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**Eureka County - NV**

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Fee: \$48.00

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RECORDING REQUESTED BY, THIS  
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RETURN TO:

Michael E. Niebruegge, Esq.  
Mayer Brown LLP  
700 Louisiana, Suite 3400  
Houston, TX 77002

INSTRUCTIONS TO COUNTY RECORDER:

Index this Document as

- (1) a deed of trust
- (2) a fixture filing

DEED OF TRUST WITH POWER OF SALE, ASSIGNMENT OF ROYALTIES,  
SECURITY AGREEMENT AND  
FINANCING STATEMENT

FROM

FRANCO-NEVADA U.S. CORPORATION, Trustor

TO

FIRST AMERICAN TITLE COMPANY, Trustee

AND

BANK OF MONTREAL, Beneficiary

Dated as of February 13, 2009

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“THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS.”

“THIS INSTRUMENT SECURES PAYMENT OF FUTURE ADVANCES.”

“ALL FUTURE ADVANCES TO \$150,000,000 ARE OBLIGATORY.”

“THE MINERAL INTERESTS INCLUDED IN THE ENCUMBERED PROPERTY WILL BE FINANCED AT THE MINEHEADS OF THE MINES LOCATED ON THE PROPERTIES DESCRIBED IN EXHIBIT A OR IN INSTRUMENTS REFERENCED IN OR INCORPORATED IN EXHIBIT A HERETO, AND THIS FINANCING STATEMENT IS TO BE FILED FOR RECORD, AMONG OTHER PLACES, IN THE REAL ESTATE RECORDS.”

“THE TRUSTOR HAS AN INTEREST OF RECORD IN THE REAL ESTATE CONCERNED, WHICH IS DESCRIBED IN EXHIBIT A OR IN INSTRUMENTS REFERENCED IN OR INCORPORATED IN EXHIBIT A HERETO.”

“SOME OF THE GOODS CONSTITUTING A PORTION OF THE ENCUMBERED PROPERTY ARE OR ARE TO BE AFFIXED TO THE PROPERTIES DESCRIBED IN EXHIBIT A HERETO AND ARE TO BECOME FIXTURES RELATED TO THE REAL ESTATE DESCRIBED IN EXHIBIT A OR IN INSTRUMENTS REFERENCED IN OR INCORPORATED IN EXHIBIT A TO THIS DEED OF TRUST, AND THIS FINANCING STATEMENT AND FIXTURE FILING IS TO BE FILED FOR RECORD, AMONG OTHER PLACES, IN THE REAL ESTATE RECORDS.”

“A POWER OF SALE HAS BEEN GRANTED IN THIS DEED OF TRUST. A POWER OF SALE MAY ALLOW THE TRUSTEE TO TAKE THE ENCUMBERED PROPERTY AND SELL IT WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON DEFAULT BY THE TRUSTOR UNDER THIS DEED OF TRUST.”

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**DEED OF TRUST WITH POWER OF SALE, ASSIGNMENT OF ROYALTIES,  
SECURITY AGREEMENT AND  
FINANCING STATEMENT**

THIS DEED OF TRUST WITH POWER OF SALE, ASSIGNMENT OF ROYALTIES, SECURITY AGREEMENT AND FINANCING STATEMENT, dated as of February 13, 2009, (this "Instrument") is from FRANCO-NEVADA U.S. CORPORATION, 1745 Shea Center Drive, Suite 310, Highlands Ranch, Colorado 80129, a Delaware corporation (herein called the "Trustor"), to FIRST AMERICAN TITLE COMPANY, as trustee (herein, together with any successor thereto in such capacity, called the "Trustee"), and BANK OF MONTREAL, 100 King Street West, 4<sup>th</sup> Floor, Toronto, Ontario, Canada M5X 1H3, as Collateral Agent for each of the Finance Parties (herein called the "Beneficiary").

WHEREAS, pursuant to that certain Credit Agreement, dated as of December 20, 2007 (as amended and as the same may be further amended, modified or supplemented, from time to time, the "Credit Agreement"), among Franco-Nevada Corporation and Trustor, as Borrowers (each a "Borrower"), the banks and other financial institutions from time to time party thereto (collectively, the "Lenders"), and the Beneficiary, as Administrative Agent (in such capacity, the "Administrative Agent"), the Lenders extended Commitments to make Loans and other credit extensions to the Borrowers in a principal amount not to exceed at any time as of the date hereof \$150,000,000 with a scheduled final maturity date as of the date hereof expected to be December 20, 2010, subject to the terms and conditions of the Credit Agreement;

WHEREAS, the Trustor may hereafter enter into Hedging Agreements with the Beneficiary, one or more Lenders or Affiliates of the Beneficiary or the Lenders;

WHEREAS, the Trustor is the owner of certain mineral interests, leasehold interests and rights to receive royalties pursuant to that Grant, Bargain and Sale Deed and Assignment of Lease dated December 22, 2008 from Gold Quarry Royalty Trust, a trust organized under the laws of Nevada, as Grantor to Trustor conveying and assigning to Trustor all of Grantor's right, title and interest in and to those interests more particularly described in Exhibit A hereto; the above instrument, as well as any documents, agreements or amendments thereto and assignments or conveyances thereof, may be referred to herein collectively as the "Royalty Assignment."

WHEREAS, in order to secure the performance by the Trustor of its obligations under the Credit Agreement and the other Finance Documents, the Trustor has agreed to grant a lien on and security interest in all of its right, title and interest in, to and under

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the Royalty Assignment (for the ratable benefit of the Finance Parties on a *pari passu* basis) as more particularly set forth in this Instrument; and

WHEREAS, it is a condition precedent to the obligation of the Beneficiary to make Loans that the Trustor execute and deliver this Instrument;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the Trustor, the Trustor undertakes and agrees with the Trustee and the Beneficiary for the ratable benefit of the Finance Parties as follows:

**Defined Terms.** Capitalized terms used but not defined herein (including in the preamble and recitals) have the meanings provided in the Credit Agreement. In this Instrument (including its preamble and recitals), the following terms shall have the following meanings:

“Accounts” has the meaning given such term in the Uniform Commercial Code.

“Applicable Law” means, with respect to any Person or matter, any supranational, national, federal, state, regional, tribal or local statute, law, code, rule, treaty, convention, regulation, order, decree, consent decree, injunction, directive, determination or other requirement (whether or not have the force of law but, if not having the force of law, the compliance with which statute, etc. would be prudent for a Person subject to such statute, etc.) relating to such Person or matter and, where applicable, any interpretation thereof by any Official Body having jurisdiction with respect thereto or charged with the administration or interpretation thereof.

“Approvals” means each and every approval, authorization, license, permit, consent, variance, land use entitlement, franchise, agreement, filing or registration by or with any Official Body or other Person.

“As-Extracted Collateral” has the meaning given to such term in the Uniform Commercial Code.

“Assigned Agreements” means all agreements related, directly or indirectly, to the Royalty Assignment.

“Beneficiary” is defined in the preamble.

“BLM” is defined in Section 2.3.

“Borrower” is defined in the first recital.

“Claims” is defined in Section 4.6.

“Collateralized Obligations” is defined in Section 1.1.

“Contract Rights” has the meaning given such term in the Uniform Commercial Code.

“Credit Agreement” is defined in the first recital.

“Encumbered Property” means the properties, rights and interests hereinafter described and defined as the Encumbered Property.

“General Intangibles” has the meaning given such term in the Uniform Commercial Code.

“Goods” has the meaning given such term in the Uniform Commercial Code.

“Instrument” is defined in the preamble.

“Inventory” has the meaning given such term in the Uniform Commercial Code.

“Lands” means all lands and interests which are either described in Exhibit A hereto or the description of which is incorporated in Exhibit A hereto by reference to another instrument or document referenced in Exhibit A.

“Lenders” is defined in the first recital.

“Patented Mining Claims” means all patented mining claims in which the Trustor or its predecessors in interest has, have or had or may hereafter have any interest.

“Post-Production Contracts” means contracts, if any, now in effect or hereafter entered into by the Trustor, or entered into by the Trustor’s predecessors in interest (if any), for the sale, purchase, exchange, supply, handling, processing, refining, beneficiation, marketing and/or transportation of gold or other minerals produced from all or any part of the Lands or from any other lands any production from which, or profits or proceeds from such production, is attributable to any interest in the Lands or to any interest described in Exhibit A hereto.

