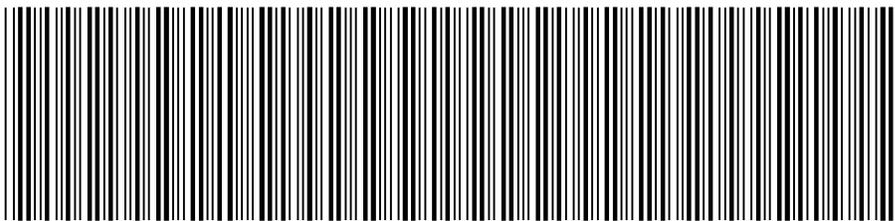


**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**

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**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 13**

**Document ID: 2010060100747001**

Document Date: 05-01-2010

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**PRESENTER:**

CHICAGO TITLE INSURANCE CO. (PICK-UP)  
711 THIRD AVE, 5TH FLOOR  
3110-85102  
NEW YORK, NY 10017  
212-880-1200  
chackoe@ctt.com

**RETURN TO:**

CHICAGO TITLE INSURANCE CO. (PICK-UP)  
STROOCK & STROOCK & LAVAN LLP  
180 MAIDEN LANE (TOOD CULVER)  
NEW YORK, NY 10038

**PROPERTY DATA**

<b>Borough</b>	<b>Block</b>	<b>Lot</b>	<b>Unit</b>	<b>Address</b>
QUEENS	2529	40	Entire Lot	N/A 56TH DRIVE
<b>Property Type:</b> NON-RESIDENTIAL VACANT LAND Easement				

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or Document ID \_\_\_\_\_ or Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**GRANTOR/SELLER:**

PHELPS DODGE REFINING CORPORATION  
C/O FREEPORT-MCMORAN COPPER & GOLD INC.,  
ONE NORTH CENTRAL AVENUE  
PHOENIX, AZ 85004-2306

**GRANTEE/BUYER:**

PHELPS DODGE REFINING CORPORATION  
C/O FREEPORT-MCMORAN COPPER & GOLD INC.,  
ONE NORTH CENTRAL AVENUE  
PHOENIX, AZ 85004-2306

**FEES AND TAXES**

<b>Mortgage</b>				<b>Filing Fee:</b>	
Mortgage Amount:	\$	0.00		\$	100.00
Taxable Mortgage Amount:	\$	0.00		NYC Real Property Transfer Tax:	
Exemption:				\$	0.00
<b>TAXES:</b> County (Basic):	\$	0.00		NYS Real Estate Transfer Tax:	
City (Additional):	\$	0.00		\$	0.00
Spec (Additional):	\$	0.00			
TASF:	\$	0.00			
MTA:	\$	0.00			
NYCTA:	\$	0.00			
Additional MRT:	\$	0.00			
<b>TOTAL:</b>	\$	0.00			
Recording Fee:	\$	97.00			
Affidavit Fee:	\$	0.00			

**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE  
CITY OF NEW YORK**

Recorded/Filed 06-04-2010 10:37

City Register File No.(CRFN):

**2010000185869**



*Annette McMill*

*City Register Official Signature*

## DECLARATION OF COVENANTS AND EASEMENTS

THIS DECLARATION OF COVENANTS AND EASEMENTS (this "Easement Agreement") made as of this 1st day of May, 2010 by PHELPS DODGE REFINING CORPORATION, a New York corporation, with offices c/o Freeport-McMoRan Copper & Gold Inc., One North Central Avenue, Phoenix, Arizona, 85004-2306 ("Grantor") and PHELPS DODGE REFINING CORPORATION, a New York corporation, with offices c/o Freeport-McMoRan Copper & Gold Inc., One North Central Avenue, Phoenix, Arizona, 85004-2306 ("Grantee").

### Recitals

A. Grantor is the owner of that certain real property more particularly described on Exhibit A attached hereto and incorporated herein (the "Premises").

