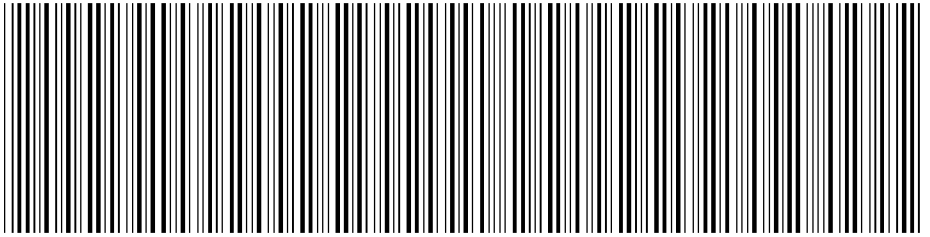


**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**

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2016102001085002001E2FD1

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 17**

**Document ID: 2016102001085002** Document Date: 10-14-2016 Preparation Date: 10-20-2016  
Document Type: SUNDRY MISCELLANEOUS  
Document Page Count: 16

**PRESENTER:**

CHICAGO TITLE INSURANCE CO. (PICK-UP)  
711 THIRD AVE, 5TH FLOOR  
CT16-00533-Q  
NEW YORK, NY 10017  
212-880-1200  
ctinyrecording@ctt.com

**RETURN TO:**

CHICAGO TITLE INSURANCE CO. (PICK-UP)  
VENABLE LLP/PETER G KOFFLER ESQ.  
1270 AVENUE OF THE AMERICAS  
NEW YORK, NY 10020

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
QUEENS	2529	71	Entire Lot	N/A 56TH DRIVE
<b>Property Type:</b> NON-RESIDENTIAL VACANT LAND				

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**PARTY 1:**

HELPS DODGE REFINING CORPORATION  
C/O FREEPORT MCMORAN INC., 333 NORTH  
CENTRAL AVE.  
PHOENIX, AZ 85004

**PARTY 2:**

JMDH REAL ESTATE OF MASPETH PARKING, LLC  
C/O JETRO CASH AND CARRY ENTERPRISES, LLC.,  
15-24 132ND STREET  
COLLEGE POINT, NY 11356

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount:	\$	0.00
Taxable Mortgage Amount:	\$	0.00
Exemption:		
TAXES: County (Basic):	\$	0.00
City (Additional):	\$	0.00
Spec (Additional):	\$	0.00
TASF:	\$	0.00
MTA:	\$	0.00
NYCTA:	\$	0.00
Additional MRT:	\$	0.00
<b>TOTAL:</b>	<b>\$</b>	<b>0.00</b>
Recording Fee:	\$	117.00
Affidavit Fee:	\$	0.00

**Filing Fee:**

Filing Fee:	\$	100.00
NYC Real Property Transfer Tax:	\$	0.00
NYS Real Estate Transfer Tax:	\$	0.00

**RECORDED OR FILED IN THE OFFICE**

**OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 11-07-2016 12:04

City Register File No.(CRFN):

**2016000392343**



*Annette McMill*

**City Register Official Signature**

CT16-00533-0  
WHEN RECORDED RETURN TO: )  
)  
Venable LLP )  
1270 Avenue of the Americas )  
New York, NY 10020 )  
Attn: Peter G. Koffler, Esq. )  
)  
)  
Block/Lot: 2529/71 )  
County: Queens )

DECLARATION OF  
COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this "Declaration") is made as of this 14 day of October, 2016, by and between PHELPS DODGE REFINING CORPORATION, a New York corporation, having an address c/o Freeport-McMoRan Inc., 333 North Central Avenue, Phoenix, AZ 85004-4415 ("Phelps Dodge") and JMDH REAL ESTATE OF MASPETH PARKING, LLC, a Delaware limited liability company, having an office at c/o Jetro Cash and Carry Enterprises, LLC, 15-24 132nd Street, College Point, New York 11356 ("Purchaser").

