

J.B. McNaughton,

to

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) Agreement.  
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J.Arnold Farrer, John H. Sherburne )

This memorandum made this 30th day of November, 1935, by and between J.B.McNaughton of the Town of Eureka, state of Nevada, party of the first part, and J.Arnold Farrer, of Boston, Massachusetts, and John H. Sherburne, of Boston Massachusetts, constituting a committee of bondholders of the Eureka Smelting Company, under an agreement dated December 27, 1929, the parties of the second part,

W I T N E S S E T H :

THAT, WHEREAS, in The Third Judicial District Court of the State of Nevada in and for the County of Eureka, there is pending and at issue, in readiness for trial case No. 2344, in which the said J.B.McNaughton, the party of the first part hereto, is plaintiff, and Eureka Smelting Company, a corporation of the state of Nevada, is defendant, and the second parties hereto are interveners, which action was commenced to quiet title in plaintiff to three certain lode mining claims situate in the Eureka Mining District, county of Eureka, state of Nevada, named Wabash No.1, Wabash No.2, and Wabash No.3, amended location certificates of which are of record in the office of the county recorder of said Eureka County, Nevada in book K of Eureka County Mining locations at pages 217, 219, and 220, respectively, and,

WHEREAS, the said mining claims cover in part the ground at the portal of what is known as "Prospect Mountain Tunnel", which said tunnel extends easterly therefrom and from its portal a distance of approximately 3250 feet, and penetrates under and through other mining claims and ground owned by said first party and at its face penetrates ground vertically beneath a certain mining claim, or certain mining claims owned by said second party, and,

WHEREAS, it is believed by the respective parties hereto that the said tunnel affords ample capacity for the further development and exploitation and mining of the claims owned and controlled by said second party as well as the claims owned and controlled by said first party, and it being the mutual desire of the respective parties hereto that said suit and litigation be terminated without further expenditure of time and money:

NOW, in consideration of the premises, and of the covenants and agreements herein contained, and for further consideration passing between the respective parties hereto, the receipt and sufficiency whereof is hereby acknowledged, it is hereby reciprocally agreed as follows:

FIRST: Immediately upon the execution and delivery hereof by the respective parties hereto, said second parties, through their attorney, W.R.Reynolds, will stipulate and consent to the making and entering in the aforementioned case of a decree quieting title to the said Wabash No.1, and Wabash No.2, and Wabash No.3, in plaintiff, reserving unto the party of the second part herein all machinery, tools, and other mining equipment, which is now located on said mining claims, or any thereof, owned by said first party, each party to pay his own costs incurred in said suit.

SECOND: The first party hereto, for himself, his personal representatives and heirs, hereby grants unto said second party, their successors, personal representatives, heirs and assigns, a perpetual right and easement to the use of said tunnel in common with similar use thereof by first party, to extend the said tunnel as said second party may desire, and to haul therethrough ore, waste material, timbers, tools, and other mining equipment required for and/or in connection with the development and/or mining and exploitation of the mining claims now owned, or which may hereafter be acquired by said second parties, together with the use of such portions of the surface of the aforementioned Wabash No.2 and Wabash No.3, mining claims as shall be reasonably required in adding to or extending existing dumps thereon, and for dumping waste material thereon, and for the erection and maintenance of any buildings, machinery, and equipment required in the operation of said mining properties, or in reduction of ores extracted from said claims, provided that said tunnel will not be used by either party hereto for the purpose of depositing waste material, ore, or other materials therein such as will prevent or interfere unduly with the free use of said tunnel by either party; provided, that this grant of right and perpetual easement shall not prejudice or interfere with the right of the first party to mine, develop and exploit the three said Wabash claims, paying due regard to the surface rights hereby granted; and provided further, that at all times the said first party, his heirs, personal representatives and assigns shall retain the right to the use of said tunnel, in common with said second party's use, in connection with the development, mining and exploitation of said Wabash claims as well as the mining claims eastward therefrom presently owned by said first party and named as follows: Williams, Pioneer, McNaughton, Apache, Loral, Silver Connor, Kit Carson, Young Mabel, Gore, Dalesford, Dalesford Millsite, Wabash, Wabash Fraction, and Huckelberry.

It is expressly agreed and declared that the right and easement to the use of said tunnel hereby granted to said second parties and to which the aforementioned properties of plaintiff are made servient run with the said second parties' lands and properties and shall continue into subsequent owners and purchasers from second parties, provided however, that first party in no wise warrants or guarantees the said right and the continuance thereof against adverse claims of parties other than those hereto.

It is expressly agreed further that the said first party, his heirs, executors, administrators and assigns, shall and will keep and hold the said Wabash No.2, and Wabash No.3, claims, and do and perform the annual assessment on each of said claims each year, or to file notice of intention to hold said claims when law so permits in lieu of performing assessment work, to the end that the said Wabash No.2, and Wabash No.3, upon which the portal of said tunnel is located, and upon which the building, machinery, tools and other mining equipment are located, or may be located, shall not be forfeited for failure to perform the annual assessment work, or if the

said first party shall at any time hereafter wish to cease the performance of said annual assessment work as required by law, or to forfeiture or abandon said Wabash No.2, and Wabash No.3, it is agreed that said first party will convey the said Bash No.2, and Wabash No.3, or either as the case may be, to the party of the second part, to the end that the said claims, or either thereof, shall not become open to relocation, or location by another, or himself, at anytime, provided that the assessment work required by law to be performed may be performed on any claim or group of claims which may be contiguous to said Wabash claims, if it shall be sufficient to answer for assessment work on said Wabash claims.

THIRD: It is expressly agreed that the buildings, machinery, tools, and any other mining equipment which may now be located upon said Wabash claims near the portal of, or in said Tunnel may be allowed to remain thereon, and any improvements which may hereafter placed upon said Wabash claims under the terms hereof may be removed at any time at the option of the second party, and that the said first party, for and in consideration that he acts as watchman of the buildings, machinery, tools, and other mining equipment located at and near said tunnel on said claims, and uses his best efforts to prevent the destruction of said property by way of fire or otherwise, may have the use of the said machinery while not in use by said second party, and during the time it remain upon said mining claims, and the right to the use of said machinery, or the use thereof, as the case may be, shall be compensation in full for such services as such watchman. Said machinery shall be kept in good condition as the same is now, or may be put into.

This agreement shall be binding upon and enure to the benefit of the heirs, executors, administrators and assigns of the respective parties hereto.

IN WITNESS WHEREOF the respective parties hereto have executed this agreement in duplicate the day and year first above written.

J.B.McNaughton  
Party of the first part.

J.Arnold Farrer  
John H. Sherburne  
Parties of the second part.

State of Nevada  
County of Eureka ss

On this 29th day of January, 1936, personally appeared before me, W.R.Reynolds, a notary public in and for the county of Eureka, Nevada., John B.McNaughton, known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notarial Seal)

W.R.Reynolds  
Notary Public.

Recorded at the request of W.R.Reynolds Dec. 14, A.D. 1937 At 30 minutes past 10 A.M.

Peter Merialdo---Recorder.