“Proceeds” has the meaning given such term in the Uniform Commercial Code.

“Requirement of Law” means, with respect to any Person, its constating documents and any Applicable Law or contractual obligation binding on such Person or its property.

“Royalties” is defined in the Grant.

“Trustee” is defined in the preamble.

“Trustor” is defined in the preamble.

“Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of Nevada or any other applicable State.

“Unpatented Mining Claims” means all now existing or hereafter acquired, located, amended or relocated unpatented mining claims and millsites, that is, possessory rights initiated on the public domain of the United States of America under 30 U.S.C. § 21, et seq., as implemented by regulations and state statutes and for the purposes of this Instrument includes lode and placer mining claims, millsites and tunnel sites, including amendments and relocations thereof. “Unpatented Mining Claims” shall include all rights incident thereto as recognized under Applicable Laws relating to mining and shall include any and all appurtenant rights established by or accruing to the owner thereof, including, to the extent applicable to any individual Unpatented Mining Claim, the right of access, use of water and the right to conduct mineral exploration, development and exploitation activities.

**Interpretation.** Unless a clear contrary intention appears, this Instrument shall be construed and interpreted in accordance with the provisions set forth below:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person’s successors, executors, administrators, substitutes and assigns but, if applicable, only if such successors, executors, administrators, substitutes and assigns are permitted by this Instrument, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (c) reference to any gender includes any other gender;
- (d) reference to any agreement (including this Instrument and all Schedules and Exhibits hereto), document or instrument means such agreement, document or instrument as amended, supplemented, novated, refinanced, replaced, waived, restated or modified, and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;



(e) reference to any promissory note includes any promissory note which is an extension or renewal thereof or a substitute or replacement therefor;

(f) reference to any Applicable Law means such Applicable Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder;

(g) "hereunder", "hereof", "hereto", "herein" and words of similar import shall be deemed references to this Instrument, as the case may be, as a whole and not to any particular Article, Section, clause or other provision hereof or thereof;

(h) any reference to any particular Article, Section or clause shall be to such Article, Section or clause of this Instrument;

(i) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(j) relative to the determination of any period of time, "from" means "from (and including)" and "to" means "to (but excluding)";

(k) reference to a "company" or "corporation" shall be construed as a reference to the analogous form of business entity used in any relevant jurisdiction; and

(l) when an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

## GRANT

NOW, THEREFORE, the Trustor, for and in consideration of the premises and of the debts and trusts hereinafter mentioned and upon and subject to the terms and conditions hereinafter set forth, has granted, bargained, sold, warranted, encumbered, assigned, transferred and conveyed and by these presents does grant, bargain, sell, warrant, encumber, assign, transfer and convey, unto the Trustee, IN TRUST, WITH POWER OF SALE, for the use and benefit of the Beneficiary, all the Trustor's right, title and interest, whether now owned or hereafter acquired, in and to all of the hereinafter described properties, rights and interests; and insofar as such properties, rights and interests consist of General Intangibles, Accounts, As-Extracted Collateral, Contract Rights, Inventory, Goods, Proceeds of collateral or any other personal property of a kind or character defined in or subject to the applicable provisions of the Uniform Commercial Code (as in effect in the appropriate jurisdiction with respect to each of said properties, rights and interests), the Trustor hereby grants to said Trustee, for the



use and benefit of the Beneficiary and to the Beneficiary directly, a security interest therein to the full extent of the Trustor's legal and beneficial interest therein now owned or hereafter acquired, namely:

(a) the Royalty Assignment, and all payment rights incident thereto relating to the Lands (the "Royalties"),

(b) without duplication of any other provision of this granting clause, all of the Trustor's now or hereafter arising, As-Extracted Collateral, Contract Rights relating directly or indirectly to the Lands, General Intangibles relating directly or indirectly to the Lands and Goods (including without limitation all its Inventory),

(c) in furtherance of, and not in limitation of, the foregoing, the Assigned Agreements, together with:

(i) all rights of the Trustor to receive moneys due and to become due under or pursuant to each Assigned Agreement,

(ii) all rights of the Trustor to receive proceeds of any insurance, indemnity, warranty, guaranty or collateral security with respect to each Assigned Agreement,

(iii) all claims of the Trustor for damages arising out of or for breach of or default under each Assigned Agreement,

(iv) all rights of the Trustor to terminate the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder, and

(v) to the extent not included in the foregoing, all proceeds of any and all of the foregoing,

(d) the Unpatented Mining Claims,

(e) the Patented Mining Claims,

(f) all Approvals related to the Royalty Assignment,

(g) all awards, payments or judgments, including interest thereon, and the right to receive the same, as a result of the exercise or threatened exercise of any right of eminent domain, other injury to, taking up, or decrease



in the value of all or any portion of the Royalty Assignment or the Royalties, or any other property described herein,

(h) all other property or rights of any kind or character related to the Lands or other property described herein, and

(i) all Proceeds and products of the foregoing, together with any and all corrections or amendments to, or renewals, extensions or ratifications of, or replacements or substitutions for, any of the same, or any instrument relating thereto and all contracts, contract rights, title instruments, title opinions, land status reports, title abstracts, title insurance commitments or policies, title materials and information, files, records, writings, data bases, information, systems, maps, plats, surveys, geological and geophysical (including, without limitation, electrical, electromagnetic, gravity and seismic), geochemical and radiometric data and information, drilling data, test data, mineral samples (including, without limitation, drill cores), mineral assay reports, interpretative and analytical reports of any kind or nature (including, without limitation, reserve or deposit studies or evaluations), mine feasibility reports, mine development studies and plans, information concerning exploration and development of deposits of gold and other minerals (including information concerning mine operation, shutdown and closure and concerning reclamation of lands and other resources affected by mining), environmental data and related information and reports and studies, computer hardware and software and all documentation therefor or relating thereto (including, without limitation, all licenses relating to or covering such computer hardware, software and/or documentation), trade secrets, business names and the goodwill of the business relating thereto, unpatented inventions, patent applications and patents, mining claims (whether unpatented or now or hereafter patented), lease records (including, without limitation, rental and royalty payment records), Unpatented Mining Claim records (including, without limitation, evidence of annual assessment work, payment of rental or maintenance fees and filings and recordings made with Governmental Agencies), the Approvals and records and information concerning compliance therewith, mine development programs and budgets, financial statements and audits, reclamation plans and related data and reports, insurance policies, commingling agreements, information and data and reports regarding the products and proceeds of mine operations (including, without limitation, quantities produced, proceeds from sale or other disposition and disbursement of proceeds to persons entitled to a share thereof), development rights, air rights, parcel maps, extralateral rights, condemnation awards, franchises, easements, servitudes, permits, licenses, tenements, hereditaments, appurtenances, rents, royalties, overriding royalties, gross profits interests, net smelter returns, revenues, avails, income, security deposits,



reclamation bonds, bonuses, accounts, returns, issues, profits, advantages, claims against third parties, products, proceeds and all other benefits, whether now or hereafter existing or arising, used or useful in connection with, covering, relating to, or arising from or in connection with, any of the aforesaid in this granting clause referenced, and all other things of value and incident thereto which the Trustor might at any time have or be entitled to (including, without limitation, any and all liens, lien rights and security interests, and all properties, rights and interests, whether now or hereafter existing or arising, that may be used or useful in connection with mining gold or other minerals from all or any part of the Lands, or any other lands any production from which, or the profits or proceeds from such production, is attributed to any interest in the Lands or to any interest described in Exhibit A hereto, or in connection with any related activities); together with all strips and gores belonging, adjacent or pertaining the Lands; and any after-acquired title, additions and accretions to any of the foregoing, including those which may be subjected to the lien and security interests of this Instrument by means of supplements or amendments hereto, all the aforesaid properties, rights and interests, together with any after-acquired title, additions and accretions to any of the foregoing, being hereinafter called the "Encumbered Property".

Subject, however, to (i) the assignment of Royalty Assignment contained in Article 4 but only insofar and so long as said assignment of Royalty Assignment is not inoperative under the provisions of Section 4.5, and (ii) the condition that neither the Trustee nor the Beneficiary shall be liable in any respect for the performance of any covenant or obligation (including, without limitation, measures required to comply with any Environmental Laws) of the Trustor in respect of the Encumbered Property.

TO HAVE AND TO HOLD the Encumbered Property unto the Trustee forever to secure the payment and performance in full of the Collateralized Obligations and to secure the performance of all of the obligations of the Trustor herein contained.