RECITALS

WHEREAS, Purchaser has, immediately prior to the execution and delivery of this Declaration, acquired fee title from PDRC Laurel Hill 9, LLC ("Seller") to that certain parcel of land located in the Borough and County of Queens, City and State of New York, identified as Block 2529, Lot 71, as more particularly described on Exhibit 1 attached hereto (the "Property"); and

WHEREAS, as an inducement for Seller to convey the Property, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser agreed to execute and deliver this Declaration; and

NOW, THEREFORE, Purchaser and Phelps Dodge hereby agree as follows:

1. Definitions. As used in this Declaration, the following terms shall have the meanings indicated below.

"Cap" is defined in Section 2(b).

"Capping Obligations" is defined in Section 2(a).

"Certification" is defined in Section 2(c).

"Change in Law" means any amendment to, modification of or other change in any Environmental Law as in effect as of the date of this Declaration or the enactment or new interpretation of any Environmental Law after the date of this Declaration.

N/A 56 71 Drive

“Change in Use” means (i) a closure of or cessation of operations at the Property (or any material portion thereof), (ii) a change in use of the Property to a use that violates or conflicts with any Environmental Document, or is substantially dissimilar to the use of the Property as of the date of this Declaration, or (iii) the physical alteration of the Property that is likely to disturb or expose Hazardous Substances or that may violate or conflict with any Environmental Document.

“CICPRR” is defined in Section 2(b).

“Consent Order” means that certain Order on Consent, effective May 13, 2004, entered into by and among PDRC, Sagres Partners, LLC and DEC with respect to the Site and certain other real property located in Maspeth, New York.

“Corrective Measures” is defined in Section 2(c)(ii).

“Corrective Measures Plan” is defined in Section 2(e).

“Damages” means, collectively, any and all actions, claims, causes of action, suits, debts, dues, accounts, reckonings, bonds, bills, specialties, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, covenants, losses, liabilities, costs, expenses (including, without limitation, reasonable attorneys’ fees and disbursements), sums of money and demands whatsoever, in law or in equity.

“DEC” means the New York State Department of Environmental Conservation.

“DEC Oversight Costs” means any fees, costs, charges and/or expenses billed by DEC in respect of its oversight, management and implementation of the Consent Order.

“DEP” means the New York City Department of Environmental Protection.

“DOT Capping Claim” means that certain lawsuit captioned The State of New York, plaintiff, against Freeport McMoRan, Inc. d/b/a Phelps Dodge Refining Corporation, PDRC Laurel Hill 9 LLC and Sagres Partners, LLC, defendants (Civil Action No. 1:16-cv-0131), as the same may be amended from time to time.

“Environment” means the ambient air, surface water, groundwater, soil, soil vapor, sediment and land.

“Environmental Condition” means an existing Environmental Release, past Environmental Release, or threatened Environmental Release.

“Environmental Documents” means, collectively, the ROD, the Consent Order, the SMP, the Remedial Design, and the final environmental work designs and reports and material communications with DEC that alter or modify the same (expressly excluding, however, drafts of such work plans or reports or routine communications with DEC; Seller’s income tax records; its corporate records with its members or partners and any records relating to Seller’s selling or financing negotiations or third party appraisals or any internal documents relating to the value of the Property).

“Environmental Enforcement Entities” means, subject to the second (2nd) sentence of this definition, any Governmental Authority which has jurisdiction over, or approval rights and/or enforcement power with respect to, Remedial Work, and any other Governmental Authority that may be granted jurisdiction over, or approval rights and/or enforcement power with respect to, the Remedial

Work from time to time, and shall include any individual employees, agents, officials or other persons employed by or acting under the jurisdiction of any of the foregoing. For purposes of defining Environmental Enforcement Entities, the only Governmental Authorities deemed to have jurisdiction over the Remedial Work shall be New York State and federal Governmental Authorities (i.e., not local Governmental Authorities), unless and to the extent that, after the date Effective Date, applicable laws, rules and/or regulations (including applicable interpretations and/or applications thereof) change such that any Governmental Authorities become vested with jurisdiction, in which case such local agencies, organizations and/or regulatory bodies shall be deemed to be included within the definition of Environmental Enforcement Entities.

