

136790

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made this 17th day of May, 1991, by and between NERCO Exploration Company, an Alaska corporation, whose address is 8100 N.E. Parkway Drive, Vancouver, Washington 98662 ("NERCO"), and Atlas Corporation, a Delaware corporation, whose address is 370 Seventeenth Street, Suite 3150, Denver, Colorado 80202 ("Atlas").

RECITALS

A. NERCO, NERCO Minerals Company and Atlas entered into a Purchase and Sale Agreement dated May 17, 1991 (the "Agreement"), under which NERCO agreed to grant to Atlas an undivided 100% interest in and to certain unpatented mining claims located in Eureka County, Nevada, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Claims").

B. Pursuant to the terms and conditions of the Agreement, NERCO now desires to grant the Claims to Atlas, and Atlas desires to obtain the Claims with NERCO reserving a royalty on the production of Valuable Minerals from the Claims as set forth below.

AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

1. Grant of Claims. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NERCO does hereby grant, bargain and sell unto Atlas, its successors and assigns forever, all of NERCO's right,

title and interest in and to the Claims, together with all lodes, ledges, veins and mineral bearing rock, both known and unknown, lying within the boundaries of the above named claims, together with all dips, spurs, and angles, and all the ores, mineral-bearing quartz, rock and earth or other deposits therein or thereon, and all of the rights, privileges and franchises thereto incident, and all and singular the tenements and hereditaments thereunto or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of said NERCO, of, in or to the premises and every part and parcel thereof, including all after acquired title, reserving to NERCO the royalty described in Section 2 below. NERCO warrants that there are no persons or entities lawfully claiming any interest in the Claims by, through or under NERCO, subject to the paramount title of the United States of America, and subject to the existence of an overlap between portions of Altin Claim Nos. 410, 412, 413 and 414 and land not available for mineral entry.

2. Grant of Royalty. NERCO excepts and reserves from the foregoing conveyance, and Atlas, for and in consideration of its acquisition of the Claims, does hereby grant, bargain, sell, convey, set over, assign and deliver unto NERCO, its successors and assigns, the following nonoperating, nonexecutory, nonparticipating production royalty:

(a) one percent (1%) of the Net Smelter Returns (as defined below) from the sale of any ore, minerals or mineral

substances ("Valuable Minerals") derived from the Claims. "Net Smelter Returns" are defined as the gross proceeds received by Atlas from the sale of any such Valuable Minerals derived from the Claims, less (i) all costs incurred in transporting Valuable Minerals from the mine or mill (or other processing facility) to the point of sale, including insurance and intransit security costs; (ii) all charges and penalties imposed by the smelter, refinery or purchaser; and (iii) ad valorem taxes, severance taxes and such other taxes (excluding taxes based on income) as are imposed upon production. For purposes of calculating Net Smelter Returns in the event Atlas elects not to sell any portion of any gold derived from the Claims, but instead elects to have the final product of any such gold credited to or held for its account with any smelter, refiner or broker, such gold shall be deemed to have been sold at the price per ounce of gold equal to the London Bullion Broker's Second Gold Fixing on the day such gold is actually credited to or placed in Atlas's account.

(b) Time of Payment; Reports; Inspection of Records. All production royalties shall be computed and paid on a quarterly basis on or before 30 days following the close of the calendar quarter during which Atlas shall have received payment for Valuable Minerals sold by Atlas. At the time of making each such payment, Atlas shall deliver to NERCO a statement showing the amount of such production royalty and the manner in which it was determined, including the number of units of Valuable Minerals sold during the quarter, the price received, and the amounts deducted. Atlas shall maintain accurate books and

records concerning the Valuable Minerals produced and sold from the Claims and the royalty payable hereunder. All records relating to the calculation of such royalties shall be available for an annual inspection by an authorized representative of NERCO for the purpose of confirming the accuracy of such statements. Any such inspection shall be for a reasonable length of time during regular business hours, at a mutually convenient time, upon reasonable notice by NERCO. Any complaint or objection which NERCO may wish to raise with respect to production royalties payable hereunder shall be made by NERCO to Atlas in writing within six months after the end of the calendar year in which such payment was made to NERCO or shall be deemed to have been waived by NERCO.