B. Grantor desires to grant and convey to Grantee a perpetual easement over, under, across and through a portion of the Premises, the surface footprint of said portion being more particularly described in Exhibit B attached hereto and incorporated herein ("Easement Footprint").

NOW, THEREFORE, in consideration of ten (\$10) dollars in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Any and all capitalized terms used herein but not specifically defined herein are defined on Exhibit C attached hereto and incorporated herein.

2. Easement Grant. To the extent that Grantee reasonably requires utility services, including, but not limited to, power, natural gas, water/sewer, telephone and cable, in connection with the performance by Grantee of any Remedial Work and/or the installation, utilization, maintenance, replacement and/or removal of the same, Grantor hereby grants, establishes and conveys for the benefit of Grantee (and/or its utility providers) a perpetual exclusive easement (the "Easement") over, under, through and across the Easement Footprint (the "Easement Area") for purposes of the installation, utilization, maintenance, replacement and/or removal of such utility services, all in accordance with the rules, procedures and regulation of the applicable utility providers. The Easement shall include reasonable rights in favor of Grantee (including its agents, representatives, guests and invitees) a perpetual right of entry upon, and ingress and egress over and across, the Premises for the installation, utilization, maintenance, replacement and/or removal of utility services within the Easement Area.

3. Exclusivity/Restricted Area. The Easement shall be for the sole and exclusive use and benefit of Grantee and its successors and assigns. Without limiting the generality of the foregoing, without the express written consent of Grantee in each instance, (a) no utilities, conduits or other installations may be constructed or installed by Grantor or any other party within any portion of the Easement Area, (b) no utilities, conduits or other installations by or for the benefit of Grantee within the Easement Area may be shared or otherwise utilized by Grantor or any other party, (c) no improvements, including, but not limited to, buildings, structures and

foundations, may be constructed, installed or placed by Grantor or any other party directly on or above that portion of the Premises more particularly described on Exhibit D attached hereto and incorporated herein (the "Restricted Area"), and (d) neither Grantor nor any other party may place or set upon or over any portion of the Restricted Area, on a temporary or permanent basis, any materials, including, but not limited to, equipment, storage racks, crates, boxes, soil, constructions equipment and supplies. Notwithstanding the foregoing, nothing in this Paragraph 3 shall prevent (i) the installation of a concrete or asphalt cap, for purposes of motor vehicle movement, over the Restricted Area, provided that Grantor shall have previously approved, in writing, the plans and specifications therefor (such approval not to be unreasonably delayed, conditioned or withheld), (ii) the use of the Restricted Area as a shared driveway and/or temporary parking area for motor vehicles, provided that any such motor vehicles are capable of being removed (and, in fact, shall be removed on a temporary basis) from the Restricted Area by Grantee on not less than 24-hour notice from Grantor, or (iii) the installation within the Controlled Area (as hereinafter defined) of underground utilities and conduits for items such natural gas, water, power and/or telephone, provided that Grantor shall have previously approved, in writing, the plans and specifications therefor (such approval not to be unreasonably delayed, conditioned or withheld). As referenced herein, the term "Controlled Area" shall mean those portions of the Restricted Area not comprised of the Easement Area.

4. Costs. Grantor, on behalf of itself and its successors and assigns, expressly agrees that Grantee will not be required to pay any additional compensation to Grantor, its successors, assigns or other third parties for Grantee's continued access to the Premises pursuant to and in accordance with the easement herein granted and conveyed to Grantee.

5. Assignment. The Easement and Grantee's rights and benefits herein may be assigned by Grantee, without the consent of Grantor.

6. Notices. All notices, requests, demands and other communications provided for by this Easement Agreement shall be in writing and shall be deemed to have been given (a) when hand delivered, or (b) 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:

To Grantor: Phelps Dodge Refining Corporation  
c/o Freeport-McMoRan Copper & Gold Inc.  
One North Central Avenue  
Phoenix, Arizona 85004-2306  
Attention: Property Manager

with a copy to: Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038-4982  
Attention: Peter G. Koffler, Esq.