“Environmental Law” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term “Environmental Law” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations or publications adopted or promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term “Environmental Law” also includes, but is not limited to, any present and future federal, state and local laws, statutes ordinances, rules, regulations, permits or authorizations and the like, as well as common law, that (a) condition transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the Property; (b) require notification or disclosure of any Environmental Release or other environmental condition of the Property to any Governmental Authority or other Person, whether or not in connection with a transfer of title to or interest in the Property; (c) impose conditions or requirements in connection with permits or other authorization for lawful activity, with respect to the environmental condition of the Property; (d) relate to nuisance, trespass or other causes of action related to the environmental condition of the Property; or (e) relate to wrongful death, personal injury, or property or other damage in connection with any environmental condition of the Property. The term “Environmental Law” also includes, but is not limited to, the Consent Order, the Remedial Design/Remedial Action Work Plan, the Remedial Design, the SMP, and all other DEC approvals and requirements governing the management of Hazardous Substances remaining in, on and under the Property.

“Environmental Release” includes, but is not limited to, any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances into the Environment.

“Hazardous Substance” includes, but is not limited to, any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Law or that may have a negative impact on human health or the environment, including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, volatile organic compounds, but excluding substances of kinds and in amounts ordinarily and customarily used or stored in properties similar to the Property for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Law.

“Governmental Authority” means any agency, instrumentality, department, commission, court, tribunal or board of any government, whether foreign or domestic and whether national, federal, state, provincial, local or any quasi-governmental entity, having jurisdiction over any of the Seller, PDRC or the Property, including, but not limited to, DEC, DEP, NYSDOT, NYCDOT and USACE.

“IC’s” is defined in Section 2(b)(i).

“Inspection” is defined in Section 2(b).

“Inspection and Certification Obligations” is defined in Section 2(d).

“Inspection Form” is defined in Section 2(b).

“Institutional Control” means any non-physical means of enforcing a restriction on the use of real property that limits human and environmental exposure, restricts the use of groundwater, provides notice to potential owners, operators, or members of the public, or prevents actions that would interfere with the effectiveness of any Environmental Document or with the effectiveness and/or integrity of operation, maintenance, or monitoring activities at or pertaining to the Property, and shall include, but not be limited to, this Declaration of Restrictions.

“Material Adverse Effect” is defined in Section 2(f).

“NYCDOT” means the New York City Department of Transportation.

“NYSDOT” means the New York State Department of Transportation.

“Owner” means Purchaser and its successors and assigns which are the record owner in fee title of all or any portion of the Property at any time.

“Owner Assumed Liabilities” means, collectively, any and all past, present and future obligations or Damages imposed under Environmental Laws, including obligations to perform Remedial Work, relating to or arising out of, in whole or in part, (x) any and all Environmental Conditions on, at, under, emanating from, arising from, relating to and/or in respect of the Property, whether presently or previously know or unknown, or discovered or undiscovered, and (y) the presence of any Hazardous Substances in, on, under, or emanating from the Property, whether presently or previously known or unknown, or discovered or undiscovered, expressly excluding, however, as to both items (x) and (y), any Seller Retained Liabilities.