(c) Ore Processing. All determinations with respect to: (i) whether ore will be beneficiated, processed or milled by Atlas or sold in a raw state, (ii) the methods of beneficiating, processing or milling any such ore, (iii) the constituents to be recovered therefrom, and (iv) the purchasers to whom any Valuable Minerals may be sold, shall be made by Atlas in its sole and absolute discretion.

(d) Ore Samples. For purposes other than commingling, the mineral content of all ore mined and removed from the Claims (excluding ore leached in place) and the quantities of constituents recovered by Atlas shall be determined by Atlas, or with respect to such ore which is sold, by the mill or smelter to which the ore is sold, in accordance with standard sampling and analysis procedures, and shall be a weighted average

based on the total amount of ore from the Claims crushed and sampled or the constituents recovered during the entire calendar quarter. Upon reasonable advance notice to Atlas, NERCO shall have the right to have representatives present at the time samples are taken for the purpose of confirming that the sampling and analysis procedure is proper.

(e) Commingling. Atlas shall have the right to commingle Valuable Minerals from the Claims with Valuable Minerals from other properties owned, leased or controlled by Atlas; provided, however, that before commingling, Atlas shall calculate from representative samples the average grade of the ore from the Claims and shall either weigh or volumetrically calculate the number of tons of ore from the Claims to be commingled. As other products are produced from the commingled ores, Atlas shall calculate from representative samples the average percentage recovery of other products produced from the commingled ores during each quarter. In obtaining representative samples, calculating the average grade of commingled ores and average percentage of recovery, Atlas may use any procedures acceptable in the mining and metallurgical industry which Atlas believes to be accurate and cost-effective for the type of mining and processing activity being conducted, and Atlas's choice of such procedures shall be final and binding on NERCO. In addition, comparable procedures may be used by Atlas to apportion among the commingled ores any penalty charges imposed by the refiner on commingled ores or concentrates. The records relating to commingled ores shall be available for inspection by NERCO, at

NERCO's sole expense, in accordance with the provisions of Section 2(b).

(f) Except as otherwise set forth in Section 2(g), the royalty provided for herein shall apply to (i) any relocations of unpatented mining claims included in the Claims and (ii) all property interests of any nature acquired by Atlas, its successors and assigns or their Affiliates to the extent such property interests cover lands now covered by any of the Claims (which Claims, when originally located, were located prior to any overlapping unpatented mining claims), and (iii) all unpatented mining claims now owned by Atlas and its affiliates which cover lands now covered by any of the Claims (which Claims, when originally located, were located prior to any overlapping unpatented mining claims now owned by Atlas). As used herein, the term "Affiliate" shall mean any person or entity which controls, is controlled by, or is under common control with Atlas.

(g) In the event that NERCO owns and grants to Atlas an interest in any Valuable Minerals extracted from any part of the Claims which is less than the entire undivided mineral or working interest in such Valuable Minerals from the Claims, then the production royalty herein reserved and attributable to NERCO with respect to the portion of the Claims in which NERCO has a lesser interest shall be paid to NERCO only in the proportion that NERCO's interest in such production bears to the entire undivided mineral or working interest in such portion of the Claims.

3. Place and Manner of Payment. Atlas shall make all payments required hereunder by check payable to NERCO Exploration Company, whose address is 8100 N.E. Parkway Drive, Vancouver, Washington 98662. All such payments shall be delivered by certified mail to NERCO at such address, or to such other single depository bank as NERCO, its successors or assigns, may designate from time to time in writing. Payments by Atlas to NERCO in accordance herewith shall discharge fully Atlas's obligation with respect to such payment, and Atlas shall have no duty to apportion or allocate any payment due to NERCO, or to its successors and assigns.

4. Abandonment of Claims. If Atlas desires to abandon any of the Claims, it will give NERCO fifteen days prior written notice of such intention, and NERCO shall have the option to notify Atlas within such fifteen-day period of NERCO's desire to acquire those claims from Atlas by appropriate conveyance. If Atlas notifies NERCO of its intent to abandon any such claims which NERCO desires to acquire between July 1 and September 1 of any year, Atlas shall be responsible for the performance of annual assessment work on those claims for the then current assessment year. Such assessment work will be of a character and value which is reasonably expected to satisfy the requirements of the mining laws of the United States and of the State of Nevada, and generally regarded in the mining industry as sufficient. In the event that the performance of the work, intended by Atlas in good faith to satisfy the requirements under the mining laws with respect to assessment work, is deficient in one respect or

another, and in the event that such failure will, through relocation of a third party or otherwise, result in the forfeiture of loss of any of the Claims as to which there is a deficiency in the work, Atlas will not be liable to NERCO or others in damages or otherwise on account of such failure to meet the requirements of the mining laws. Notwithstanding the foregoing, if Atlas is unable to obtain any permits required by any federal, state or local government agencies to obtain access to and perform assessment work on any mining claims which NERCO desires to acquire pursuant to this Section 4, Atlas shall have no obligation to perform assessment work on or for the benefit of such claims.

