

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Excel Mining Systems, Inc.		09/15/2006	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	Excel Mining Systems LLC		
Street Address:	600 Boyce Dr., PO Box 263		
City:	Bowerston		
State/Country:	OHIO		
Postal Code:	44695		
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	1436199	DOUBLE LOCK	
Registration Number:	1475626	HY TEC	
CORRESPONDENCE DATA			
Fax Number:	(714)755-8290		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	(714) 540-1235		
Email:	ipdocket@LW.com		
Correspondent Name:	Latham & Watkins LLP		
Address Line 1:	650 Town Center Drive, 20th Floor		
Address Line 4:	Costa Mesa, CALIFORNIA 92626		
ATTORNEY DOCKET NUMBER:	030786-0286 INC. TO LLC.		
NAME OF SUBMITTER:	Pamela Pascual		
Signature:	/pamela pascual/		
Date:	10/30/2006		

OP \$65.00 1436199

Total Attachments: 20

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SOLE MEMBER'S CERTIFICATE

EXCEL MINING SYSTEMS LLC

October 20, 2006

The undersigned sole member of Excel Mining Systems LLC, a Delaware limited liability company (the "Borrower"), does hereby certify for and on behalf of the Borrower that:

(a) This certificate is furnished pursuant to Section 4.01(c) of the Credit Agreement, dated as of October 20, 2006 (the "Credit Agreement"), among the Borrower, Mining Systems Holding LLC ("Holdings"), the Lenders party thereto from time to time, Credit Suisse, as Administrative Agent and Collateral Agent for the Secured Parties, and Credit Suisse Securities (USA) LLC, as Sole Bookrunner and Joint Lead Arranger. Capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the Credit Agreement.

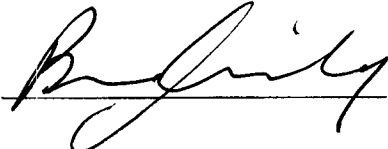

(b) Attached hereto as Exhibit A is a true and complete copy of resolutions duly adopted by the sole member of the Borrower by unanimous written consent as of the date shown thereon. Such resolutions have not been modified, rescinded or amended since the date of adoption thereof and are in full force and effect on the date hereof;

(c) Attached hereto as Exhibit B is a true and complete copy of the limited liability company operating agreement of the Borrower as in effect on the date hereof;

(d) Attached hereto as Exhibit C is a true and complete copy of the certificate of formation (including all amendments thereto) of the Borrower as in effect on the date hereof, which has not been amended since the date of the last amendment, if any, incorporated therein or attached hereto;

(e) To my knowledge, there is no pending proceeding for the dissolution or liquidation of the Borrower or threatening its existence; and

(f) Each of the individuals named below holds the office of the Borrower set forth opposite his/her name on the date hereof and each has been duly authorized to sign, on behalf of the Borrower, all relevant Loan Documents required to be executed pursuant to the Credit Agreement. The signature written opposite the name and title of each such officer is his/her genuine signature;

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Bruce Cassidy	President and Chief Executive Officer	
Frank Wenthur	Vice President (Finance), Secretary and Chief Financial Officer	

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IN WITNESS WHEREOF, the undersigned has caused this Certificate to be executed as of the date set forth above.

MINING SYSTEMS HOLDING LLC, as its sole member

By: 

Name: Bruce Cassidy

Title: President and Chief Executive Officer

[Excel Mining Systems LLC - Sole Member's Certificate (Credit Agreement)]

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Exhibit A

**ACTION TAKEN BY WRITTEN CONSENT OF
THE SOLE MEMBER OF EXCEL MINING SYSTEMS LLC**

October 19, 2006

The undersigned, being the sole member (the "Sole Member") of Excel Mining Systems LLC (formerly known as Mining Systems Acquisition LLC), a Delaware limited liability company (the "Company"), acting without a meeting pursuant to Section 18-302(d) of the Delaware Limited Liability Company Act, does hereby consent to the following actions as of the date first written above:

I. CREDIT FACILITIES

Credit Agreement and Related Transactions

WHEREAS, it is proposed that the Company and Mining Systems Holding LLC ("Holdings") execute and deliver the Credit Agreement (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among the Company, Holdings, the Lenders party thereto from time to time, Credit Suisse, as Administrative Agent and Collateral Agent, Credit Suisse Securities (USA) LLC, as Sole Bookrunner and Joint Lead Arranger and the other Agents party thereto;