“Owner Environmental Acts” means (i) any Post-Closing Environmental Condition, except for any such condition actually caused by Seller or Seller Related Parties after the date of this Declaration; (ii) any Pre-Closing Environmental Condition materially exacerbated by any physical activity on, in, under or about the Property by the Owner, Owner Representatives or Owner’s tenants, sub-tenants, invitees, licensees or other; or (iii) any failure by Owner or its tenants or sub-tenants, invitees, licensees or other occupants to observe or comply with the terms and conditions of the Consent Order or any other Environmental Documents, or to observe or comply with any Institutional Control imposed on the Property, or to comply with, inspect, maintain, repair, replace, restore or submit required certifications with respect to, Remedial Design installed or implemented on or at the Property, in each case as required by Environmental Laws, the Consent Order or any other Environmental Documents, which acts or events set forth in clauses (i)-(iii) hereof result in any obligation or requirement to incur any cost or perform any action, including Remedial Work.

“Owner Representatives” means, collectively, Owner and its agents, principals, employees, consultants, inspectors, appraisers, engineers and contractors

“Owner’s Default” is defined in Section 2(f).

“PDRC” means Phelps Dodge (as defined in the preamble hereto), and its successors and assigns.

“Periodic RP” is defined in Section 2(b).

“Post-Closing Environmental Conditions” means any actual or threatened Environmental Release on, at, under or emanating from the Property first occurring or existing on or after the date of this Declaration.

“Pre-Closing Environmental Condition” means an Environmental Release on, at, under or emanating from the Property first occurring or existing prior to the date of this Declaration.

“Person” means any natural person, partnership, corporation, trust, estate, fiduciary, unincorporated association, syndicate, joint venture, or organization or any other entity.

“Remedial Design” means, collectively, (i) that certain Proposed Capping Plans, Specifications and Standard Drawings for Parcels OU1Aa, OU9A and OU2, Replacement of the Kosciuszko Bridge Over Newtown Creek, July 2013, prepared by Hardesty & Hanover, LLC, and (ii) that certain Parcel 9A Partial Cap Remedial Design, September 15, 2016, prepared by GHD Infrastructure and Engineering Inc., as each may be amended.

“Remedial Work” means any activities or work performed in order to respond to, investigate, evaluate, treat, remove, remediate, monitor, correct, abate or in any way address any actual or potential environmental conditions on, at, under, about or emanating from the Property and includes, without limitation, response, removal, remedial and/or corrective actions under any Environmental Law, Institutional Controls and all actions required to operate, inspect, maintain, repair, replace or certify the continuing effectiveness of (x) any equipment installed, erected and operated on the Property for the removal, remediation, correction or treatment of Hazardous Substances or (y) any Institutional Control.

“Reopener” means a requirement imposed by DEC or any other Environmental Enforcement Entity pursuant to the Consent Order to perform additional Remedial Work to address Pre-Closing Environmental Conditions in the soil or groundwater on, at, under or emanating from the Property as a result of a determination by such agency that the Consent Order was improperly issued or is invalid or rescinded or that Remedial Work previously implemented under the Consent Order, including an Institutional Control, intended to address such conditions is not or is no longer adequately protective of human health or the Environment, except if such determination is the result, in whole or in part, of Owner Environmental Acts, a Change in Law or a Change in Use.

“ROD” means that Record of Decision - Phelps Dodge Laurel Hill Site, Maspeth, Queens County, site Number 2-41-0002, issued January, 2003 by DEC.

“Seller Related Parties” means, individually and collectively, and any agent, advisor, representative, affiliate, employee, director, partner, principal, member, beneficiary, investor, servant, shareholder, trustee or other person or entity acting on Seller’s behalf or otherwise related to or affiliated with Seller (including their respective successors and assigns).

“Seller Retained Liabilities” means any and all Damages relating to or arising out of (i) any Reopeners, (ii) any material exacerbation of Environmental Conditions at the Property caused by the affirmative acts or omissions (where a duty to act exists) of Seller or Seller Related Parties after Closing, and (iii) the DOT Capping Claim.

“Site” means the Laurel Hill site, located in Maspeth, New York, of which the Property comprises a portion.

“Site-Specific Cap” shall mean the capping plan pursuant to the Consent Order as it may be amended and approved by DEC.

