IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRICK GOLD CORPORATION, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. XI, Respondent, and BULLION MONARCH MINING, INC., Real Party in Interest.	Case No. **APPENDIX IN SUPPORT OF BARRICK GOLD CORPORATION'S PETITION FOR WRIT OF PROHIBITION** **VOLUME V OF VIII**

DATED this 24th day of August, 2021.

PISANELLI BICE PLLC

By: */s/ Jordan T. Smith*

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CHRONOLOGICAL INDEX

DOCUMENT	DATE	VOL.	PAGE
Appendix to Barrick Nevada Holding LLC's Motion to Dismiss Plaintiff's Second Amended Complaint **EXHIBIT D FILED UNDER SEAL**	08/06/2020	III, IV, V	PA 0573-1042
Combined Opposition to Barrick Gold Corporation's and Barrick Nevada Holding, LLC's Motion to Dismiss Plaintiff's Second Amended Complaint	08/21/2020	V, VI	PA 1043-1148
Reply in Support of Barrick Gold Corporation's Motion to Dismiss Plaintiff's Second Amended Complaint	09/08/2020	VI	PA 1149-1173
Transcript of Proceedings	09/22/2020	VI	PA 1174-1249
Notice of Entry of Order Regarding Motions to Dismiss and Motion for a More Definite Statement	12/09/2020	VI	PA 1250-1257
Barrick Gold Corporation's Petition for Writ of Prohibition	01/25/2021	VI	PA 1258-1295
Third Amended Complaint **FILED UNDER SEAL**	02/08/2021	VI	PA 1296-1346
Motion to Dismiss Petition or Notice of Intent to Oppose Petition as Moot	02/10/2021	VII	PA 1347-1406
Opposition to Motion to Dismiss Petition and Countermotion for a Stay Pending Decision on Writ Petition	02/17/2021	VII	PA 1407-1427
Motion to Dismiss Plaintiff's Third Amended Complaint	02/22/2021	VII	PA 1428-1536
Opposition to Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint	03/10/2021	VII	PA 1537-1544
Reply in Support of Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint	03/22/2021	VII	PA 1545-1551
Minute Order on Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint	03/29/2021	VII	PA 1552-1553

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Notice of Entry of Order Denying Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint	04/21/2021	VII	PA 1554-1559
Motion to Supplement Petition and Appendix Thereto	05/28/2021	VIII	PA 1560-1715
Order Granting Motion to Dismiss Petition	07/15/2021	VIII	PA 1716-1718

ALPHABETICAL INDEX

DOCUMENT	**DATE**	**VOL.**	**PAGE**
Appendix to Barrick Gold Corporation's Motion to Dismiss Plaintiff's Second Amended Complaint	07/28/2020	III	PA 0415-0572
Appendix to Barrick Nevada Holding LLC's Motion to Dismiss Plaintiff's Second Amended Complaint **EXHIBIT D FILED UNDER SEAL**	08/06/2020	III, IV, V	PA 0573-1042
Barrick Gold Corporation's Motion to Dismiss	10/11/2019	I	PA 0045-0128
Barrick Gold Corporation's Motion to Dismiss Plaintiff's Second Amended Complaint	07/28/2020	II	PA 0391-0414
Barrick Gold Corporation's Petition for Writ of Prohibition	01/25/2021	VI	PA 1258-1295
Bullion Monarch Mining, Inc. Motion for Leave to File Amended Complaint **FILED UNDER SEAL**	11/02/2019	I	PA 0129-0185
Bullion Monarch Mining, Inc.'s Opposition to Motion to Dismiss **FILED UNDER SEAL**	11/12/2019	I, II	PA 0186-0329