## **ARTICLE 1. SECURITY FOR OBLIGATIONS**

**SECTION 1.1. Collateralized Obligations.** The lien and security interest in the Encumbered Property granted hereunder secures the full and punctual payment when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise of:

(a) The Secured Obligations of the Trustor to the Beneficiary and to any Finance Party now or hereafter existing or arising under or in connection with each Finance Document to which the Trustor either is or may from time to time become a party, whether for principal, interest, fees, expenses or otherwise,

including Secured Obligations under Hedging Agreements between the Trustor and the Beneficiary or any Lender (or any Affiliate of the Beneficiary or any Lender) (including all such amounts which would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, 11 U.S.C. §362(a), and the operation of Sections 502(b) and 506(b) of the United States Bankruptcy Code, 11 U.S.C. §502(b) and §506(b) and any other similar provisions arising under Applicable Law.

(b) Any sums advanced or expenses or costs incurred (including, without limitation, all attorneys' fees and other legal, management and consulting expenses) by the Trustee or the Beneficiary (or any receiver appointed hereunder) which are made or incurred pursuant to, or permitted by, the terms hereof, plus interest thereon at the rate herein specified or otherwise agreed upon, from the date of such advances or the incurring of such expenses or costs until reimbursed.

(c) Any extensions or renewals of all such obligations described in clauses (a) and (b) above, whether or not the Trustor executes any extension agreement or renewal instruments.

All the above obligations of the Trustor are hereinafter collectively referred to as the "Collateralized Obligations".

## **ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF THE TRUSTOR**

In connection with the Credit Agreement, the Trustor hereby represents and warrants unto the Beneficiary as set forth in this Article. The representations and warranties of the Trustor set forth in this Article shall be made anew upon the delivery of each Drawdown Notice pursuant to the Credit Agreement.

**SECTION 2.1. Valid Title.** The Trustor, to the extent of the interest specified in Exhibit A hereto and subject to Section 2.2, has valid and indefeasible title (or senior uncontested possessory interest) to the Royalty Assignment and has a good and legal right to grant and convey the same to the Trustee.

**SECTION 2.2. No Liens.** The Encumbered Property is free from all Liens whatsoever, except Permitted Liens.

**SECTION 2.3. [Intentionally Blank.]**

**SECTION 2.4. Entire Interest.**

The Encumbered Property comprises the entirety of the Trustor's interest in the Royalty Assignment and the Trustor has no interest in the Royalty Assignment that is not described in Exhibit A. As of the date of this Instrument, the Trustor does not own any mineral leases.

**SECTION 2.5. Approvals.** Other than the recording or filing of this Instrument and similar instruments in favor of the Beneficiary pursuant to Section 2.10, no Approval is necessary or advisable either for:

(a) the granting by the Trustor of any Lien over any Encumbered Property pursuant to this Instrument; or

(b) the exercise by the Beneficiary or the Trustee of its rights and remedies in respect of the Encumbered Property (other than in respect of nonassignable governmental permits in which the Trustor may not lawfully grant a security interest) pursuant to this Instrument, subject to any limitations on such exercise set forth in any such Approval.

**SECTION 2.6. [Intentionally Blank.]**

**SECTION 2.7. Correct Names, etc.**

(a) The cover page to this Instrument lists the correct legal name of the Trustor and the Trustor is not now and has not been known by any trade name.

(b) The Trustor has not been known by any legal name different from the one set forth on the cover page of this Instrument, nor has the Trustor been the subject of any merger or other corporate reorganization.

**SECTION 2.8. [Intentionally Blank.]**

**SECTION 2.9. [Intentionally Blank.]**

**SECTION 2.10. Filings.** All recordings, filings and other actions (other than the recording and filing of this Instrument and any financing statements or similar instruments relating hereto with all appropriate offices as described below) necessary and desirable to perfect and protect the Lien over the Encumbered Property have been duly made and taken. No effective deed of trust, mortgage, financing statement or other instrument similar in effect covering all or any part of the Encumbered Property is recorded or on file in any recording or filing office, except such as may have been expressly disclosed in writing to the Beneficiary. Immediately following the execution hereof, the Trustor shall cause this Instrument and any financing statements or similar



instruments relating hereto to be recorded and filed with all appropriate offices necessary and desirable to perfect and protect the Lien over the Encumbered Property.

**SECTION 2.11. Perfected Lien.** Upon the recording and filing of this Instrument and all financing statements or similar instruments relating hereto with all appropriate offices, this Instrument will, subject to Section 2.2, create a valid, first-priority, perfected security interest in the Encumbered Property, securing payment of the obligations stated to be secured thereby.

### **ARTICLE 3. COVENANTS**

The Trustor agrees with the Beneficiary that, until the Collateralized Obligations have been paid and performed in full, it shall perform its obligations set forth in this Article.

**SECTION 3.1. Payment and Performance of Collateralized Obligations.** The Trustor will duly pay and perform the Collateralized Obligations hereunder and under and in connection with the Credit Agreement and each other Finance Document to which it is a party as and when required by their terms.

**SECTION 3.2. Warrant and Defend Title.** The Trustor will warrant and forever defend the Royalty Assignment (except to the extent such Trustor is permitted to encumber, abandon or dispose of the same pursuant to this Instrument or the Credit Agreement without resulting in a Default) unto the Trustee and Beneficiary against every Person whomsoever lawfully claiming the same or any part thereof, and the Trustor will maintain and preserve the Lien hereby created.

**SECTION 3.3. Further Assurances.** The Trustor will execute and deliver such other and further instruments and will do such other and further acts as in the reasonable opinion of the Trustee or the Beneficiary may be necessary or desirable to carry out more effectually the purposes of this Instrument, including, without limiting the generality of the foregoing, (a) prompt correction of any defect which may hereafter be discovered in the title to the Royalty Assignment or in the execution and acknowledgment of this Instrument or any other document executed in connection herewith, and (b) supplements to this Instrument as reasonably required from time to time by the Beneficiary.

**SECTION 3.4. [Intentionally Blank.]**

**SECTION 3.5. Operation of the Encumbered Property.** In addition to any similar obligations binding on it pursuant to the Credit Agreement, the Trustor shall, at the Trustor's own expense:

(a) do or cause to be done all things necessary to keep unimpaired the Trustor's rights in the Encumbered Property (except as permitted by Section 3.2);

(b) cause the Encumbered Property to be kept free and clear of Liens, other than (i) the Lien created by this Instrument and, (ii) Permitted Liens;

(c) [intentionally blank];

(d) furnish to the Beneficiary prior to the occurrence of any change in the address of the Trustor's location (as described on the signature page hereto) or in the name of the Trustor, notice in writing of such change;

(e) comply in all material respects with all conditions and requirements arising under Applicable Law necessary to preserve and extend any and all rights, licenses, permits, claims, patents, privileges, franchises and concessions necessary in order to use and own the Encumbered Property which are applicable to the Trustor or have been granted for the Encumbered Property or the use thereof;

(f) not initiate or acquiesce in any change in any material zoning or other land use or water rights classification now or hereafter in effect and affecting the Encumbered Property or any part thereof, where such change, if implemented, would have a Material Adverse Effect; and

(g) appear in and defend, with counsel reasonably acceptable to the Beneficiary, any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee; and pay all reasonable costs and expenses, including cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which the Beneficiary or the Trustee may appear.

**SECTION 3.6. Trustor Remains Liable.** Anything herein to the contrary with respect to the Assigned Agreements notwithstanding:

(a) the Trustor shall remain liable under the Assigned Agreements to the extent set forth therein, and shall perform all of its duties and obligations under such Assigned Agreements to the same extent as if this Instrument had not been executed,

(b) the exercise by the Trustee or the Beneficiary of any of its rights hereunder shall not release the Trustor from any of its duties or obligations under any such Assigned Agreements, and



(c) neither the Trustee nor the Beneficiary shall have any obligation or liability under any Assigned Agreement by reason of this Instrument, nor shall the Trustee or the Beneficiary be obligated to perform any of the obligations and liabilities or duties of the Trustor thereunder or to take any action to collect or enforce any claim for payment assigned thereunder.