“SMP” means that certain Site Management Plan for the Property, as approved by DEC by letter dated April 13, 2016, as the same may be updated, amended and/or modified from time to time.

“USACE” means the United States Army Corp of Engineers.

2. Capping; Etc.

(a) Capping Obligations. Owner shall implement the Site-Specific Cap for the Property, at Owner’s expense (“Capping Obligations”).

(b) Inspections. Owner shall retain a professional engineer, licensed by the State of New York who is also a qualified environmental professional (as defined in 6 NYCRR 375-1.2) to undertake an annual inspection on a schedule consistent with the SMP-stipulated Periodic Review Period (“Periodic RP”) (each, an “Inspection”), of the Site cover system for the Property (the “Cap”) in accordance with the SMP to confirm, among other things, Owner’s due performance of the Capping Obligations. In addition, and without limiting the foregoing, Owner shall ensure that such inspections are performed after the occurrence of any severe weather conditions that may have materially affected the condition or integrity of the Cap. During any and all inspections, an inspection form, as provided in SMP Appendix O, will be completed by such engineer (an “Inspection Form”). The Inspection Form will meet all DEC requirements as in effect from time to time, and at a minimum will compile sufficient information to assess the following:

- (i) compliance with the Institutional Controls (“ICs”) identified in the SMP, including site usage;
- (ii) an evaluation of the condition and continued effectiveness of the Cap;
- (iii) general site conditions at the time of the inspection;
- (iv) the Property management activities being conducted, including, where appropriate, confirmation sampling and a health and safety inspection;
- (v) identify any corrective measures to be undertaken in accordance with Section 7.4 of the SMP; and
- (vi) confirm that the Property records are up to date.

(b) CICPRRs. Owner shall cause its engineer to prepare annual Cap and Institutional Control Periodic Review Reports (“CICPRR”) for the twelve-month period ending on the due date of the Periodic RP, which shall contain all Inspection Forms and a Certification (as defined

below) for such twelve-month period. Owner shall submit the CICPRRs annually to PDRC, and in all events, in time for submittal of the PDRC's annual Periodic RP report to DEC, as required by the SMP.

(c) Certification Obligations. Owner shall cause each CICPRR to, in accordance with the SMP, include a written statement by a New York State licensed professional engineer (a "Certification") certifying, under penalty of perjury, that:

(i) ICs employed at the Property are unchanged from the previous PRR certification or that any changes to the controls were approved by DEC;

(ii) the Cap has been maintained as required by the Remedial Design (as may be amended with DEC approval) for the Property, or repaired, replaced or modified in accordance with a Corrective Measures Plan (as hereinafter defined) and Section 7.4 of the SMP (the "Corrective Measures"); and

(iii) nothing has occurred that impairs the ability of the controls to protect public health and environment, or that constitute a violation or failure to comply with the SMP.

(d) Updates, Etc. Owner's obligations under this Section 2 (collectively, the "Inspection and Certification Obligations") are subject to (a) any updates and/or modifications from time to time of the SMP, and (b) any terms or conditions imposed by DEC through its interpretation and/or enforcement of the SMP from time to time, such that Owner shall, at all times, be required to comply with the SMP and any further or additional requirements imposed by DEC in respect thereof.

(e) Corrective Measures. Owner shall undertake any necessary Corrective Measures required by DEC for the Property, including those identified in any Inspection Forms, or that PDRC (through its environmental consultants) otherwise determines to be required by Section 7.4 of the SMP. Except in the event of an emergency, such Corrective Measures shall be undertaken only after receiving DEC approval of a Corrective Measures plan (as approved, a "Corrective Measures Plan"). Owner's engineer shall confirm the completion of such Corrective Measures in the next annual CICPRR for the Property.