5. No Implied Covenant for Operations. Nothing herein contained is intended or shall be held to require Atlas to commence, suspend, resume or terminate any particular operation upon the Claims or with reference to the disposition of Valuable Minerals, and all such operations, including the timing thereof, shall be made at the sole discretion of Atlas.

6. Nature of NERCO's Rights. The production royalty granted hereunder shall be payable from actual production from the Claims. NERCO shall have only a royalty interest and rights and incidents of ownership of a nonparticipating royalty owner. NERCO shall not have any fee simple estate or possessory interest in the Claims nor any of the incidents of such estate or interest, including, by way of example but not by way of limitation, the right to participate in the execution of applications for authorities, permits or licenses, mining leases,

options, farm-outs or other conveyances, the right to share in bonus payments or rental payments received as consideration for the execution of any such leases, options, farm-outs or other conveyances, and the right to enter upon the Claims and prospect for, mine, drill for, or remove ores or minerals therefrom.

7. Duration of Atlas's Obligation to Make Payments.

Atlas's personal obligation to pay such royalty shall terminate when it conveys its interest in the Claims to any third party (or such obligation shall be proportionately reduced if Atlas conveys less than all of its interest in the Claims to any third party) with respect to Valuable Minerals produced and sold from the Claims after such conveyance. Atlas's personal obligation to pay to NERCO the production royalty provided for herein shall be reduced or terminated as set forth above only if the third party to whom Atlas conveys some or all of its interest in the Claims explicitly assumes an obligation to pay its proportionate share of such royalty, and if NERCO receives prior written notice of the name and address of such third party.

IN WITNESS WHEREOF, the parties have executed this instrument effective the day and year first above written.

NERCO EXPLORATION COMPANY

By: Glen J. Zion
Name: Glen J. Zion
Title: Vice President

ATLAS CORPORATION

By: Richard R. Weaver
Name: Richard R. Weaver
Title: President

STATE OF WASHINGTON)
) ss
COUNTY OF CLARK)

On this 16th day of May, 1991, personally appeared before me, a notary public Glen J. Zion, personally known to me to be the person whose name is subscribed to the within instrument, who acknowledged that he executed the instrument as Vice President of NERCO Exploration Company, an Alaska corporation.

Witness my hand and official seal.

My commission expires: January 11, 1992
Bonnie R. Curtis
Notary Public

STATE OF Colorado)
) ss
COUNTY OF Denver)

On this 17 day of May, 1991, personally appeared before me, a notary public Richard R. Weaver, personally known to me to be the person whose name is subscribed to the within instrument, who acknowledged that he executed the instrument as President of Atlas Corporation, a Delaware corporation.

Witness my hand and official seal.

My commission expires: November 8, 1993
Sharon J. Henrich
Notary Public

EXHIBIT A

The following unpatented lode mining claims located in Sections 5, 6, 7, 8, 17, 18, 19 and 20, Township 16 North, Range 53 East, and Sections 1, 12, 13 and 24, Township 16 North Range 52 East, Eureka County, Nevada.