**SECTION 3.7. [Intentionally Blank.]**

**SECTION 3.8. Recording and Filing.** The Trustor will promptly, and at the Trustor's expense, pay all fees, taxes and charges, execute, record, register, deposit and file this and every other instrument in addition or supplemental hereto, including, without limitation, financing statements and continuations thereof, in such offices and places and at such times and as often as may be reasonably necessary to create, preserve, protect and renew the Lien as a valid, first Lien on and prior perfected security interest in real or personal property (except as otherwise permitted pursuant to this Instrument), as the case may be, and the rights and remedies of the Trustee and of the Beneficiary, obtain such acknowledgements or consents, notify all obligors or providers of services and materials and otherwise do and observe all things or matters necessary or expedient to be done or observed by reason of any Applicable Law, or as the Beneficiary reasonably may request from time to time, for the purpose of effectively creating, maintaining and preserving the Lien hereof on and in the Encumbered Property.

**SECTION 3.9. Sale or Mortgage of the Encumbered Property.** Except in the ordinary course of the Trustor's business, the Trustor will not sell, convey, mortgage, pledge, or otherwise dispose of or encumber the Encumbered Property nor any portion thereof, nor any of the Trustor's right, title or interest therein, nor contract to do nor permit to occur any of the foregoing, without first securing the written consent of the Beneficiary. Upon the disposition of any Encumbered Property permitted pursuant to this Instrument or the Credit Agreement, the Administrative Agent shall, at the Trustor's expense, execute and deliver to the Trustor all instruments and other documents as may be necessary or proper to release the lien on and security interest in such Encumbered Property which has been granted hereunder.

**SECTION 3.10. [Intentionally Blank.]**

**SECTION 3.11. Right of Entry.** The Trustor will permit the Trustee, employees of the Beneficiary and such other persons or entities as the Beneficiary may in its discretion designate, at the cost and expense of the Trustor, reasonable access to the Encumbered Property and to the field offices and other offices, including the principal place of business, of the Trustor to inspect and examine the Encumbered Property and to inspect, review and reproduce as necessary any books, records,

accounts, contracts or other documents of the Trustor. This Section shall not be construed to affect or limit the obligations or rights of the Trustor pursuant to the Credit Agreement or Section 6.10 or 6.11 of this Instrument in any manner whatsoever.

**SECTION 3.12. After-Acquired Properties.** To the extent required pursuant to Section 11.1(x) or Section 11.2(k) of the Credit Agreement, the Trustor shall advise the Beneficiary as to any additional interests in the Encumbered Property it has acquired and, to the extent required pursuant to Section 11.1(bb) of the Credit Agreement, shall execute, acknowledge and deliver such other and further instruments and agreements necessary or desirable to include such interests and assets as a part of the Encumbered Property hereunder.

**SECTION 3.13. Performance of Assigned Agreements; Notices.** The Trustor shall:

(a) perform and observe in all material respects its covenants and agreements in the Assigned Agreements, maintain the Assigned Agreements in full force and effect, enforce, defend and protect its rights contained in the Assigned Agreements, and

(b) upon the reasonable request of the Beneficiary: (i) furnish to the Beneficiary such information and reports regarding the Assigned Agreements as the Beneficiary may reasonably request, and (ii) make upon each relevant Assigned Agreement counterparty such demands and requests for information and reports or for action as the Trustor is entitled to make under the Assigned Agreements.

**SECTION 3.14. Actions Under Assigned Agreements.** The Trustor shall not:

(a) cancel or terminate any Assigned Agreement or consent to or accept any cancellation or termination thereof,

(b) amend or otherwise modify any Assigned Agreement or give any consent, waiver or approval thereunder, or

(c) waive any default under or breach of any Assigned Agreement, in each case to the extent such action would result in a Material Adverse Effect.

#### **ARTICLE 4. ASSIGNMENT OF ROYALTY ASSIGNMENT**

**SECTION 4.1. Assignment.** The Trustor hereby absolutely and irrevocably (a) transfers, assigns, warrants and conveys to the Beneficiary, effective as of the date





hereof, at 12:01 A.M., local time, the Royalty Assignment, and (b) gives to and confers upon the Beneficiary the right, power and authority to collect the Royalties. The Trustor irrevocably appoints the Beneficiary its true and lawful attorney-in-fact, with full authority in the place and stead of the Trustor and in the name of the Trustor or otherwise, from time to time in the Beneficiary's discretion, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of the Trustor or the Beneficiary, for the Royalty Assignment and apply the Royalties to the payment of the Collateralized Obligations. Subject to the foregoing, all parties responsible for the payment of the Royalties, are authorized and directed to treat and regard the Beneficiary as the assignee and transferee of the Trustor and entitled in the Trustor's place and stead to receive such Royalties; and said parties and each of them shall be fully protected in so treating and regarding the Beneficiary and shall be under no obligation to see to the application by the Beneficiary of any such proceeds or payments received by it. The assignment of the Royalty Assignment and the Royalties in this Section is intended to be an absolute assignment from the Trustor to the Beneficiary and not merely the granting or passing of a security interest. Such Royalty Assignment and the Royalties are hereby assigned absolutely by the Trustor to the Beneficiary contingent with respect to collection only upon the occurrence of an Event of Default hereunder.

**SECTION 4.2. Collection Upon Event of Default.** Upon the occurrence of any Event of Default, the Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Collateralized Obligations, in its own name or as agent or attorney in fact for the Trustor, enter upon and take possession of the Encumbered Property, or any part thereof, and sue for or otherwise collect the Royalties, including those past due and unpaid and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any of the Collateralized Obligations, in such order as the Beneficiary shall determine. The collection of the Royalties, or the entering upon and taking possession of the Encumbered Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to notice of default.

**SECTION 4.3. No Liability of the Beneficiary in Collecting.** The Beneficiary is hereby absolved from all liability for failure to enforce collection of any proceeds so assigned (and no such failure shall be deemed to be a waiver of any right of the Beneficiary under this Article) and from all other responsibility in connection therewith, except the responsibility to account to the Trustor for funds actually received.

**SECTION 4.4. Assignment Not a Restriction on the Beneficiary's Rights.** Nothing herein contained shall detract from or limit the absolute obligation of the Trustor to make payment of the Collateralized Obligations regardless of whether the

proceeds assigned by this Article are sufficient to pay the same, and the rights under this Article shall be in addition to all other security now or hereafter existing to secure the payment and performance of the Collateralized Obligations.

**SECTION 4.5. Status of Assignment.** Notwithstanding the other provisions of this Article, and in addition to the other rights hereunder, the Trustee or any receiver appointed in judicial proceedings for the enforcement of this Instrument shall have the right to receive the Royalties herein assigned and the proceeds therefrom after the Collateralized Obligations have been declared due and payable in accordance with the provisions of the Credit Agreement and/or Hedging Agreement and to apply all of said proceeds as provided in Section 4.2. Upon any sale of the Encumbered Property or any part thereof pursuant to Article 5, the Royalties thereafter attributable to the property so sold, and the proceeds therefrom, shall be included in such sale and shall pass to the purchaser free and clear of the assignment contained in this Article.

**SECTION 4.6. Indemnity.** In addition to any similar obligations set forth in the Credit Agreement and each other Credit Document to which it is a party, the Trustor shall indemnify the Trustee and the Beneficiary against all claims, actions, liabilities, judgments, costs, losses, damages, attorneys' fees or other charges or expenses of whatsoever kind or nature (collectively, "Claims") made against or incurred by them or either of them as a consequence of the assertion, either before or after the payment in full of the Secured Obligations, that they or any of them received the Royalty Assignment herein assigned or the proceeds thereof claimed by third persons, and the Trustee and the Beneficiary shall have the right to defend against any such Claims, employing attorneys therefor, and unless furnished with reasonable indemnity, they or any of them shall have the right to pay or compromise and adjust all such Claims. The Trustor will indemnify and pay to the Trustee or the Beneficiary any and all such amounts as may be paid in respect thereof or as may be successfully adjudged against the Trustee and the Beneficiary, except to the extent such amounts arise for the account of the Trustee or Beneficiary by reason of their gross negligence or wilful misconduct (as determined by a court of competent jurisdiction). If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Trustor hereby agrees to make the maximum contribution to the payment and satisfaction of the claims which is permissible under Applicable Law. The obligations of the Trustor as hereinabove set forth in this Section shall survive the release, termination, foreclosure or assignment of this Instrument or any sale hereunder.