(f) PDRC Self-Help. In the event that Owner fails to, at Owner's cost and expense, promptly undertake, and diligently prosecute to completion, any Corrective Measures (as applicable, an "Owner Default"), PDRC may (but shall not be obligated to), and without limiting any other rights or remedies of PDRC, perform and cure such Owner Default and undertake and prosecute to completion any of the same, at the expense of Owner (i) immediately and without notice in the case of emergency or in case such Owner Default will (or is reasonably likely to) result in a violation of the SMP or an enforcement action by DEC in respect thereof (as applicable, a "Material Adverse Effect"), and (ii) in any other case, if such Owner Default continues after fifteen (15) days following written notice by PDRC of such Owner Default; provided, however, that (A) if such default is not willful and flagrant and is both susceptible of cure and not reasonably likely to result in a Material Adverse Effect, provided that Owner initiates such cure and diligently prosecutes such cure to completion, such grace period shall be extended for such time (not to exceed ninety (90) days in the aggregate) as is reasonably necessary to allow Owner to effect such cure, or (B) if such default or breach is willful, flagrant and material and not susceptible of cure, then no notice or grace period shall be required. Bills for all reasonable costs and expenses incurred by PDRC in connection with any performance by it under this Section 2(f) shall be payable within thirty (30) days after notice of the amount thereof accompanied by reasonable back-up documentation.

(g) Indemnification. Owner shall, to the fullest extent permitted by applicable law, indemnify, defend and hold PDRC harmless from and against any and all claims, demands, causes of



action, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), suffered or incurred by them as a result of or in connection with any failure of Owner to comply with its Capping Obligations or to perform any Corrective Measures, as and when provided herein.

(h) DEC Oversight Costs. Any DEC Oversight Costs, regardless of whether billed to PDRC, Seller, Owner or any other party, shall be allocated between PDRC and Owner as follows:

(i) To the extent DEC Oversight Costs accrue prior to the date of this Declaration, and/or relate exclusively to matters other than the Capping Obligations, PDRC shall be responsible for 100% thereof.

(ii) To the extent DEC Oversight Costs accrue on or after the date of this Declaration and relate, in whole or in part, to the Capping Obligations, such DEC Oversight Costs shall be allocated between PDRC and Owner as follows: (x) if and to the extent such DEC Oversight Costs directly relate to the Capping Obligations, Owner shall be responsible for 100% thereof, and (y) if and to the extent such DEC Oversight Costs relate to both the Capping Obligations and to matters other than the Capping Obligations but are not expressly itemized as such, Owner and PDRC shall each be responsible for their proportional share thereof, based upon a fair and reasonable allocation determined by PDRC taking into account, among other things, the itemized charges, the relation of such charges to the square foot ratio of the Property to other properties to which such charges may pertain, and such other factors that PDRC determines are fair and equitable.

Any sums owed by Owner to PDRC or *vice versa* shall be paid promptly upon demand from the party entitled to receive the same.

3. Indemnification; Release.

(a) Owner, on behalf of itself and its successors and assigns, does hereby remise, release, and forever discharge Seller and any and all Seller Related Parties, and PDRC, from any and all past, present and future damages by reason of, relating to or arising out of Owner Assumed Liabilities and Owner Environmental Acts, which Owner and its successors and assigns at any time had or may have.

(b) Owner hereby agrees to defend, indemnify and hold Seller and all Seller Related Parties, and PDRC, harmless from and against any and all damages which any of them sustain at any time by reason of, relating to or arising out of Owner Assumed Liabilities and any Owner Environmental Acts, provided, however, that the same shall not include punitive, special or consequential damages.

4. Notices. Any notices shall be in writing and shall be deemed to have been given (i) when hand delivered, or (ii) if sent same day or overnight recognized commercial courier service, when received, addressed to the address of the parties stated below or to such changed address as such party may have fixed by notice:

PDRC: Phelps Dodge Refining Corporation  
c/o Freeport-McMoRan Inc.  
333 North Central Avenue  
Phoenix, AZ 85004  
Attn: Jason Hughes, Esq.  
and  
Mr. Joseph A. Brunner

With a copy to: GHD Services Inc.  
651 Colby Drive  
Waterloo ON N2V 1C2  
Canada  
Attn: Robert Medsger  
and  
James K. Puskas

and to: Venable LLP  
1270 Avenue of the Americas  
New York, NY 10020  
Attn: Peter G. Koffler, Esq.