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DOCUMENT	DATE	VOL.	PAGE
Combined Opposition to Barrick Gold Corporation's and Barrick Nevada Holding, LLC's Motion to Dismiss Plaintiff's Second Amended Complaint	08/21/2020	V, VI	PA 1043-1148
Complaint filed in *Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc., et al.,* Case No. A-18-785913-B, **FILED UNDER SEAL**	12/12/2018	I	PA 0001-0041
Minute Order on All Pending Motions	04/22/2019	I	PA 0042-0044
Minute Order on Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint	03/29/2021	VII	PA 1552-1553
Motion to Dismiss Petition or Notice of Intent to Oppose Petition as Moot	02/10/2021	VII	PA 1347-1406
Motion to Supplement Petition and Appendix Thereto	05/28/2021	VIII	PA 1560-1715
Notice of Entry of Order Denying Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint	04/21/2021	VII	PA 1554-1559
Notice of Entry of Order Regarding Motions to Dismiss and Motion for a More Definite Statement	12/09/2020	VI	PA 1250-1259
Opposition to Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint	03/10/2021	VII	PA 1537-1544
Order Granting Motion to Dismiss Petition	07/15/2021	VIII	PA 1716-1718
Order Granting Plaintiff's Motion for Leave to File Amended Complaint	05/21/2020	II	PA 0336-0338
Order Regarding Motion for Clarification or, Alternatively, for Leave to File Amended Complaint	07/14/2020	II	PA 0339-0343
Proof of Service on Defendant Barrick Gold Corporation	11/25/2019	II	PA 0330-0335

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Reply in Support of Barrick Gold Corporation's Motion to Dismiss Plaintiff's Second Amended Complaint	09/08/2020	VI	PA 1149-1173
Reply in Support of Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint	03/22/2021	VII	PA 1545-1551
Second Amended Complaint **FILED UNDER SEAL**	07/14/2020	II	PA 0344-0390
Third Amended Complaint **FILED UNDER SEAL**	02/08/2021	VI	PA 1296-1346
Transcript of Proceedings	09/22/2020	VI	PA 1174-1249

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 24th day of August, 2021, I electronically filed and served via United States Mail, postage prepaid, a true and correct copy of the above and foregoing **APPENDIX TO BARRICK GOLD CORPORATION'S PETITION FOR WRIT OF PROHIBITION** properly addressed to the following:

Clayton P. Brust, Esq.
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The Honorable Elizabeth Gonzalez
Eighth Judicial District court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

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ARTICLE 4

MANAGEMENT OF OPERATIONS

4.1 Designation of Operating Member.

(a) Designation of Barrick Member. Subject to the terms and conditions of this Agreement, Barrick Member agrees to serve as the initial Operating Member with overall management responsibility for Operations of Nevada JV and its subsidiaries. The Operating Member shall be subject to supervision and direction by the Board but shall carry out Operations directly for and shall be compensated by Nevada JV in accordance with the provisions of this Agreement (including the Accounting Procedures).

(b) Management Fee. In addition to payments made to the Operating Member pursuant to the Accounting Procedures, the Operating Member shall be paid by Nevada JV an annual management fee of $25 million. The management fee shall be paid in monthly installments on the 15th day of each month.

(c) Affiliates. The Operating Member may utilize the services of a direct or indirect Affiliate of the Operating Member to act as the Operating Member in the Operating Member's stead, and such Affiliate may perform all or any of the Operating Member's obligations as Operating Member. An Affiliate of the Operating Member designated as Operating Member by the Operating Member may exercise all the rights that the Operating Member has in its capacity as the Operating Member under this Agreement. The Operating Member shall cause its Affiliate that is acting as Operating Member to comply with all obligations hereunder applicable to the Operating Member and shall remain liable in respect of any failure of such Affiliate so to comply.

4.2 Rights and Obligations of the Operating Member.

Subject to the terms and conditions of this Agreement, including Sections 3.3(b) and 3.3(c), and to applicable Legal Requirements, the Operating Member shall have the following specific powers and duties:

(a) General.