WHEREAS, capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the Credit Agreement;

WHEREAS, pursuant to the Credit Agreement, the Company may borrow and otherwise utilize the term loan and revolving facilities thereunder, for the purposes and in accordance with the terms set forth therein; and

WHEREAS, it is in the best interests of the Company that the Company execute and deliver the Credit Agreement and the other Loan Documents (as defined in the Credit Agreement) to which it is a party, including the Pledge and Security Agreement, the Master Intercompany Note and any Mortgages, forms of which have been presented to and reviewed by the Sole Member, and to grant to the Collateral Agent for the benefit of the Secured Parties a security interest and lien on the Company's assets as contemplated in the Credit Agreement and the other Loan Documents;

NOW, THEREFORE, BE IT RESOLVED, that the forms, terms and provisions of the Credit Agreement and each of the other Loan Documents to which the Company is to be a party, each of the transactions contemplated thereby, and the performance by the Company of all of its obligations pursuant thereto, be, and they hereby are, in all respects authorized, ratified and approved;

RESOLVED, that any Authorized Person (as defined below) of the Company be, and each of them acting alone hereby is, authorized, empowered and directed to execute and deliver, or cause to be executed and delivered, each Loan Document to which the Company is a party, with such changes and modifications thereto as may be approved by such Authorized Person executing the same, such approval to be conclusively evidenced by his or their execution and delivery thereof, and to cause the Company to create the liens and encumber its assets in the manner contemplated therein;

RESOLVED, that any Authorized Person of the Company be, and each of them acting alone hereby is, authorized, empowered and directed to pay or cause to be paid the fees and expenses as contemplated in the Credit Agreement and each of the other Loan Documents to which it is a party;

RESOLVED, that any Authorized Person of the Company be, and each of them acting alone hereby is, authorized, empowered and directed to execute, deliver, record and/or file all documents and instruments and to do all other acts as may be required, appropriate or necessary to effectuate, carry out and perform the Loan Documents to which the Company is party and to consummate any and all of the transactions contemplated by each such document.

Security Documents

WHEREAS, the Credit Agreement contemplates and it is a condition precedent to the effectiveness of such Credit Agreement that the Company will enter into, in favor of the Collateral Agent for the benefit of the Secured Parties, certain Security Documents (as defined in the Credit Agreement), each dated as of the effective date of the Credit Agreement, pursuant to which the Company will grant security interests in its assets and properties described therein to the Collateral Agent, for the benefit of the Secured Parties, to secure the Secured Obligations (as defined in the Pledge and Security Agreement) of the Company and the other Loan Parties under the Credit Agreement and the other Loan Document;

NOW, THEREFORE, BE IT RESOLVED, that the form, terms and provisions of each of the Security Documents, each of the transactions contemplated thereby, and the performance by the Company of all of its obligations pursuant thereto, be, and they hereby are, approved, ratified and authorized;

RESOLVED, that any Authorized Person of the Company be, and each of them acting alone hereby is, authorized, empowered and directed to execute and deliver, or cause to be executed and delivered, the Security Documents, with such changes and modifications thereto as may be approved by such Authorized Person executing the same, such approval to be conclusively evidenced by his or their execution and delivery thereof, and to cause the Company to grant security interests, pledge equity interests, create the liens and encumber its assets in the manner contemplated therein;

RESOLVED, that any Authorized Person of the Company be, and each of them acting alone hereby is, authorized, empowered and directed to execute, deliver, record and/or file all financing statements, documents and instruments and to do all other acts as may be required,

appropriate or necessary to effectuate, carry out and perform the Security Documents, and to consummate any and all of the transactions contemplated by each such document; and further

Amendments, Waivers and Consents

RESOLVED, that the Sole Member hereby authorizes and directs the appropriate Authorized Person of the Company to prepare amendments, waivers or consents under the Credit Agreement and any of the other Loan Documents, as may be necessary or appropriate, which amendments, waivers or consents to such agreements or documents may provide for consent payments, fees or other amounts payable or other modifications of relief under such agreements or documents, the purpose of such amendments, waivers or consents being to facilitate consummation of the transactions contemplated by the foregoing resolutions or otherwise; and that such Authorized Person of the Company be, and each of them hereby is, authorized to execute and deliver, in the name and on behalf of the Company, the amendments, waivers or consents under such agreements or documents as such Authorized Person shall determine to be necessary or appropriate, in the forms negotiated by such Authorized Person.