## **ARTICLE 5. ENFORCEMENT OF THE SECURITY**

**SECTION 5.1. Waiver of Notice and Demand Upon Acceleration.** Upon the occurrence of an Event of Default, Beneficiary, at its option, may declare the



Collateralized Obligations to be forthwith due and payable, without any notice or demand of any kind, both of which are hereby expressly waived.

**SECTION 5.2. Power of Sale of Real Property Constituting a Part of the Encumbered Property.** Upon the occurrence of an Event of Default, the Trustee shall have the right and power to sell without the necessity of judicial proceedings, to the extent permitted by Applicable Law, at one or more sales, as an entirety or in parcels, as it and the Beneficiary may elect, the real property constituting a part of the Encumbered Property, at such place or places and otherwise in such manner and upon such notice as may be required by Applicable Law, or, in the absence of any such requirement, as the Trustee and the Beneficiary may deem appropriate, and to make conveyance to the purchaser or purchasers; and the Trustor shall warrant title (to the extent, but subject to the exceptions, warranted to the Beneficiary herein) to such real property to such purchaser or purchasers. The Trustee and the Beneficiary may postpone the sale of all or any portion of such real property by public announcement at the time and place of such sale, and from time to time thereafter may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement, as allowed by Applicable Law. The right of sale hereunder shall not be exhausted by one or any sale, and the Trustee and the Beneficiary may make other and successive sales until all of the Encumbered Property shall have been legally sold.

**SECTION 5.3. Rights of the Trustee and the Beneficiary with Respect to Personal Property Constituting a Part of the Encumbered Property.** Upon the occurrence of an Event of Default, the Trustee and the Beneficiary will have all rights and remedies granted by Applicable Law, and particularly by the Uniform Commercial Code, including, but not limited to, the right to take possession of all personal property constituting a part of the Encumbered Property, and for this purpose the Trustee and/or the Beneficiary may enter upon any premises on which any or all of such personal property is situated and take possession of and operate such personal property (or any portion thereof) or remove it therefrom. The Trustee and/or the Beneficiary may require the Trustor to assemble such personal property and make it available to the Trustee and/or the Beneficiary at a place to be designated by the Trustee and/or the Beneficiary. Unless such personal property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Trustee and/or the Beneficiary will give the Trustor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition of such personal property is to be made. This requirement of sending reasonable notice will be met if the notice is mailed by first-class mail, postage prepaid, to the Trustor at the address shown below the signatures at the end of this Instrument at least ten (10) days before the time of the sale or disposition.

**SECTION 5.4. [Intentionally Blank.]**

**SECTION 5.5. Judicial Proceedings.** Upon the occurrence of an Event of Default, the Trustee and/or the Beneficiary, in lieu of or in addition to exercising any power of sale hereinabove given, may proceed by a suit or suits in equity or at law, whether for a foreclosure hereunder, or for the sale of the Encumbered Property, or for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Encumbered Property, or for the enforcement of any other appropriate legal or equitable remedy.

**SECTION 5.6. Possession of the Encumbered Property.** It shall not be necessary for the Trustee or the Beneficiary to have physically present or constructively in its possession at any sale held by the Trustee, the Beneficiary or by any court, receiver or public officer any or all of the Encumbered Property, and the Trustor shall deliver to the purchasers at such sale on the date of sale the Encumbered Property purchased by such purchasers at such sale, and if it should be impossible or impracticable for any of such purchasers to take actual delivery of the Encumbered Property, then the title and right of possession to the Encumbered Property shall pass to such purchaser at such sale as completely as if the same had been actually present and delivered.

**SECTION 5.7. Certain Aspects of a Sale.** The Beneficiary shall have the right to become the purchaser at any sale held by the Trustee or by any court, receiver or public officer, and the Beneficiary shall have the right to credit upon the amount of the bid made therefor the amount payable out of the net proceeds of such sale to it. Recitals contained in any conveyance made to any purchaser at any sale made hereunder shall conclusively establish the truth and accuracy of the matters therein stated, including, without limiting the generality of the foregoing, nonpayment of the unpaid portion of, and the interest accrued on, the Collateralized Obligations after the same have become due and payable, advertisement and conduct of such sale in the manner provided herein or appointment of any successor Trustee hereunder.

**SECTION 5.8. Receipt to Purchaser.** Upon any sale, whether made under the power of sale herein granted and conferred or by virtue of judicial proceedings, the receipt of the Trustee, or of the officer making sale under judicial proceedings, shall be sufficient discharge to the purchaser or purchasers at any sale for his or their purchase money, and such purchaser or purchasers, or his or their assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Trustee or of such officer therefor, be obliged to see to the application of such purchase money, or be in anywise answerable for any loss, misapplication or nonapplication thereof.



**SECTION 5.9. Effect of Sale.** Any sale or sales of the Encumbered Property, whether under the power of sale herein granted and conferred or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever either at law or in equity, of the Trustor of, in and to the premises and the property sold and shall be a perpetual bar, both at law and in equity, against the Trustor and the Trustor's successors or assigns, and against any and all persons claiming or who shall thereafter claim all or any of the property sold from, through or under the Trustor or the Trustor's successors or assigns. Nevertheless, the Trustor, if requested by the Trustee and/or the Beneficiary so to do, shall join in the execution and delivery of all proper conveyances, assignments and transfers of the properties so sold.

**SECTION 5.10. Application of Proceeds.** All proceeds received by the Beneficiary in respect of any sale of the Encumbered Property, or any part thereof, whether under the power of sale herein (whether granted and conferred herein, or by virtue of judicial proceeding) of, collection from, or other realization upon, all or any part of the Encumbered Property (after payment and satisfaction of all costs and expenses incurred by the Mortgagee in the performance of its rights or duties, and of any amounts payable pursuant to the Credit Agreement and Section 5.13 of this Instrument) shall be applied in such order as Beneficiary shall determine.

**SECTION 5.11. Liability for Deficiency.** The Trustor will remain liable for any deficiency owing to the Beneficiary and be entitled to surplus, if any, after application of the proceeds of any sale of the Encumbered Property as set forth in Section 5.10, to the fullest extent permitted by Applicable Law.

**SECTION 5.12. The Trustor's Waiver of Appraisal, Marshalling, and Other Rights.** The Trustor agrees, to the fullest extent that the Trustor may lawfully so agree, that the Trustor will not at any time insist upon or plead or in any manner whatever claim the benefit of any appraisal, moratorium, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Instrument or the absolute sale of the Encumbered Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; and the Trustor, for the Trustor and all who may claim by, through or under the Trustor, so far as the Trustor or those claiming by, through or under the Trustor now or hereafter lawfully may, hereby waives the benefit of all such laws. The Trustor, for the Trustor and all who may claim by, through or under the Trustor, waives, to the extent that the Trustor may lawfully do so, any and all right to the exemption of homesteads and to have the Encumbered Property marshalled upon any foreclosure of the Lien hereof, or sold in inverse order of alienation, and agrees that the Trustee or any court having jurisdiction to foreclose such Lien may sell the Encumbered Property as an entirety or in separate parts. The Trustor, for the Trustor and all who may claim by, through or

under the Trustor, further waives, to the fullest extent that the Trustor may lawfully do so, any requirement for posting a receiver's bond or replevin bond or other similar type of bond if the Trustee and/or the Beneficiary commences an action for appointment of a receiver or an action for replevin to recover possession of any of the Encumbered Property. The Trustor hereby further waives the pleading of any statute of limitations as a defense to any and all Collateralized Obligations, and the Trustor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Instrument or any of the Encumbered Property. The Trustor, for itself and for all persons and entities hereafter claiming by, through or under the Trustor or who may at any time hereafter become holders of Liens junior to the Lien of this Instrument, hereby expressly waives and releases all rights to direct the order in which any of the Encumbered Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Encumbered Property and/or any other property now or hereafter constituting security or any of the Collateralized Obligations marshalled upon foreclosure of this Instrument or of any other security or any of such Collateralized Obligations. If any Applicable Law in this Section referred to and now in force, of which the Trustor or the Trustor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this Section.