Seller: PDRC Laurel Hill 9, LLC  
c/o Freeport-McMoRan Inc.  
333 North Central Avenue  
Phoenix, AZ 85004  
Attn: Jason Hughes, Esq.  
and  
Mr. Joseph A. Brunner

With a copy to: GHD Services Inc.  
651 Colby Drive  
Waterloo ON N2V 1C2  
Canada  
Attn: Robert Medsger  
and  
James K. Puskas

and to: Venable LLP  
1270 Avenue of the Americas  
New York, NY 10020  
Attn: Peter G. Koffler, Esq.

Owner: JMDH Real Estate of Maspeth Parking, LLC  
c/o Jetro Cash and Carry Enterprises, LLC  
15-24 132nd Street  
College Point, New York 11356  
Attention: CEO

and to: Nachmias Morris & Alt, P.C.  
20 Ash Street, Suite 200  
Conshohocken, Pennsylvania 19428  
Attention: Austin S. Faberman, Esq.

Owner, Seller and PDRC may, by notice given as aforesaid, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its notices. Owner shall, promptly upon any transfer to title of the Property and/or change in the identity or address of Owner, furnish updated notice information to PDRC.

4. Miscellaneous.

(a) Amendments. This Declaration may not be modified or terminated orally or in any manner other than by an agreement in writing signed by (i) Owner, and (ii) PDRC.

(b) Governing Law; Construction. This Declaration shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

(c) Partial Invalidity. If any provision of this Declaration is held to be invalid or unenforceable as against any person or under certain circumstances, the remainder of this Declaration and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

(d) Legal Fees. If any legal action or other proceeding is brought for the enforcement of this Declaration or because of an alleged dispute, breach or default in connection with any of the provisions of this Declaration, the successful or prevailing party or parties shall be entitled to recover its reasonable fees and costs, including reasonable attorneys' fees, court costs and other costs incurred in such action or proceeding, in addition to any other relief to which it or they may be entitled.

(e) Waiver. No failure or delay of PDRC in the exercise of any right given to PDRC hereunder or the waiver by PDRC of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

(f) Headings. The headings which have been used throughout this Declaration have been inserted for convenience of reference only and should not be construed in interpreting this Declaration. Words of any gender used in this Declaration shall include any other gender and words in the singular shall include the plural, and vice versa, unless the context requires otherwise. The terms "include" and "including" when used in this Declaration shall each be construed as if followed by the phrase "without being limited to" or "without limitation". The words "herein," "hereof," "hereunder" and other similar compounds of the words "here" when used in this Declaration shall refer to the entire Agreement and not to any particular provision or section. As used in this Declaration, the term "business day" shall be deemed to mean any day, other than a Saturday or Sunday, on which commercial banks in New York State are not required or authorized to be closed for business.

(g) Construction. This Declaration shall be given a fair and reasonable construction in accordance with the intentions of Purchaser and PDRC.

(h) Binding Effect; Run With Land. All provisions of this Declaration shall, to the extent applicable and unless otherwise expressly herein provided to the contrary, be perpetual and be construed to be covenants running with the land and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon Owner, and shall inure to the benefit of PDRC. All present and future Owners of any portion of the Property and their tenants, lessees and occupants shall be subject to, and shall comply with, the provisions of this Declaration, as may be amended from time to time. The acceptance of a deed or conveyance (including through foreclosure or in lieu of foreclosure), the entering into a lease, or the entering into occupancy of any portion or portions of the Property shall constitute an agreement that the provisions of this Declaration, as may be amended from time to time, are accepted and ratified by such Owner, grantee, tenant, lessee or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any Person having, at any time, any


interest or estate in such deed, conveyance or lease as though such provisions were recited and stipulated at length therein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Owner and PDRC have caused this Declaration of Covenants and Restrictions to be executed and delivered as of the date written above.