(i) The Operating Member shall manage, direct and control Operations (including any Exploration) and shall carry out and cause the employees of Nevada JV and its subsidiaries as well as employees of the Operating Member and its Affiliates to carry out the decisions of the Board, including Approved Programs and Budgets, and to carry out other activities provided for in this Agreement, and the Operating Member shall conduct, or cause to be conducted, all such Operations in a good, workmanlike and efficient manner, using the skill and judgment and exercising such degree of care and skill as would reasonably be exercised by an experienced mining company operating projects or conducting mining operations of the nature and scope of the Nevada JV Mines and Operations related thereto, all in material compliance with sound mining practices, consistent with the standards of the industry and in accordance with all terms and provisions of applicable Legal Requirements, Governmental Authorizations, contracts, all other agreements pertaining to the Nevada JV Assets and the conduct of Operations and plans and

policies of Nevada JV contemplated in Section 4.2(p). Notwithstanding the foregoing sentence, neither the Operating Member nor any Affiliate of the Operating Member that carries out activities in its capacity as Operating Member or as an Affiliate designated by the Operating Member to carry out such activities shall be liable to Nevada JV, its subsidiaries or the Members for, and shall not be denied its right to recover its costs and expenses in respect of, any act or omission resulting in damage, claims or loss, except to the extent caused by the gross negligence or willful misconduct of the Operating Member or any such Affiliate. Subject to Section 18.14, the Operating Member shall be liable for acts or omissions resulting in damage, claims or loss to the extent caused by the Operating Member's gross negligence or willful misconduct.

(ii) Except as otherwise provided herein, the Operating Member and any Affiliate of the Operating Member acting in the Operating Member's stead shall have the right to recover from Nevada JV, and Nevada JV shall reimburse the Operating Member and such Affiliate, in accordance with the Accounting Procedures, for all costs and expenses properly incurred by it in accordance with the provisions of this Agreement and any losses and damages it suffers from its activities as Operating Member for the conduct of Operations hereunder, except to the extent caused by or attributable to the Operating Member's gross negligence or willful misconduct.

(iii) The Operating Member's authority shall be limited to that authority which is conferred on it by this Agreement.

(iv) The Operating Member shall not be in default of its duties under Section 4.2(a)(i) or any other provision of this Agreement if its failure to perform is caused by any act or omission of a Member or Nevada JV conducted independently and not at the behest of the Operating Member, including the failure of any Member or Nevada JV (A) to perform acts required of it by this Agreement or (B) to provide necessary funds pursuant to this Agreement.

(b) General Obligations.

(i) Subject to applicable Legal Requirements and the provisions of this Agreement, the Operating Member shall arrange for Nevada JV to (A) make all payments required by the Nevada JV Licenses, Governmental Authorizations, contracts and other agreements, (B) pay all rentals, royalties, fees, taxes, assessments and like charges on Operations and the Nevada JV Assets and take other actions required to keep property interests of Nevada JV and its subsidiaries in good standing, (C) make all corporate filings and take other steps required to maintain Nevada JV in good standing, (D) pay dividends and distributions and Member Loan Payments to the Members as authorized pursuant to this Agreement and the Certificate of Formation, (E) receive Member Contributions from the Members, (F) establish bank accounts for funds with banks Approved by the Board, (G) maintain financial and cost accounting books and records on an accrual basis for financial reporting in accordance with Section

4.6(a), as applicable, (H) maintain corporate records and (I) do all other acts reasonably necessary to maintain the Nevada JV Assets, including the payment by Nevada JV of all taxes and Maintenance Costs required to be paid or incurred with respect to the Nevada JV Business. To the extent reasonably possible, the Operating Member shall cause the Nevada JV Assets to be acquired and held by Nevada JV and its subsidiaries. All of the Nevada JV Assets shall be assets of Nevada JV and its subsidiaries irrespective of whether the Operating Member or Nevada JV and its subsidiaries actually holds title.

(ii) Nevada JV shall provide the necessary company approvals for the Operating Member to carry out the duties described in Section 4.2(b)(i).

(c) Materials and Supplies. Subject to Section 3.3(b)(xiii), the Operating Member shall purchase or otherwise acquire for, or arrange for the acquisition directly by, Nevada JV and its subsidiaries all materials, supplies, equipment, vehicles, fuel and tools, and water, utility and transportation services required for Operations.

