

Business. The Leased Real Property includes, to the Sellers' knowledge, the water rights set forth in the Acquired Property Lease (the "**Water Rights**"). Except for the Leased Real Property no other real property, whether owned, leased or licensed, is used in or held for use in the Business. With respect to the Leased Real Property:

(a) To the Sellers' knowledge, there is no pending or threatened condemnation, eminent domain, or other Proceeding concerning, or that could adversely affect, the Leased Real Property, nor are there any other matters materially and adversely affecting the current use or occupancy thereof.

(b) Sellers have delivered to Buyer copies of all surveys or engineering studies relating to the Leased Real Property that are in the possession or control of Sellers.

(c) Sellers have paid all Taxes and other governmental assessments relating to the Leased Real Property, to the extent that the same have become due and payable.

(d) To the Sellers' knowledge, the Leased Real Property, and the current uses thereof, complies in all material respects with all restrictive covenants and applicable Laws (including all applicable zoning or building ordinances or codes and other use or occupancy restrictions, in each case, without reliance on any "grandfather" clauses or exceptions for permitted, non-conforming use).

(e) Except to the extent expressly set forth on Schedule 3.08(e), to Sellers' knowledge, no natural person, entity, or organization whatsoever including any individual, sole proprietorship, corporation, partnership, limited liability company, association, trust, bank, estate, or Governmental Authority (each a "**Person**"), other than Sellers occupies, possesses, or uses, or has any right to occupy, possess, or use, any of the Leased Real Property (other than the reversionary interest of the landlord), including by virtue of leases, subleases, licenses, concessions or other Contracts (written or oral).

SECTION 3.09. Acquired Property Lease. Schedule 3.09 includes a true, correct and complete (a) copy of the Acquired Property Lease (including all amendments or modifications thereto) and (b) description of the Leased Real Property that is the subject thereof. To the Sellers' knowledge, the Acquired Property Lease is valid, binding, enforceable, and fully assignable to Buyer in accordance with its terms without any change to, or acceleration of, such terms. No Seller is in breach or default, with or without the giving of notice or the passage of time or both, with respect to the Acquired Property Lease, and no Seller has knowledge that any other party is in breach or default, with or without the giving of notice or the passage of time or both, with respect to the Acquired Property Lease. All notices have been delivered to, and all consents and approvals have been received from, the lessor under the Acquired Property Lease. No event or omission has occurred that would, and neither the execution and delivery of this Agreement nor the consummation of the Transaction will, result in any party being in breach or default of the Acquired Property Lease, with or without the giving of notice, the passage of time, or both. The Acquired Property Lease has been performed in compliance with its terms and conditions. No Seller has received any notice from any other party to the Acquired Property Lease (i) of the termination thereof or (ii) regarding any dispute or controversy under the Acquired Property Lease. All rental and other payments due under the Acquired Property Lease have been duly paid in accordance with the terms of the Acquired Property Lease.

SECTION 3.10. Contracts. There are no Contracts, other than the Acquired Property Lease, utilized in the Business. For purposes of this Agreement, "**Contract**" means each contract, subcontract, lease, purchase order, supply agreement, understanding, instrument, note, warranty, license, sublicense, insurance policy, benefit plan and other contract, agreement or legally binding commitment or undertaking of any kind or nature, whether oral or written, and whether express or implied, of the Business.

DUE DILIGENCE CERTIFICATION

The Board wishes to ensure that Prospective Successors are fully informed of their duties and obligations should they become Successor to the Permit. Accordingly, the Prospective Successor must carefully review the items below and must initial indicating its agreement and understanding.

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If the Application is approved, the Prospective Successor will assume all liability for the reclamation of the affected land, and for compliance with the Hard Rock Act and Rules or the Construction Materials Act and Rules, as applicable (available online at <http://mining.state.co.us/Rules%20and%20Regs.htm>). Successor will be liable for any pre-existing conditions or violations, whether known or unknown at the time of the SO. It is the Prospective Successor's sole responsibility to investigate the operation prior to filing an Application.

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If the Application is approved, the Successor will be solely responsible for maintaining the mining and reclamation operations in compliance with the Reclamation Permit. The Permit includes the original approved Application, along with any and all subsequent revisions, amendments, and conversions thereto. It is not uncommon for a Permit to include dozens of documents that span many years. It is the Successor's sole responsibility to obtain a full and complete copy of the Permit and to understand the extent of his/her/its obligations thereunder. Permit documents may be purchased from the Division of Reclamation, Mining and Safety (the "Division") upon request or viewed on the Division's website at <http://drmsweblink.state.co.us/drmsweblink/search.aspx?dbid=0>

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If the Application is approved, the Successor must submit Annual Fees and Annual Reports to the Division on the anniversary date of the Reclamation Permit. For hard rock and designated mining operations, consult C.R.S. § 34-32-127(2) for the amount of the Annual Fee. For construction materials operations, consult the C.R.S. § 34-32.5-125 for the amount of the Annual Fee. Required annual reporting information is described in Hard Rock and Construction Materials Rule 1.15 and in the Annual Report Form provided by the Division. Failure to submit Annual Fees or Annual Reports may result in enforcement action.