II. MEZZANINE LOAN FACILITIES

Mezzanine Loan Agreement and Related Transactions

WHEREAS, it is proposed that the Company and Holdings execute and deliver the Mezzanine Loan Agreement (as amended, supplemented or otherwise modified from time to time, the "Mezzanine Loan Agreement"), among the Company, Holdings and the Lenders party thereto from time to time;

WHEREAS, pursuant to the Mezzanine Loan Agreement, the Company may borrow and otherwise utilize the mezzanine loan facilities thereunder, for the purposes and in accordance with the terms set forth therein; and

WHEREAS, it is in the best interests of the Company that the Company execute and deliver the Mezzanine Loan Agreement and the other Loan Documents, as defined in the Mezzanine Loan Agreement, to which it is a party (the "Mezzanine Loan Documents"), forms of which have been presented to and reviewed by the Sole Member;

NOW, THEREFORE, BE IT RESOLVED, that the forms, terms and provisions of the Mezzanine Loan Agreement and each of the other Mezzanine Loan Documents to which the Company is to be a party, each of the transactions contemplated thereby, and the performance by the Company of all of its obligations pursuant thereto, be, and they hereby are, in all respects authorized, ratified and approved;

RESOLVED, that any Authorized Person (as defined below) of the Company be, and each of them acting alone hereby is, authorized, empowered and directed to execute and deliver, or cause to be executed and delivered, each Mezzanine Loan Document to which the Company is a party, with such changes and modifications thereto as may be approved by such Authorized Person executing the same, such approval to be conclusively evidenced by his or their execution and delivery thereof, and to cause the Company to create the liens and encumber its assets in the manner contemplated therein;

RESOLVED, that any Authorized Person of the Company be, and each of them acting alone hereby is, authorized, empowered and directed to pay or cause to be paid the fees and expenses as contemplated in the Mezzanine Loan Agreement and each of the other Mezzanine Loan Documents to which it is a party;

RESOLVED, that any Authorized Person of the Company be, and each of them acting alone hereby is, authorized, empowered and directed to execute, deliver, record and/or file all documents and instruments and to do all other acts as may be required, appropriate or necessary to effectuate, carry out and perform the Mezzanine Loan Documents to which the Company is party and to consummate any and all of the transactions contemplated by each such document.

III. ACQUISITION OF ASSETS OF EXCEL MINING SYSTEMS, INC.

Amendment No. 1 to Purchase Agreement

RESOLVED, that the Company enter into, execute and deliver Amendment No. 1 to the Purchase Agreement, dated as of September 15, 2006 (as amended, supplemented or modified from time to time, the "Purchase Agreement"), substantially in the form previously presented to the Company with such changes, modifications and amendments approved at any time and from time to time by any of the Authorized Persons, such approval to be conclusively evidenced by such Authorized Person's execution and delivery of such agreement, and (ii) the Company is hereby authorized to perform each of the actions contemplated by such document;

Purchased Assets and Assumed Liabilities

RESOLVED, that on the terms and subject to the conditions of the Purchase Agreement, the Company is authorized to (i) purchase, acquire and accept from the Company and its subsidiaries, all of their respective right, title and interest in, to and under all of the Acquired Assets (as defined in the Purchase Agreement) and (ii) assume the Assumed Liabilities (as defined in the Purchase Agreement).

Transaction and Monitoring Fee Letter

RESOLVED, that (i) the Transaction Fee and Monitoring Agreement, between the Company and SPG Partners, LLC ("SPG"), substantially in the form previously presented to the Company, whereby SPG agrees to provide management, consulting and financial services to the Company and its divisions and subsidiaries, is hereby authorized and approved and deemed advisable and in the best interest of the Company, with such changes, modifications and amendments approved at any time and from time to time by any of the Authorized Persons, such approval to be conclusively evidenced by such Authorized Person's execution and delivery of such agreement and (ii) the Company is hereby authorized to perform each of the actions contemplated by such document.

Assumption of Benefit Plans of Excel Mining Systems, Inc.