(d) Compliance With Legal and Policy Requirements. The Operating Member shall (i) secure for itself, if applicable, and for Nevada JV and its subsidiaries all necessary Governmental Authorizations and approvals for Operations, (ii) conduct Operations in material compliance with applicable Governmental Authorizations, other Legal Requirements, including those relating to safety requirements, working conditions, anti-corruption, workers' compensation, employee benefits, Environmental Compliance and Policies and (iii) prepare and facilitate the filing of all reports or notices required for Operations. The Operating Member shall give notice promptly to the Board of any allegation of a significant violation of any Legal Requirement or Policies in respect of Operations.

(e) Employees. Executive and other employees required for Operations may be employees of Nevada JV or any Affiliate as determined by the Operating Member. The Parties acknowledge that certain employees of Newmont Member or its Affiliates, on the one hand, and of Barrick Member or its Affiliates, on the other hand, are leased to the Nevada JV under and in accordance with the terms and conditions of the respective employee lease agreements dated the date of this Agreement between Nevada JV and, as applicable, Newmont (the "**Newmont Employee Lease Agreement**") and Barrick (the "**Barrick Employee Lease Agreement**" and, together with the Newmont Employee Lease Agreement, the "**Employee Lease Agreements**"), for the period of time provided in each such Employee Lease Agreement. Except as otherwise provided herein or in the Employee Lease Agreements, the Operating Member, acting through the General Manager, shall have the authority to (A) hire, transfer or discharge, or to cause the hiring, transfer or discharge of, employees assigned to Operations, (B) establish the terms of their employment and their wages, salaries and benefits, (C) direct them as to their obligations and duties and (D) supervise them in the performance of their jobs. The Operating Member shall have discretion in appointing employees of the Operating Member or its Affiliates or, with the consent of Newmont or in accordance with the Newmont Employee Lease Agreement, employees of Newmont or its Affiliates, to fill or second, on a temporary or indefinite basis, supervisory positions in connection with Operations, and to the extent that any employees of Newmont or its Affiliates are seconded to the Nevada JV, Newmont shall be entitled to payments in accordance with the Newmont Employee Lease Agreement, in the case of employees seconded thereunder, and otherwise in accordance with the Accounting Procedures, *mutatis mutandis*. To the extent that any of the duties of the Operating Member set forth herein

are carried out by employees of Nevada JV, such duties shall be carried out under the supervision of the Operating Member.

(f) Litigation. The Operating Member shall provide assistance to Nevada JV and its subsidiaries in the conduct of arbitration and litigation and shall be reimbursed by Nevada JV for all reasonable costs and expenses incurred by it in the course of providing such assistance.

(g) Disposition of Assets. Subject to Section 3.3(c)(xxii), Section 3.3(c)(xxvi), Section 4.12 and Section 4.13, the Operating Member may dispose of, and cause Nevada JV and its subsidiaries to dispose of, the Nevada JV Assets by abandonment, forfeiture, surrender or Transfer.

(h) Acquisition of Assets. Subject to Section 3.3(c)(xiv) and Section 3.3(c)(xxiii), the Operating Member may, and cause Nevada JV and its subsidiaries to, acquire any assets or make any investments in the ordinary course of business.

(i) Contracts.

(i) Subject to Section 3.3(c)(xix), the Operating Member may utilize and enter into, or cause Nevada JV and its subsidiaries to enter into, contracts with competent consultants, technicians, agents, Affiliates and independent contractors as may be required in the performance of Operations in accordance with Approved Programs and Budgets and the provisions hereof. The Operating Member shall have sole discretion, subject to applicable Legal Requirements and to the provisions of applicable Approved Programs and Budgets to select, or to supervise the selection by Nevada JV and its subsidiaries of, such consultants, technicians, agents, Affiliates or independent contractors.

(ii) Any contracts with third parties who are not arms-length with the Operating Member (including any Related Party Contracts) shall have terms and conditions no less favorable to Nevada JV than terms and conditions available from third parties who are at arms-length with the Operating Member. The Operating Member shall provide the Board with a summary of all such contracts entered into at the next regularly scheduled Board meeting.