**SECTION 5.13. Costs and Expenses.** All reasonable costs and expenses (including reasonable attorneys' fees and other legal, management and consulting expenses) incurred by the Trustee or the Beneficiary in protecting and enforcing their rights hereunder (including (i) any and all such costs and expenses which are incurred in connection with any state or federal action or proceeding concerning bankruptcy, debt relief, or protection from creditors, and in connection with any and all appellate actions or proceedings and (ii) any and all costs and expenses of any entry or taking of possession of, or any sale or conveyance of, any Encumbered Property (including, advertisement costs, court costs, compensation of any employees and reasonable legal fees)), shall constitute a demand obligation owing by the Trustor to the party incurring such costs and expenses and shall draw interest at an annual rate equal to the highest rate of interest from time to time accruing under and as provided in the Credit Agreement until paid, all of which shall constitute a portion of the Collateralized Obligations.

**SECTION 5.14. Operation of the Encumbered Property by the Beneficiary.** Upon the occurrence of an Event of Default and in addition to all other rights herein conferred on the Beneficiary, the Beneficiary (or any Person designated by the Beneficiary) shall have the right and power to the fullest extent allowed under Applicable Law, but shall not be obligated, to enter upon and take possession of any of



the Encumbered Property, and to exclude the Trustor and the Trustor's agents or servants, wholly therefrom, and to hold, use, administer, manage and operate the same to the extent that the Trustor shall be at the time entitled and in its place and stead, in any form and manner deemed expedient by the Beneficiary. The Beneficiary, or any Person designated by the Beneficiary, shall have the right to collect, receive and receipt for the Royalty Assignment and the Royalties (as described in Section 5.2), and to exercise every power, right and privilege of the Trustor with respect to the Encumbered Property. All amounts paid or expended by the Beneficiary in exercising its rights under this Section (plus reasonable compensation to the Beneficiary for its out-of-pocket and other expenses for each matter for which it acts under this Instrument), along with interest thereon at the highest rate of interest from time to time accruing under and as provided in the Credit Agreement until paid, all of which shall constitute a portion of the Collateralized Obligations, shall be added to the Collateralized Obligations and shall be repaid to the Beneficiary upon demand. When and if such expenses have been paid and the Collateralized Obligations paid, said properties shall, if there has been no sale or foreclosure, be returned to the Trustor.

#### **ARTICLE 6. OTHER PROVISIONS**

**SECTION 6.1. Successor Trustee.** Any Trustee may resign in writing addressed to the Beneficiary or may be removed at any time with or without cause by an instrument in writing duly executed by the Beneficiary. In case of the resignation or removal of a Trustee, one or more successor Trustees may be appointed by the Beneficiary by an instrument of substitution complying with any requirements of Applicable Law and in the absence of any such requirement without formality other than appointment and designation in writing. Such appointment and designation shall be full evidence of the right and authority to make the same and of all facts therein recited, and upon the making of any such appointment and designation this conveyance shall vest in the named successor Trustee or Trustees all the estate and title of the prior Trustee in all of the Encumbered Property, and he or they shall thereupon succeed to all the rights, powers, privileges, immunities and duties hereby conferred upon the prior Trustee. All references herein to the Trustee shall be deemed to refer to the Trustee from time to time acting hereunder.

**SECTION 6.2. Right to Perform the Trustor's Obligations.** Each and every covenant herein contained shall be performed and kept by the Trustor solely at the Trustor's expense. If the Trustor shall fail to perform or keep any of the covenants of whatsoever kind or nature contained in this Instrument, the Beneficiary, or the Trustee or any receiver appointed hereunder, may, but shall not be obligated to, perform or keep, or cause to be performed or kept, the same in the Trustor's behalf, and the Trustor hereby agrees to reimburse the Beneficiary or the Trustee or such receiver (as the case may be) on demand for all reasonable expenses incurred in connection therewith plus



interest thereon at an annual rate equal to the highest rate of interest from time to time accruing under and as provided in the Credit Agreement until paid. The undertaking of such performance by the Beneficiary or the Trustee or such receiver (as the case may be) as aforesaid shall not obligate the Beneficiary or the Trustee or such receiver (as the case may be) to continue such performance or to engage in such performance or performance of any other act in the future, shall not obligate the Trustee or such receiver (as the case may be) to take any necessary steps to preserve rights against prior parties or any other rights in connection with any agreements, shall not relieve the Trustor from the observance or performance of any covenant or agreement contained in this Instrument or constitute a waiver of default hereunder and shall not affect the right of the Beneficiary to accelerate the payment of the Collateralized Obligations or to resort to any other of its rights or remedies hereunder or under Applicable Law.

**SECTION 6.3. Defense of Claims.** The Trustor will notify the Trustee, in writing, promptly of the commencement of any legal proceedings affecting the Lien hereof or the Encumbered Property, or any part thereof, and will take such action, employing attorneys agreeable to the Trustee, as may be necessary or appropriate to preserve the Trustor's, the Trustee's and the Beneficiary's rights affected thereby and/or to hold harmless the Trustee and the Beneficiary in respect of such proceedings; and should the Trustor fail or refuse to take any such action, the Trustee or the Beneficiary may, upon giving prior written notice thereof to the Trustor, take such action on behalf and in the name of the Trustor and at the Trustor's expense. Moreover, the Beneficiary or the Trustee, on behalf of the Beneficiary, may take such independent action in connection therewith as it or they may in its or their discretion deem proper, the Trustor hereby agreeing that all sums advanced or all reasonable expenses incurred in such actions plus interest at an annual rate equal to the highest rate of interest from time to time accruing under and as provided in the Credit Agreement until paid, will, on demand, be reimbursed, as appropriate, to the Beneficiary, the Trustee or any receiver appointed hereunder. The obligations of the Trustor as hereinabove set forth in this Section shall survive the release, termination, foreclosure or assignment of this Instrument or any sale hereunder.

**SECTION 6.4. The Encumbered Property to Revert.** If the Collateralized Obligations shall be fully paid in cash and the covenants herein contained shall be well and truly performed, then all of the Encumbered Property shall revert to the Trustor and the entire estate, right, title and interest of the Trustee and the Beneficiary shall thereupon cease; and the Trustee and the Beneficiary in such case shall, upon the request of the Trustor and at the Trustor's cost and expense, deliver to the Trustor proper instruments acknowledging satisfaction of this Instrument without warranty or recourse of any kind, to the person or persons legally entitled thereto.





**SECTION 6.5. Renewals, Amendments and Other Security.** Renewals and extensions of the Collateralized Obligations may be given at any time and amendments may be made to agreements relating to any part of such Collateralized Obligations or the Encumbered Property and the Trustee and the Beneficiary may take or may now hold other security for the Collateralized Obligations, all without notice to or consent of the Trustor. The Trustee or the Beneficiary may resort first to such other security or any part thereof or first to the security herein given or any part thereof, or from time to time to either or both, even to the partial or complete abandonment of either security, and such action shall not be a waiver of any rights conferred by this Instrument, which shall continue as a first-priority, perfected Lien (subject to the exceptions set forth herein) in the Encumbered Property not expressly released until the Collateralized Obligations are fully paid and performed.

**SECTION 6.6. Construction of Instrument as an Assignment, etc.** This Instrument shall be deemed to be and may be enforced from time to time as an assignment, chattel mortgage, contract, mortgage, deed of trust, financing statement or security agreement, and from time to time as any one or more thereof.

**SECTION 6.7. Limitation on Interest.** Notwithstanding any other provision of this Instrument, the Credit Agreement, or any other Finance Documents, the Trustor does not agree, and shall not be charged with, or obligated to pay, any amount of interest that would render the Credit Agreement or Finance Documents usurious. It is the intention of the Beneficiary and all Finance Parties, including the Lenders, to conform strictly to the applicable usury laws presently in force, and any agreement for taking, receiving, reserving or charging interest shall be held to be subject to reduction to the amount allowed under said usury laws, so that if from any circumstances any interest is in excess of the maximum permitted by Applicable Law, such excess shall be cancelled automatically, and if theretofore paid, shall be refunded or credited on the principal amount of the obligation secured thereby. All sums paid or agreed to be paid to the Beneficiary and Finance Parties, including the Lenders, for the use, forbearance or detention of the Secured Obligations shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread throughout the full stated term of the Secured Obligations until payment in full so that the rate or amount of interest does not exceed the maximum lawful rate in effect and applicable to the Secured Obligations for so long as the Secured Obligations are outstanding. This provision shall control any provision of this Instrument, the Credit Agreement, and Finance Documents, or any other instruments in connection therewith which are inconsistent with this paragraph.