RESOLVED, that the Company, pursuant to Section 5.14(b) of the Purchase Agreement, hereby assumes, effective as of the Closing Date (as defined in the Purchase Agreement), the employee benefit plans and insurance contracts related to such plans that are set forth on Part 5.1(b) of the Disclosure Letter (as defined in the Purchase Agreement);

RESOLVED, that the Company, effective as of the Closing Date, hereby agrees to accept assignment of the rights and obligations of Excel Mining Systems, Inc. ("EMS, Inc.") under its employment agreement with James L. Earl, Jr., dated as of May 3, 2006, subject to receipt of written consent from James Earl, Jr. in accordance with Section 5.9 of such employment agreement;

V. AUTHORITY TO IMPLEMENT THE FOREGOING RESOLUTIONS

RESOLVED, that the officers of the Company and each person acting on behalf of the Company or any officer of the Company pursuant to an effective power of attorney (each, an "Authorized Person") be, and each of them hereby is, authorized and directed by the Sole Member, in the name and on behalf of the Company to execute and deliver each of the documents referenced in the foregoing resolutions, in such form and with such changes therein as such Authorized Person executing the same may deem necessary or advisable, and any ancillary agreements, undertakings, documents, instruments or certificates contemplated by any of the Purchase Agreement, the Loan Documents or Mezzanine Loan Documents or any of the transactions contemplated thereby and deemed necessary or advisable by such Authorized Person ("Ancillary Agreements"), the execution of each such document to be conclusive evidence of such determination and approval by such Authorized Person, and to take such actions as may be necessary or advisable in connection with or in furtherance of the Purchase Agreement, the Loan Documents, Mezzanine Loan Documents and Ancillary Agreements and to consummate the transactions contemplated thereby, the taking of such actions by any such Authorized Person shall conclusively evidence the due authorization thereof by the Sole Member,

RESOLVED, that any Authorized Person be, and each of them individually hereby is, in accordance with the foregoing resolutions, authorized, in the name and on behalf of the Company, to prepare, execute and deliver any and all agreements, amendments, certificates, reports, applications, notices, instruments, schedules, statements, consents, letters or other documents with respect to the matters contemplated by the foregoing resolutions, to make any filings pursuant to federal, state and foreign laws and to do or cause to be done any and all such other acts and things as any such Authorized Person deems necessary, appropriate or desirable in order to comply with the applicable laws and regulations of any jurisdiction (domestic or foreign), or otherwise in order to enable the Company to carry out fully and promptly the purposes and intent of the foregoing resolutions and to permit the matters contemplated thereby to be lawfully consummated;

RESOLVED, that all actions previously taken by any Authorized Persons in the name or on behalf of the Company or any of its affiliates in connection with the matters contemplated by the foregoing resolutions be, and each of the same hereby is, adopted, ratified, confirmed and approved in all respects as the act and deed of the Company.

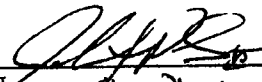
[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the undersigned Sole Member hereby consents to, approves and adopts these resolutions as of the date first written above.

MINING SYSTEMS HOLDING LLC

By: 
Name: John Pless
Title: Vice President and Treasurer

[Resolutions of Sole Member of Excel Mining Systems LLC]

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Exhibit B

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

OF

EXCEL MINING SYSTEMS LLC

The undersigned is executing this Amended and Restated Limited Liability Company Agreement (the "Agreement") of Excel Mining Systems LLC (the "Company") as of October 19, 2006:

RECITALS

WHEREAS, the Company was formed on September 5, 2006 as a limited liability company pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C. §18-101 et seq. (as amended from time to time, the "Act");

WHEREAS, the parties hereto desire to amend and restate the Limited Liability Company Agreement dated as of September 5, 2006, as amended, of the Company to make amendments as reflected herein;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Formation. A certificate of formation of the Company (the "Certificate") was executed and filed with the Office of the Secretary of State of the State of Delaware on September 5, 2006.

2. Name. The name of the limited liability company shall be "Excel Mining Systems LLC", or such other name as the Member may from time to time hereafter designate.

3. Definitions. Capitalized terms not otherwise defined herein shall have the meanings set forth therefor in Section 18-101 of the Act.