To Grantee: Phelps Dodge Refining Corporation  
c/o Freeport-McMoRan Copper & Gold Inc.  
One North Central Avenue  
Phoenix, Arizona 85004-2306

Attention: Property Manager

with a copy to: Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038-4982  
Attention: Peter G. Koffler, Esq.

provided, that any notice of change of address shall be effective only upon receipt.

7. Miscellaneous.

a. Amendments. This Easement Agreement may not be modified or terminated orally or in any manner other than by an agreement in writing signed by all the parties hereto or their respective successors in interest, as the case may be.

b. No Merger. There shall be no merger of this Easement Agreement, or the estate or interest created by this Easement Agreement, with any other estate or interest in the Premises, or any part thereof, by reason of the fact that the same person, firm, partnership, limited liability company, corporation or other entity presently does, or may hereafter acquire or own or hold, directly or indirectly, (i) this Easement Agreement or the estate created by this Easement Agreement, or any interest in this Easement Agreement or in any such easement estate, and (ii) any such other estate or interest in the Premises or any part thereof; and no such merger shall occur unless and until all persons, firms, partnerships, limited liability companies, corporations or other entities having an interest (including a security interest) in (x) this Easement Agreement or the estate created by this Easement Agreement, and (y) any such other estate or interest in the Premises, or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same. No conveyance, transfer or encumbrance by Grantor of its fee or other interest in the Premises shall be deemed to include any right or title to the Grantee interest created by this Agreement; to be effective, any conveyance, transfer or encumbrance of the Grantee interest created by this Agreement must be by written agreement by Grantee expressly in its capacity as Grantee hereunder and expressly relating to the Grantee interest created by this Agreement.

c. Governing Law; Construction. This Easement Agreement 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.

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

e. Counterparts. This Easement Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument.

f. Waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party 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.

g. Headings. The headings which have been used throughout this Easement Agreement have been inserted for convenience of reference only and should not be construed in interpreting this Easement Agreement. Words of any gender used in this Easement Agreement 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 Easement Agreement 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 Easement Agreement shall refer to the entire Agreement and not to any particular provision or section. As used in this Easement Agreement, 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.

h. Construction. This Easement Agreement shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto.

i. Binding Effect; Run With Land. This Easement Agreement shall be binding upon, and shall inure to the benefit of, the parties and each of their respective successors and assigns. This Easement Agreement shall run with and encumber the Premises until such time as expressly provided for herein, and is intended to provide actual and constructive notice to the world of the terms and conditions herein.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Easement Agreement to be executed and delivered as of the date written above.

**GRANTOR:**

PHELPS DODGE REFINING CORPORATION

By: WR Cobb  
William Cobb,  
Vice President

**GRANTEE:**

PHELPS DODGE REFINING CORPORATION

By: WR Cobb  
William Cobb,  
Vice President

ACKNOWLEDGEMENTS

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

On the 24 day of May in the year 2010 before me, the undersigned, a notary public in and for said state, personally appeared WILLIAM 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, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Erin Mullen  
Notary Public

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

On the \_\_\_ day of \_\_\_\_\_ in the year 2010 before me, the undersigned, a notary public in and for said state, personally appeared WILLIAM 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, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

EXHIBIT A

Premises

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 southerly side of 57<sup>th</sup> Avenue the following two courses and distances from the corner formed by the intersection of the westerly side of 43<sup>rd</sup> Street (60 feet wide) with the southerly side of 57<sup>th</sup> Avenue (60 feet wide);

1. Easterly along the southerly side of 57<sup>th</sup> Avenue and along a curve to the right having a radius of 2807.62 feet an arc length of 543.99 feet, being subtended by a chord of North 85 degrees 57 minutes 54 seconds East a distances of 543.14 feet to a point of tangency;
2. Thence South 88 degrees 29 minutes 03 seconds East a distance of 157.34 feet to the point or place of BEGINNING.