**SECTION 6.8. Unenforceable or Inapplicable Provisions.** If any provision hereof or of any other Finance Document is invalid or unenforceable in any jurisdiction, the other provisions hereof or of such Finance Document shall remain in full force and effect in such jurisdiction, and the remaining provisions hereof shall be liberally



construed in favor of the Trustee and the Beneficiary in order to effectuate the provisions hereof or thereof, and the invalidity of any provision hereof in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction. Any reference herein contained to a statute or law of a state in which no part of the Encumbered Property is situated shall be deemed inapplicable to, and not used in, the interpretation hereof.

**SECTION 6.9. Rights Cumulative; Waiver.**

(a) Each and every right, power and remedy herein given to the Trustee or the Beneficiary shall be cumulative and not exclusive; and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and so often and in such order as may be deemed expedient. No failure or delay by or on the part of the Trustee or the Beneficiary, as the case may be, and the exercise, or the beginning of the exercise, of any such right, power or remedy shall be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. No such failure or delay in exercising any power or right under this Instrument shall operate as a waiver of any right hereunder, nor shall any single or partial exercise of any power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. No notice to or demand on the Trustor in any case shall entitle it to any notice or demand in similar or other circumstances. No delay or omission by the Trustee or by the Beneficiary in the exercise of any right, power or remedy shall impair any such right, power or remedy or operate as a waiver thereof or of any other right, power or remedy then or thereafter existing. No waiver or approval under this Instrument shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

(b) Any and all covenants in this Instrument may from time to time by Instrument in writing signed by the Beneficiary be waived to such extent and in such manner as the Beneficiary may desire, but no such waiver shall ever affect or impair either the Trustee's or the Beneficiary's rights or Liens hereunder, except to the extent specifically stated in such written instrument.

**SECTION 6.10. Indemnification.** In addition to any similar obligations contained in this Instrument and each other Finance Document to which it is or may become a party, the Trustor hereby indemnifies and holds harmless the Trustee and the Beneficiary and the Finance Parties from and against any and all claims, actions, judgments, costs, fees (including reasonable attorneys' fees), expenses, damages,

charges, losses and liabilities arising out of or resulting from this Instrument (including the enforcement hereof), except claims, losses or liabilities resulting from the Trustee's or the Beneficiary's gross negligence or wilful misconduct (as determined by a court of competent jurisdiction). Without limiting the generality of the foregoing, upon demand, the Trustor will pay to the Trustee or the Beneficiary the amount of any and all reasonable expenses, including the reasonable fees and disbursements of its counsel and of any experts and agents, which the Trustee or the Beneficiary may incur in connection with:

- (a) the administration of this Instrument, the Credit Agreement and each other Finance Document to which the Trustor or any of its Affiliates is a party;
- (b) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Encumbered Property;
- (c) the exercise of any such right, remedy, power or privilege or enforcement of any of the rights of the Trustee or the Beneficiary hereunder; or
- (d) the failure by the Trustor to perform or observe any of the provisions hereof.

If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Trustor hereby agrees to make the maximum contribution to the payment and satisfaction of such claims, actions, judgments, costs, fees (including reasonable attorneys' fees), expenses, damages, charges, losses and liabilities which is permissible under Applicable Law. The obligations of the Trustor as hereinabove set forth in this Section shall survive the release, termination, foreclosure or assignment of this Instrument or any sale hereunder.

**SECTION 6.11. Release and Waiver.** The Trustor hereby waives and releases any and all rights of contribution, reimbursement or indemnity it has or may hereafter have against the Trustee and/or the Beneficiary arising from or relating to this Instrument and/or the Encumbered Property, including without limitation claims or liabilities relating to Environmental Laws.

**SECTION 6.12. No Partnership.** Nothing contained in this Instrument is intended to, or shall be construed as, creating to any extent and in any manner whatsoever, any partnership, mining partnership, joint venture or association among the Trustor, the Trustee and the Beneficiary, or in any way as to make the Beneficiary or the Trustee co-principals with the Trustor with reference to the Encumbered Property, and any inferences to the contrary are hereby expressly negated.

**SECTION 6.13. Partial Releases.** No partial reconveyance or release from the Lien of this Instrument with respect to any part of the Encumbered Property by the Beneficiary or the Trustee shall in any way alter, vary or diminish the force, effect or Lien of this Instrument against the balance or remainder of the Encumbered Property.

**SECTION 6.14. Action by Individual Trustee.** Any Trustee from time to time serving hereunder shall have the absolute right, acting individually, to take any action and to give any consent and to exercise any right, remedy, power, privilege or authority conferred upon the Trustee, and no person dealing with the Trustee from time to time serving hereunder shall be obligated to confirm the power and authority of the Trustee.

**SECTION 6.15. Successors and Assigns.** This Instrument shall be binding upon the Trustor and the Trustor's successors and assigns, and shall inure to the benefit of the Trustee, its successors, and the Beneficiary for the ratable benefit of the Finance Parties, and their respective successors and assigns; provided, however, that:

(a) the Trustor may not assign, delegate or transfer its rights or obligations hereunder without the prior written consent of the Beneficiary and the Lenders required to consent thereto pursuant to the terms of the Credit Agreement;

(b) the rights of sale, assignment and transfer of the Trustee are described in Section 6.1.

The provisions of this Instrument shall be covenants running with the land.

**SECTION 6.16. Amendments.** The provisions of this Instrument may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by the Trustor and the Beneficiary.

**SECTION 6.17. Headings.** The various headings of this Instrument are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Instrument.

**SECTION 6.18. Execution in Counterparts.** This Instrument may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which are identical and together shall constitute one and the same instrument, except that, to facilitate recordation or filing, in any particular counterpart portions of Exhibit A hereto which describe properties situated in counties other than the county in which such counterpart is to be recorded or filed may have been omitted.

**SECTION 6.19. Recording References in Exhibit A.** All recording references in Exhibit A hereto are to the official real property records of the county in which the affected land is located.

**SECTION 6.20. Special Filing as Financing Statement.** This Instrument shall likewise be a security agreement and a financing statement. This Instrument shall be filed for record, among other places, in the official real property records of each county in which any portion of the real property covered by the Lands described in or referred to in Exhibit A hereto is situated and, when filed in such counties, shall be effective as a financing statement covering fixtures and As-Extracted Collateral located thereon. At the option of the Beneficiary, a carbon, photographic or other reproduction of this Instrument or of any financing statement covering the Encumbered Property or any portion thereof shall be sufficient as a financing statement and may be filed as such.

**SECTION 6.21. Notices.** All notices and other communications provided to any party hereto under this Instrument shall be in writing or by facsimile and addressed or delivered or transmitted to the Trustor or the Beneficiary at its address set forth below its signature hereto or in the case of Beneficiary to it at 100 King Street West, 4<sup>th</sup> Floor, Toronto, Ontario, Canada M5X 1H3, or at such other address or facsimile number as may be designated by such party in a notice to the other parties hereto or, as the case may be, to the Trustee at such address it may designate in a notice to the other parties hereto given in accordance with the provisions of this Section. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when the confirmation of transmission thereof is received by the transmitter.

**SECTION 6.22. Request for Notice.** The Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth on the signature page(s) of this Instrument.

**SECTION 6.23. Statement by the Trustor.** The Trustor, within ten (10) days after being given notice by mail, will furnish to the Beneficiary a written statement stating the unpaid Collateralized Obligations and any other amounts secured by this Instrument and stating whether any offset or defense exists against such principal and interest.

**SECTION 6.24. Acceptance by the Trustee.** The Trustee accepts this trust when this Instrument, duly executed and acknowledged, is made a public record as provided by law.

**SECTION 6.25. Beneficiary Appointed Attorney-in-Fact.** The Trustor hereby irrevocably appoints the Beneficiary the Trustor's attorney-in-fact, with full authority in the place and stead of the Trustor and in the name of the Trustor or otherwise, from time to time in the Beneficiary's discretion, to take any action (including any action under the Assigned Agreements that the Trustor is entitled to take) and to execute any instrument which the Beneficiary may deem necessary or advisable to accomplish the purposes of this Instrument, including:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Assigned Agreements;

(b) to receive, indorse and collect any drafts or other instruments or documents in connection with clause (a);

(c) to file any claims or take any action or institute any proceedings which the Beneficiary may deem to be necessary or desirable for the collection thereof or to enforce the rights of the Beneficiary with respect to any of the Assigned Agreements or to enforce compliance with the terms and conditions of the Assigned Agreements; and

(d) to perform the affirmative obligations of the Trustor hereunder.