NAME OF CLAIM	EUREKA COUNTY RECORDING		BLM SERIAL NO.
	BOOK	PAGE	
ALTIN #1	184	159	NMC 512585
ALTIN #2	184	160	NMC 512586
ALTIN #3	184	161	NMC 512587
ALTIN #4	184	162	NMC 512588
ALTIN #5	184	163	NMC 512589
ALTIN #6	184	164	NMC 512590
ALTIN #7	184	165	NMC 512591
ALTIN #8	184	166	NMC 512592
ALTIN #9	184	167	NMC 512593
ALTIN #10	184	168	NMC 512594
ALTIN #11	184	169	NMC 512595
ALTIN #12	184	170	NMC 512596
ALTIN #13	184	171	NMC 512597
ALTIN #14	184	172	NMC 512598
ALTIN #15	184	173	NMC 512599
ALTIN #16	184	174	NMC 512600
ALTIN #17	184	175	NMC 512601
ALTIN #18	184	176	NMC 512602
ALTIN #19	184	177	NMC 512603
ALTIN #20	184	178	NMC 512604
ALTIN #21	184	179	NMC 512605
ALTIN #22	184	180	NMC 512606
ALTIN #23	184	181	NMC 512607
ALTIN #24	184	182	NMC 512608
ALTIN #25	184	183	NMC 512609
ALTIN #26	184	184	NMC 512610
ALTIN #27	184	185	NMC 512611
ALTIN #28	184	186	NMC 512612
ALTIN #29	184	187	NMC 512613
ALTIN #30	184	188	NMC 512614
ALTIN #31	184	189	NMC 512615
ALTIN #32	184	190	NMC 512616
ALTIN #33	184	191	NMC 512617
ALTIN #34	184	192	NMC 512618
ALTIN #35	184	193	NMC 512619
ALTIN #36	184	194	NMC 512620
ALTIN #37	184	195	NMC 512621
ALTIN #38	184	196	NMC 512622

EUREKA COUNTY RECORDING			
<u>NAME OF CLAIM</u>	<u>BOOK</u>	<u>PAGE</u>	<u>BLM SERIAL NO.</u>
ALTIN #85	184	197	NMC 512623
ALTIN #86	184	198	NMC 512624
ALTIN #87	184	199	NMC 512625
ALTIN #88	184	200	NMC 512626
ALTIN #89	184	201	NMC 512627
ALTIN #90	184	202	NMC 512628
ALTIN #91	184	203	NMC 512629
ALTIN #92	184	204	NMC 512630
ALTIN #93	184	205	NMC 512631
ALTIN #94	184	206	NMC 512632
ALTIN #95	184	207	NMC 512633
ALTIN #96	184	208	NMC 512634
ALTIN #97	184	209	NMC 512635
ALTIN #98	184	210	NMC 512636
ALTIN #99	184	211	NMC 512637
ALTIN #100	184	212	NMC 512638
ALTIN #101	184	213	NMC 512639
ALTIN #102	184	214	NMC 512640
ALTIN #103	184	215	NMC 512641
ALTIN #104	184	216	NMC 512642
ALTIN #105	184	217	NMC 512643
ALTIN #106	184	218	NMC 512644
ALTIN #107	184	219	NMC 512645
ALTIN #108	184	220	NMC 512646
ALTIN #109	184	221	NMC 512647
ALTIN #110	184	222	NMC 512648
ALTIN #111	184	223	NMC 512649
ALTIN #112	184	224	NMC 512650
ALTIN #113	184	225	NMC 512651
ALTIN #114	184	226	NMC 512652
ALTIN #115	184	227	NMC 512653
ALTIN #116	184	228	NMC 512654
ALTIN #117	184	229	NMC 512655
ALTIN #118	184	230	NMC 512656
ALTIN #119	184	231	NMC 512657
ALTIN #120	184	232	NMC 512658
ALTIN #121	184	233	NMC 512659
ALTIN #122	184	234	NMC 512660
ALTIN #123	184	235	NMC 512661
ALTIN #124	184	236	NMC 512662
ALTIN #125	184	237	NMC 512663
ALTIN #126	184	238	NMC 512664
ALTIN #127	184	239	NMC 512665
ALTIN #128	184	240	NMC 512666
ALTIN #129	184	241	NMC 512667
ALTIN #130	184	242	NMC 512668
ALTIN #131	184	243	NMC 512669
ALTIN #132	184	244	NMC 512670
ALTIN #133	184	245	NMC 512671
ALTIN #134	184	246	NMC 512672