THENCE South 00 degrees 00 minutes 00 seconds West a distance of 700.46 feet to a point;

THENCE South 62 degrees 02 minutes 57 seconds East a distance of 49.27 feet to a point;

THENCE South 74 degrees 51 minutes 26 seconds East a distance of 101.26 feet to a point;

THENCE North 00 degrees 00 minutes 00 seconds West a distance of 34.53 feet to a point;

THENCE North 90 degrees 00 minutes 00 seconds East a distance of 396.89 feet to a point;

THENCE North 65 degrees 57 minutes 30 seconds East a distance of 265.88 feet to a point;

THENCE North 13 degrees 18 minutes 10 seconds West a distance of 548.82 feet to a point;

THENCE North 76 degrees 41 minutes 50 seconds East a distance of 57.00 feet to the southwesterly side of 57<sup>th</sup> Avenue;

THENCE northwesterly along the southwesterly side of 57<sup>th</sup> Avenue and along a curve to the left having a radius of 447.12 feet and an arc length of 193.31 feet, being subtended by a chord of North 76 degrees 05 minutes 54 seconds West a distance of 191.81 feet to a point of tangency;

THENCE North 88 degrees 29 minutes 03 seconds West along the southerly side of 57<sup>th</sup> Avenue a distance of 524.15 feet to the point or place of BEGINNING.

EXHIBIT B

Easement Footprint

Tax Block 2529 Part of Tax Lot 40, 43, 45, 47 & 49

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 southerly side of 57<sup>th</sup> Avenue the following three courses and distances from the corner formed by the intersection of the westerly side of 43<sup>rd</sup> Street (60 feet wide) with the southerly side of 57<sup>th</sup> Avenue (60 feet wide);

1. Easterly along the southerly side of 57<sup>th</sup> Avenue and along a curve to the right having a radius of 2807.62 feet an arc length of 543.99 feet, being subtended by a chord of North 85 degrees 57 minutes 54 seconds East a distances of 543.14 feet to a point of tangency;
2. Thence South 88 degrees 29 minutes 03 seconds East a distance of 157.34 feet to the point or place of BEGINNING.

THENCE South 00 degrees 00 minutes 00 seconds West a distance of 15.00 feet to the point

THENCE South 88 degrees 29 minutes 03 seconds East a distance of 345.81 feet to the point,

THENCE South 00 degrees 00 minutes 00 seconds West a distance of 691.33 feet to the point

THENCE North 90 degrees 00 minutes 00 seconds East a distance of 10.00 feet to a point;

THENCE North 00 degrees 00 minutes 00 seconds East a distance of 691.06 feet to a point;

THENCE South 88 degrees 29 minutes 03 seconds East a distance of 167.94 feet to a point of tangency,

THENCE southwesterly along a curve parallel and 25 feet to the south of the southwesterly side of 57<sup>th</sup> Avenue and along a curve to the right having a radius of 432.12 feet and an arc length of 168.20 feet, being subtended by a chord of South 77 degrees 20 minutes 00 seconds West a distance of 167.14 feet to a point

THENCE North 76 degrees 41 minutes 50 seconds East a distance of 24.17 feet to the southwesterly side of 57<sup>th</sup> Avenue:

THENCE northwesterly along the southwesterly side of 57<sup>th</sup> Avenue and along a curve to the left having a radius of 447.12 feet and an arc length of 193.31

feet, being subtended by a chord of North 76 degrees 05 minutes 54 seconds West a distance of 191.81 feet to a point of tangency,

THENCE North 88 degrees 29 minutes 03 seconds West along the southerly side of 57<sup>th</sup> Avenue a distance of 524.15 feet to the point of BEGINNING

The above mentioned bearings refer to the Borough of Queens Coordinate System - 10<sup>th</sup> Avenue Meridian.