The Trustor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section is irrevocable and coupled with an interest.

**SECTION 6.26. Future Advances.** The obligations secured by this Instrument (exclusive of interest and the cost, expenses and all other obligations of Trustor to the Trustee and Beneficiary which are not required to be stated as part of the total principal amount of the indebtedness secured) shall not exceed at any one time \$150,000,000 U.S., which shall also be deemed the stated principal amount of this Instrument. This instrument is made, executed, and delivered to Beneficiary in consideration of future advances to be made in accordance with the terms and conditions of the Credit Agreement. The lien created by this Instrument shall have priority to the same extent as if the face amount hereof had been actually advanced by the Beneficiary to the Trustor at the time of execution of this Instrument.

**SECTION 6.27. Governing Law, Entire Agreement.** **THIS INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE LAWS OF THE STATE OF NEVADA.**

**SECTION 6.28. Beneficiary May Perform.** If the Trustor fails to perform any agreement contained herein, the Beneficiary may itself perform, or cause

performance of, such agreement, and the expenses of the Beneficiary incurred in connection therewith shall be payable by the Trustor pursuant to Section 5.3.

**SECTION 6.29. Beneficiary Has No Duty.** In addition to, and not in limitation of, Section 3.6, the powers conferred on the Beneficiary hereunder are solely to protect its interest in the Assigned Agreements and shall not impose any duty on it to exercise any such powers. Except for the accounting for moneys actually received by it hereunder, the Beneficiary shall have no duty as to any Assigned Agreement or responsibility for taking any necessary steps to preserve rights against prior parties or any other rights pertaining to any Assigned Agreement.

**SECTION 6.30. Waiver of Jury Trial.** THE BENEFICIARY, THE TRUSTEE AND THE TRUSTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS INSTRUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE TRUSTOR, TRUSTEE AND THE BENEFICIARY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BENEFICIARY AND THE TRUSTEE ENTERING INTO THIS INSTRUMENT.



IN WITNESS WHEREOF, each of the Trustor and the Beneficiary has executed or caused to be executed this Deed of Trust with Power of Sale, Assignment of Royalties, Security Agreement and Financing Statement as of the day, month and year first above written.

**TRUSTOR AND DEBTOR**

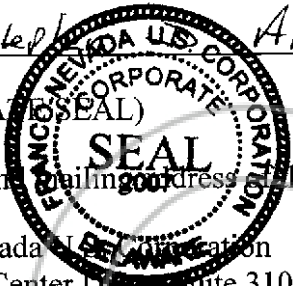
**FRANCO-NEVADA U.S. CORPORATION**

By: *[Signature]*  
Title: President and Chief of US Operations  
Name: Steven K. Aaker

ATTEST:

*[Signature]*  
Asst. Secretary

Name: Stephen D. Alfors  
(CORPORATE SEAL)



The name and mailing address of the Trustor is:

Franco-Nevada U.S. Corporation  
1745 Shea Center Drive, Suite 310  
Highlands Ranch, CO 80129  
Attn: Stephen D. Alfors  
Telephone No: 303-317-6335  
Facsimile No.: 303-317-6133



COPY



ACKNOWLEDGMENT

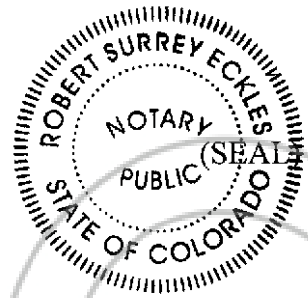
STATE OF Colorado )  
COUNTY OF Douglas : ss.

On this 26th day of February, 2009, before me, the undersigned, a Notary Public for the State of Colorado, personally appeared Alvin K Asher, known to me to be the Chief of US Operations of FRANCO-NEVADA U.S. CORPORATION, who executed the within instrument, and acknowledged to me that said corporation executed the same.

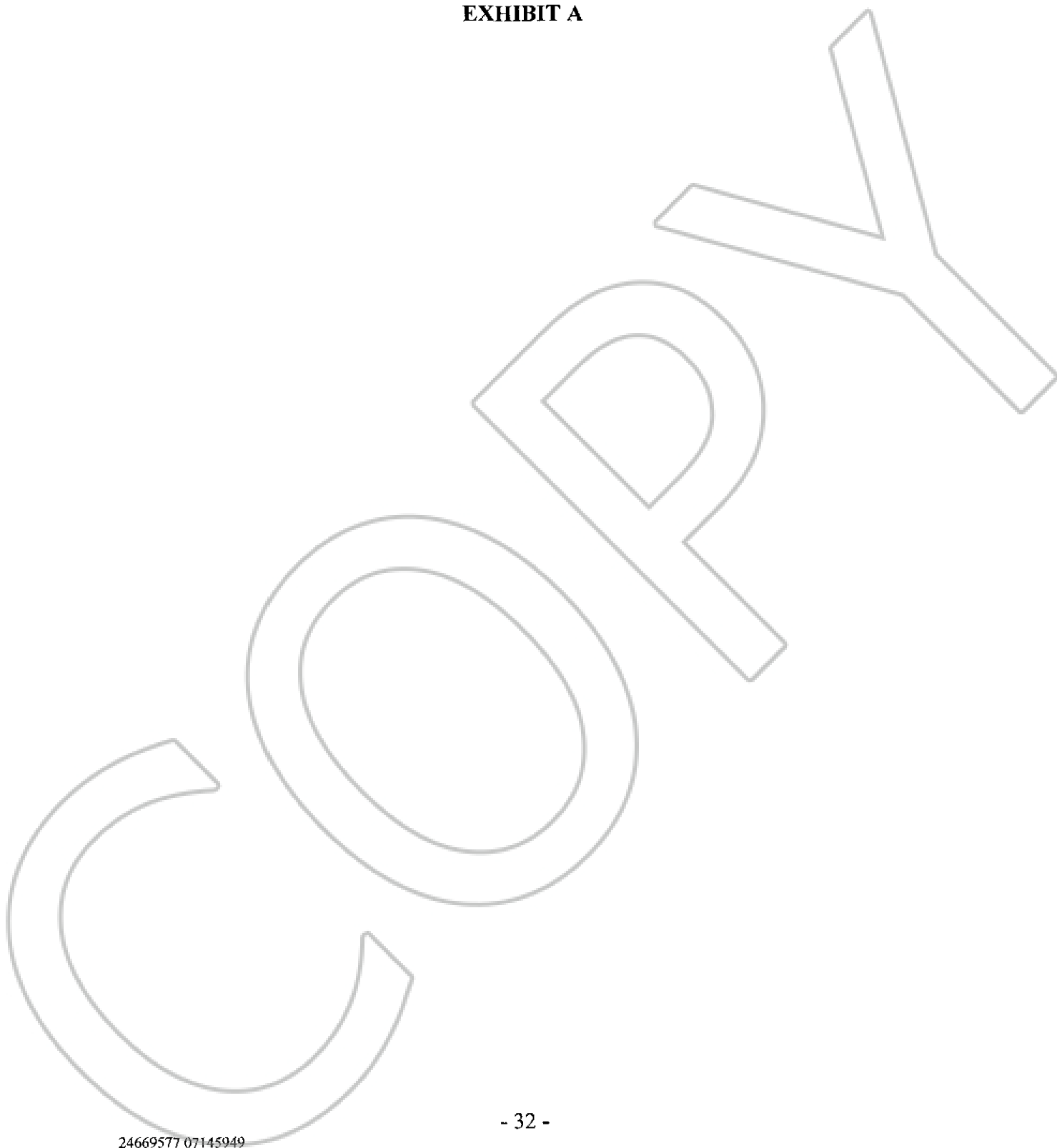
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Robert Surrey Eckles

ROBERT SURREY ECKLES  
Printed Name  
Notary Public for the State of Colorado  
Residing at Denver  
My Commission expires: 9/22/2012



**EXHIBIT A**



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Exhibit A to Gold Quarry Royalty

All those Mineral Interests, Leasehold Interests and rights to receive Royalties pursuant to that Grant, Bargain and Sale Deed and Assignment of Lease dated December 22, 2008 from Gold Quarry Royalty Trust, a Trust organized under the laws of Nevada, as Grantor, to Franco-Nevada U.S. Corporation, as Grantee, as recorded on December 29, 2008 in Book 484 at Pages 289 through 295 of the Official Records of Eureka County, Nevada.