4. Purpose. The Company is formed for the purpose of engaging in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have the power to engage in all activities and transactions that the Member deems necessary or advisable in connection with the foregoing.

5. Offices. The principal place of business and office of the Company shall be located at, and the Company's business shall be conducted from, such place or places as the Member may designate from time to time.

The registered office of the Company in the State of Delaware shall be located at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware shall be The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The Member may

from time to time change the registered agent or office by an amendment to the certificate of formation of the Company.

6. Member. Mining Systems Holding LLC is the sole member of the Company (the "Member"). The name and business or residence address of the Member is c/o SPG Partners, LLC, 667 Madison Avenue, New York, New York 10021.

7. Term. The term of the Company shall commence on the date of filing of the certificate of formation of the Company in accordance with the Act and shall continue until the Company is dissolved and its affairs are wound up in accordance with Section 16 of this Agreement and a certificate of cancellation is filed in accordance with the Act.

8. Officers. The Member may, from time to time as it deems advisable, designate natural persons as officers of the Company (the "Officers") or successor Officers of the Company and assign titles to any such person. Unless the Member decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this Section 8 may be revoked at any time by the Member. An Officer may be removed with or without cause at any time by the Member.

9. Powers. The business and affairs of the Company shall be managed by the Member in accordance with the provisions of this Agreement. The Member shall have the power to do any and all acts necessary or convenient for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by any member under the laws of the State of Delaware. Each of the Member and Officers is hereby designated as an authorized person, within the meaning of the Act, to execute, deliver and file the certificate of formation of the Company (and any amendments and/or restatements thereof) and any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business. The execution by one Officer or Member of any of the foregoing certificates (and any amendments and/or restatements thereof) shall be sufficient.

10. Management. The Member shall have the exclusive right to manage the business and affairs of the Company and may delegate such management rights, powers, duties and responsibilities to one or more Officers or such other person or persons designated by them as they may determine, provided that such delegation by the Member shall not cause the Member to cease being a member of the Company. Any decision or action by the Member in conformity with the terms of this Agreement shall bind the Company. Pursuant to its discretion to do so under this Section 10, the Member hereby delegates to each of the Officers the nonexclusive power and authority to act as an agent of the Company and, in such capacity, to bind the Company in the ordinary course of the Company's business and to execute any and all documents to be signed by the Company.

11. Capital Contributions. The Member shall make capital contributions to the Company from time to time, which amounts shall be set forth in the books and records of the Company.

12. Transfers of Member Interest. The Member may sell, assign, pledge or otherwise transfer or encumber (collectively, "Transfer") any of its membership interest in the Company to any Person so long as such Transfer is in writing.

13. Resignation. The Member shall have the right to resign from the Company so long as such resignation is in writing. The provisions hereof with respect to distributions upon resignation are exclusive and no Member shall be entitled to claim any further or different distribution upon resignation under Section 18-604 of the Act or otherwise.

14. Allocations and Distributions. Distributions of cash or other assets of the Company shall be made at such times and in such amounts as the Member may determine. Distributions shall be made to (and profits and losses of the Company shall be allocated to) the Member.

15. Return of Capital. The Member has the right to receive any distributions, including a return of all or any part of such Member's capital contribution, provided that upon the dissolution and winding up of the Company, the assets of the Company shall be distributed as provided in Section 18-804 of the Act.

16. Dissolution. The Company shall be dissolved and its affairs wound up (A) upon a decision made at any time by the Member to dissolve the Company or (B) upon the occurrence of an event causing a dissolution of the Company under Section 18-801 of the Act, except the Company shall not be dissolved upon the occurrence of an event that terminates the continued membership of a Member if (i) at the time of the occurrence of such event there are at least two Members of the Company, or (ii) within ninety (90) days after the occurrence of such event, all remaining Members agree in writing to continue the business of the Company and to the appointment, effective as of the date of such event, of one or more additional Members. In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority set forth in Section 18-804 of the Act.

17. Certificates. The Company hereby irrevocably elects that all membership interests in the Company shall be securities governed by Article 8 of the Uniform Commercial Code of Delaware. Each certificate evidencing membership interests in the Company shall bear the following legend: "This certificate evidences an interest in Excel Mining Services LLC and shall be a security for purposes of Article 8 of the Uniform Commercial Code." No change to this provision shall be effective until all outstanding certificates have been surrendered for cancellation and any new certificates thereafter issued shall not bear the foregoing legend.