(j) Insurance. The Operating Member shall, at all times while conducting Operations hereunder, procure and maintain, at the cost of Nevada JV, insurance coverage in amounts and types determined by the Operating Member to protect itself, in its capacity as Operating Member hereunder, the Members, Nevada JV, its subsidiaries and their respective officers, directors, managers and employees against liability to third parties with respect to Operations.

(k) No Encumbrances. The Operating Member shall use its best efforts to keep, and to cause Nevada JV and its subsidiaries to keep, the Nevada JV Assets free and clear of all Encumbrances, except (i) as otherwise Approved by the Board and (ii) for Permitted Encumbrances.

(l) Tax and Other Reports. The Operating Member shall prepare and file (or cause to be prepared and filed) with Governmental Authorities all tax returns, elections, forms and other reports required by law to be filed by Nevada JV and its subsidiaries, including those

required in relation to royalty payments, income and withholding taxes, value added taxes, customs duties and any other taxes, fees, levies or other government charges.

(m) Accounts and Records. The Operating Member shall keep, or cause to be kept, full and accurate records and accounts of all transactions entered into by or on behalf of Nevada JV and its subsidiaries and of all Chargeable Costs made for the account of Nevada JV and its subsidiaries, and of all funds disbursed by the Operating Member or under its direction, in accordance with Section 4.6(a) and the Accounting Procedures.

(n) Environmental Compliance. The Operating Member shall cause Operations to be conducted in accordance with all material requirements of the Nevada JV Licenses and other applicable Legal Requirements or contractual obligations and shall include in each proposed Budget sufficient funding to satisfy the financial assurance requirements of any applicable Legal Requirement or contractual obligation pertaining to Environmental Compliance.

(o) General Manager; Officers. The Operating Member shall engage, or cause Nevada JV to engage, a General Manager who will be employed full time with overall supervisory responsibilities for Operations. The General Manager will be subject to the direction of the Operating Member in the performance of day-to-day duties in the course of the Operating Member's performance of its services. Subject to Section 3.3(b)(xvi), the Operating Member will negotiate the terms of employment of the General Manager and may release and replace, or cause Nevada JV to release and replace, any individual who is engaged to be the General Manager. The Operating Member may, from time to time, nominate such other officers as may be necessary or advisable for the purposes of carrying out the Operations. The Operating Member shall discuss its intentions at a meeting of the Board, in advance of the hiring of or the release of any individual as the General Manager. The Board shall take such actions as are necessary to cause the General Manager or any other officer to have such authority to act on behalf of Nevada JV as may be determined by the Operating Member to be necessary. Such authorizations may include approvals of powers of attorney giving the General Manager and any other officer authority to act on behalf of Nevada JV.

(p) Policies and Plans. The Operating Member shall abide by appropriate policies and plans governing occupational health, work place safety, sustainability and environmental protection, and such other policies and plans in respect of the conduct of Operations as are customary and consistent with industry standards ("**Policies**"). The Members acknowledge and agree that Nevada JV and its subsidiaries have adopted, and the Operating Member will abide by, the current Barrick Policies, a copy of which have been made available to each Member. The Members acknowledge and agree that the Barrick Policies currently incorporate (i) the International Cyanide Management Code, (ii) ISO 14001 (or equivalent) and (iii) Sagebrush Conservation Program and Commitments, (iv) International Council on Mining and Metals Sustainable Development Principles and Assurance, (v) International Council on Mining and Metals Performance Expectations and Assurance, (vi) World Gold Council Responsible Gold Mining Principles and Assurance, (vii) World Gold Council Conflict Free Gold Standard and (viii) Assurance, Environmental, Social, and Governance Transparency and Reporting, United Nations Guiding Principles on Business and Human Rights and Product Stewardship Standard. Any amendment to such Policies which remove the standards set out in clauses (i), (ii) or (iii) or that reduce the standards applicable to the Operating Member as of the date hereof, will require Board Approval pursuant to Section 3.3(c)(xxi).

