 feet; N. 42° 16' 40" W. 919.01 feet; N. 42° 32' 30" W. 125.02 feet; N. 39° 51' 08" W. 100.02 feet; N. 38° 55' 20" W. 124.98 feet; N. 34° 32' 46" W. 100.90 feet; N. 34° 32' 46" W. 94.47 feet; and N. 36° 35' 44" W. 47.24 feet to the point of beginning, and being all of Tract "A", containing 182.614 acres, as shown on that certain plat entitled, "Survey For Mercer Crawley Hux", which was made by Odom Land Surveying Company under date of December 19, 2002 except for a narrow strip of land lying between the northern right of way of N.C. State Road No. 1001 and the centerline of the old road, plus two narrow strips of land lying between the southern right of way of N.C. State Road No. 1001 and the centerline of the old road; and being a portion of the property conveyed unto Carolyn C. Woltet, Louise C. Lancaster and Barbara Sue C. Gibson by deed of Carolyn C. Woltet and Barbara Sue C. Gibson, Trustees, dated September 6, 2006 and recorded in Book 2151, page 622, Halifax Public Registry; reference to said plat and deed being hereby made for greater certainty of description.

EXPRESSLY EXCEPTED from this conveyance are the home and lot conveyed to Laura W Brown by deed recorded in Book 1686, page 267, Halifax Public Registry, and shown on plat recorded in Map Book 9, page 63, Halifax Public Registry; reference to said deed and map being hereby made for greater certainty of description.

This conveyance is also made expressly subject to the right of way of N.C. State Road No. 100 (Justice Branch Road) and any remaining rights to use the old road which constitutes the southern or southwestern boundary of a portion of Tract "A".

Acknowledgment of legal description:

Iluka Resources (NC) LLC

[Owner]

By: Iluka (USA) Investments, Inc.

Name(s): Linda F. Tipton and Maurice E. Tipton, Jr. Trustees

Initial: *IL*

Initial: *L.F.T.*

M.E.T.

UNOFFICIAL