EXHIBIT C

Definitions

1. "Environment" shall mean the ambient air, surface water, groundwater, soil, sediment and land.
2. "Environmental Conditions" shall mean the Release, past Release, or threatened Release of a Hazardous Substance into the Environment.
3. "Environmental Laws" shall mean any and all Laws existing as of the date hereof relating to Environmental Conditions, the Release, past Release or threatened Release of Hazardous Substances into the Environment, the protection of public health and the Environment, or the use, manufacture, processing, distribution, treatment, storage, generation, disposal, transport or handling of Hazardous Substances, including without limitation, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k; the Clean Air Act, 42 U.S.C. §§ 7401-7671q; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675; the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692; the New York Navigation Law, Article 12, and the New York Environmental Conservation Law, Article 13, Title 27; each of their federal, state and local counterparts, as applicable, and any and all rules and regulations promulgated thereunder for all the foregoing.
4. "Hazardous Substances" shall mean any materials, substances, wastes, pollutants or contaminants that are regulated under, defined, or listed in any Environmental Laws, including, but not limited to, petroleum (including constituents or degradation products), radioactive materials and substances, asbestos, polychlorinated biphenyls and polyurethane foam insulation.
5. "Release" shall mean any discharge, burial, spillage, leaking, pumping, pouring, emitting, emptying, escaping, injection, migration, leaching, dumping or disposing or a Hazardous Substance into the Environment.
6. "Remedial Work" shall mean 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 and includes, without limitation, response, removal, remedial and/or corrective actions under any Environmental Laws.

EXHIBIT D

Restricted Area

Tax Block 2529 Part of Tax Lot 40, 43, 45, 47 & 49

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 southerly side of 57<sup>th</sup> Avenue the following three courses and distances from the corner formed by the intersection of the westerly side of 43<sup>rd</sup> Street (60 feet wide) with the southerly side of 57<sup>th</sup> Avenue (60 feet wide);

3. Easterly along the southerly side of 57<sup>th</sup> Avenue and along a curve to the right having a radius of 2807.62 feet an arc length of 543.99 feet, being subtended by a chord of North 85 degrees 57 minutes 54 seconds East a distances of 543.14 feet to a point of tangency;
4. Thence South 88 degrees 29 minutes 03 seconds East a distance of 157.34 feet to the point or place of BEGINNING.

THENCE South 00 degrees 00 minutes 00 seconds West a distance of 25.00 feet to the point

THENCE South 88 degrees 29 minutes 03 seconds East a distance of 338.30 feet to the point,

THENCE South 00 degrees 00 minutes 00 seconds West a distance of 681.56 feet to the point

THENCE North 90 degrees 00 minutes 00 seconds East a distance of 25.00 feet to a point;

THENCE North 00 degrees 00 minutes 00 seconds East a distance of 680.90 feet to a point;

THENCE South 88 degrees 29 minutes 03 seconds East a distance of 160.17 feet to a point of tangency,

THENCE southwesterly along a curve parallel and 25 feet to the south of the southwesterly side of 57<sup>th</sup> Avenue and along a curve to the right having a radius of 422.12 feet and an arc length of 150.02 feet, being subtended by a chord of South 78 degrees 14 minutes 56 seconds West a distance of 150.82 feet to a point

THENCE North 76 degrees 41 minutes 50 seconds East a distance of 41.08 feet to the southwesterly side of 57<sup>th</sup> Avenue:

THENCE northwesterly along the southwesterly side of 57<sup>th</sup> Avenue and along a curve to the left having a radius of 447.12 feet and an arc length of 193.31 feet, being subtended by a chord of North 76 degrees 05 minutes 54 seconds West a distance of 191.81 feet to a point of tangency,

THENCE North 88 degrees 29 minutes 03 seconds West along the southerly side of 57<sup>th</sup> Avenue a distance of 524.15 feet to the point of BEGINNING

The above mentioned bearings refer to the Borough of Queens Coordinate System - 10<sup>th</sup> Avenue Meridian