PDRC

PHELPS DODGE REFINING CORPORATION,  
a New York corporation

By:   
Name: William E. Cobb  
Title: Vice President

OWNER

JMDH REAL ESTATE OF MASPETH PARKING,  
LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, Owner and PDRC have caused this Declaration of Covenants and Restrictions to be executed and delivered as of the date written above.

PDRC

PHELPS DODGE REFINING CORPORATION,  
a New York corporation

By: \_\_\_\_\_

Name: William E. Cobb

Title: Vice President

OWNER

JMDH REAL ESTATE OF MASPETH PARKING,  
LLC, a Delaware limited liability company

By: \_\_\_\_\_

  
Name: **Brian Emmert**

Title: **CFO, Secretary & Treasurer**

STATE OF ARIZONA )  
 )  
COUNTY OF MARICOPA ) ss.:

On the 14<sup>th</sup> day of September in the year 2016, before me, the undersigned, personally appeared William E. Cobb, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of Phoenix, State of Arizona.



*Sandra G. Skinner*  
Notary Public

STATE OF NEW YORK )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.:

**SEAL**

On the \_\_\_\_ day of September, in the year 2016, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

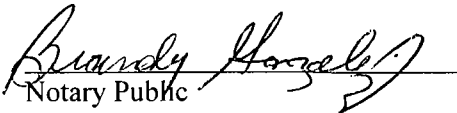
STATE OF ARIZONA            )  
  )  
COUNTY OF MARICOPA    ) ss.:

On the \_\_\_ day of September in the year 2016, before me, the undersigned, personally appeared William E. Cobb, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of Phoenix, State of Arizona.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK        )  
  )  
COUNTY OF Queens    ) ss.:

On the 19<sup>th</sup> day of September, in the year 2016, before me, the undersigned, personally appeared Brian F. Emmert personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
Notary Public

BRANDY GONZALEZ  
Notary Public - State of New York  
No. 01G06257818  
Qualified in Queens County  
My Commission Expires 3/19/20



Exhibit 1  
Legal Description of the Property

All that certain, plot, piece or parcel of land situate, lying and being in the Borough and County of Queens, City and State of New York bounded and described as follows:

BEGINNING at a point on the westerly side of 43<sup>rd</sup> Street (60 feet wide) distant 45.00 feet northerly from the corner formed by the intersection of the westerly side of 43<sup>rd</sup> Street with the northerly side of 57<sup>th</sup> Avenue (60 feet wide);

RUNNING THENCE southwesterly, along a curve bearing to the left having a radius of 2852.62 feet, an arc length of 196.57 feet being subtended by a chord bearing South 78 degrees 26 minutes 44 seconds West, a distance of 196.53 feet to a point of tangency;

RUNNING THENCE South 76 degrees 28 minutes 18 seconds West, 231.69 feet to a point;

THENCE North 05 degrees 16 minutes 15 seconds East, 15.85 feet to the southerly side of land now or formerly of the Long Island Rail Road;

RUNNING THENCE North 76 degrees 28 minutes 18 seconds East, along the land now or formerly of the Long Island Rail Road, 226.59 feet to a point of curvature;

RUNNING THENCE northeasterly, along a curve bearing to the right having a radius of 2867.62 feet an arc length of 197.70 feet, being subtended by a chord bearing North 78 degrees 26 minutes 48 seconds East, a distance of 197.66 feet to the westerly side of 43<sup>rd</sup> Street;

RUNNING THENCE South 09 degrees 14 minutes 31 seconds East, along the westerly side of 43<sup>rd</sup> Street, 15.00 feet to the point or place of BEGINNING.