EUREKA COUNTY RECORDING			
<u>NAME OF CLAIM</u>	<u>BOOK</u>	<u>PAGE</u>	<u>BLM SERIAL NO.</u>
ALTIN #135	184	247	NMC 512673
ALTIN #136	184	248	NMC 512674
ALTIN #137	184	249	NMC 512675
ALTIN #138	184	250	NMC 512676
ALTIN #186	184	251	NMC 512677
ALTIN #188	184	252	NMC 512678
ALTIN #190	184	253	NMC 512679
ALTIN #192	184	254	NMC 512680
ALTIN #194	184	255	NMC 512681
ALTIN #196	184	256	NMC 512682
ALTIN #198	184	257	NMC 512683
ALTIN #200	184	258	NMC 512684
ALTIN #202	184	259	NMC 512685
ALTIN #204	184	260	NMC 512686
ALTIN #206	184	261	NMC 512687
ALTIN #208	184	262	NMC 512688
ALTIN #210	184	263	NMC 512689
ALTIN #212	184	264	NMC 512690
ALTIN #214	184	265	NMC 512691
ALTIN #216	184	266	NMC 512692
ALTIN #218	184	267	NMC 512693
ALTIN #220	184	268	NMC 512694
ALTIN #222	184	269	NMC 512695
ALTIN #224	184	270	NMC 512696
ALTIN #226	184	271	NMC 512697
ALTIN #228	184	272	NMC 512698
ALTIN #230	184	273	NMC 512699
ALTIN #232	184	274	NMC 512700
ALTIN #234	184	275	NMC 512701
ALTIN #236	184	276	NMC 512702
ALTIN #238	184	277	NMC 512703
ALTIN #285	184	278	NMC 512704
ALTIN #286	184	279	NMC 512705
ALTIN #287	184	280	NMC 512706
ALTIN #288	184	281	NMC 512707
ALTIN #289	184	282	NMC 512708
ALTIN #290	184	283	NMC 512709
ALTIN #291	184	284	NMC 512710
ALTIN #292	184	285	NMC 512711
ALTIN #293	184	286	NMC 512712
ALTIN #294	184	287	NMC 512713
ALTIN #295	184	288	NMC 512714
ALTIN #296	184	289	NMC 512715
ALTIN #297	184	290	NMC 512716
ALTIN #298	184	291	NMC 512717
ALTIN #299	184	292	NMC 512718
ALTIN #300	184	293	NMC 512719
ALTIN #385	184	294	NMC 512720
ALTIN #386	184	295	NMC 512721
ALTIN #387	184	296	NMC 512722

EUREKA COUNTY RECORDING			
NAME OF CLAIM	BOOK	PAGE	BLM SERIAL NO.
ALTIN #388	184	297	NMC 512723
ALTIN #389	184	298	NMC 512724
ALTIN #390	184	299	NMC 512725
ALTIN #391	184	300	NMC 512726
ALTIN #392	184	301	NMC 512727
ALTIN #393	184	302	NMC 512728
ALTIN #394	184	303	NMC 512729
ALTIN #395	184	304	NMC 512730
ALTIN #396	184	305	NMC 512731
ALTIN #397	184	306	NMC 512732
ALTIN #398	184	307	NMC 512733
ALTIN #399	184	308	NMC 512734
ALTIN #400	184	309	NMC 512735
ALTIN #401	184	310	NMC 512736
ALTIN #402	184	311	NMC 512737
ALTIN #403	184	312	NMC 512738
ALTIN #404	184	313	NMC 512739
ALTIN #405	184	314	NMC 512740
ALTIN #406	184	315	NMC 512741
ALTIN #407	184	316	NMC 512742
ALTIN #408	184	317	NMC 512743
ALTIN #409	184	318	NMC 512744
ALTIN #410	184	319	NMC 512745
ALTIN #411	184	320	NMC 512746
ALTIN #412	184	321	NMC 512747
ALTIN #413	184	322	NMC 512748
ALTIN #414	184	323	NMC 512749
ALTIN #423	184	324	NMC 512750
ALTIN #424	184	325	NMC 512751
ALTIN #425	184	326	NMC 512752
ALTIN #426	184	327	NMC 512753
ALTIN #427	184	328	NMC 512754
ALTIN #428	184	329	NMC 512755
ALTIN #429	184	330	NMC 512756
ALTIN #430	184	331	NMC 512757
ALTIN #431	184	332	NMC 512758
ALTIN #432	184	333	NMC 512759
ALTIN #433	184	334	NMC 512760
ALTIN #434	184	335	NMC 512761
ALTIN #435	184	336	NMC 512762
ALTIN #436	184	337	NMC 512763
ALTIN #437	184	338	NMC 512764
ALTIN #438	184	339	NMC 512765

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OFFICIAL RECORDS
RECORDED AT THE REQUEST OF
Atlas Corp.

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EUREKA COUNTY, NEVADA
M.N. REBALEATI, RECORDER
FILE NO. FEE \$ 18.00

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