18. Other Business. The Member may engage in or possess an interest in other business ventures of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

19. Limited Liability. The Member shall not have any liability for the debts, obligations or liabilities of the Company except to the extent expressly provided by the Act.

20. Exculpation; Indemnification. Neither the Member, the Officers nor any of their respective affiliates or subsidiaries, nor officers, directors, partners, employees or agents of any of the foregoing (collectively, "Covered Persons") shall be liable to the Company or any other person or entity who has an interest in the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Member or Officer, as applicable, by this Agreement. To the fullest extent permitted by applicable law, the Company shall indemnify each Covered Person against any loss, damage, claim, liability, expense, judgment, fine or settlement incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Member or Officer, as applicable, by this Agreement; provided, however, that any indemnity under this Section 20 shall be provided out of and to the extent of Company assets only, and neither the Member nor the Officer, as applicable, nor any other Covered Person, shall have personal liability on account thereof.

21. Banking Matters. The Member, each Officer and any agent or employee of the Company or other person designated by such Member or Officer, is hereby authorized and empowered to: (A) establish one or more domestic or international accounts (including but not limited to, depository, checking, disbursement, custodian, or investment accounts, and other accounts as deemed necessary or expeditious for business purposes of the Company) ("Accounts"), in the name of the Company with any bank, trust company, savings and loan institution, brokerage firm or other financial institution that said Member or Officer shall from time to time designate as a depository of funds, securities or other property of the Company, for any purpose and on terms and conditions deemed appropriate by such Member or Officer on behalf of the Company; (B) close Accounts of the Company now or hereafter established; and (C) assign, limit or revoke any and all authority of any agent or employee of the Company, or other person designated by such Member or Officer to (i) sign checks, drafts and orders for the payment of money drawn on the Company's Accounts, and all notes, acceptances and endorsements of the Company, (ii) execute or initiate electronic fund transfers, (iii) execute or initiate foreign currency exchange transactions, (iv) execute or initiate the investment of monies and (v) initiate requests for information for any Account of the Company.


22. Benefits of Agreement. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of any Member.

23. Amendment. This Agreement may only be amended by a writing duly signed by the Member.

24. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, without regard to conflict of law rules.

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first written above.

MINING SYSTEMS HOLDING LLC

By: 
Name: John Pless
Title: Vice President and Treasurer

[Amended and Restated Limited Liability Company Agreement of Excel Mining Systems LLC
Signature Page]

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TRADEMARK
REEL: 003418 FRAME: 0260

Exhibit C

Delaware

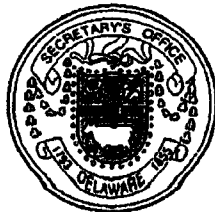
PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OR A MERGER WITH A RESTATED CERTIFICATE ATTACHED OF "EXCEL MINING SYSTEMS LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, CHANGING ITS NAME FROM "MINING SYSTEMS ACQUISITION LLC" TO "EXCEL MINING SYSTEMS LLC", FILED THE ELEVENTH DAY OF OCTOBER, A.D. 2006, AT 3:07 O'CLOCK P.M.



4213102 8100X

060945161

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5116225

DATE: 10-16-06

TRADEMARK
REEL: 003418 FRAME: 0262

AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
MINING SYSTEMS ACQUISITION LLC

This Amended and Restated Certificate of Formation of Mining Systems Acquisition LLC (the "LLC"), dated as of October 11, 2006, has been duly executed and is being filed by the undersigned, as an authorized person, in accordance with the provisions of 6 Del. C. § 18-208 to amend and restate the original Certificate of Formation of the LLC, which was filed on September 5, 2006 with the Secretary of State of the State of Delaware (the "Certificate") to form a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. § 18-101, *et seq.*).

The Certificate is hereby amended and restated in its entirety to read as follows:

1. The name of the limited liability company continued hereby is Excel Mining Systems LLC (the "Company").
2. The address of the Company's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801. The name of the Company's registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Formation as of the date first written above and submits it for filing in accordance with the Delaware Limited Liability Company Act.

MINING SYSTEMS HOLDING LLC

By: 

Name: John Pless

Title: Vice President and Treasurer

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