(q) Authorizations. Subject to decisions of the Board made pursuant to Section 3.3(a), the Operating Member shall, and shall have authority to, undertake all other activities

reasonably necessary to fulfill the foregoing. The Members shall as necessary cause Nevada JV and its subsidiaries to provide one or more powers-of-attorney permitting the Operating Member to take actions authorized hereunder on behalf of and as agent for Nevada JV and its subsidiaries, and if necessary under applicable Legal Requirements, to one or more individual employees of the Operating Member or its Affiliates, to vest such individual(s) with authority to take action on behalf of Nevada JV and its subsidiaries.

4.3 Reports and Information.

(a) Reports. The Operating Member shall, subject to any modifying instructions Approved by the Board expanding or increasing such requirements, prepare and, or cause Nevada JV to prepare, the following reports for the Board, delivered at the following times:

(i) monthly reports by (A) the 9th Business Day of each month to and including January 2020, and (B) thereafter, the 7th Business Day of each month, describing with respect to the preceding month the Operations performed by or under the direction of the Operating Member and the results of such Operations, including a detailed summary of all expenditures made during such calendar month and a comparison of such expenditures and all prior reported expenditures in reasonable detail to estimates set forth in the applicable Approved Program and Budget;

(ii) within 4 Business Days after the end of each month, monthly reports describing with respect to the preceding month daily production statistics with a comparison of actual production to forecasted production during such month;

(iii) within the Prescribed Number of Business Days after the end of each month, unaudited trial balances of Nevada JV for the preceding month; "**Prescribed Number of Business Days**" means for purposes of this Section 4.3(a)(iii), (A) for the duration of 2019, 7 Business Days, and (B) thereafter, 5 Business Days;

(iv) at least 10 days prior to the beginning of each month, a daily delivery schedule stating the forecasted amounts of Bullion (as defined in the Bullion Purchase Agreement) to be delivered by all refiners during that month, and (ii) as soon as reasonably practicable, a written notice of any material deviations from any such monthly forecast that are foreseen by the Operating Member, or that occur, regardless of whether foreseen;

(v) by the 25th day following the end of each month, a summary of new geological, geophysical, geochemical and mineral reserve and mineral resource data acquired during the preceding month;

(vi) copies of any preliminary economic assessment, pre-feasibility study, feasibility study, and mineral resources or mineral reserves reports (whether prepared by Nevada JV, the Operating Member or third parties) concerning Operations, including NI 43-101 reports, within 15 Business Days after the end of the month in which received;

(vii) a detailed final report within 90 days after completion of each Approved Operating Program and Budget, which shall include comparisons between actual and budgeted expenditures and comparisons between the objectives and results of Programs;

(viii) no later than October 15th of each Calendar Year, a draft report setting forth the Operating Member's guidance for production and all-in sustaining costs, sustaining capital, development capital, costs applicable to sales, all-in sustaining costs and a reconciliation of costs applicable to sale to all-in sustaining costs for the current Calendar Year and the succeeding 7 Calendar Years, by site, prepared in accordance with Generally Accepted Accounting Principles;

(ix) by January 15 of each Calendar Year, in draft form (not for public disclosure), and by January 22 of each Calendar Year, in final form, annual reports of mineral reserves and mineral resources, by deposit, sufficient to comply with securities laws and the applicable rules of any stock exchange to which either Member or any of its Affiliates is subject with respect to its reporting and disclosure obligations of mineral resources and mineral reserves, as well as any other technical information which may be reasonably requested by a Member to permit it to comply with the reporting and disclosure obligations of mineral reserves and mineral resources of the Member or any of its Affiliates, including the following on a site-basis:

(A) tonnage, grade and ounces by confidence classification (Proven, Probable, Measured, Indicated and Inferred);

(B) cut-off grades and metallurgical recovery for mineral reserves and mineral resources;

(C) sources of change from previous year's mineral reserves and mineral resources by confidence classification for:

(I) Divestment / Acquisition;

(II) Engineering Changes;

(III) Depletion;

(IV) Metal Price;

(V) Drilling/Study Work;

(VI) Conversion to Reserve (Resource only); and

(VII) Reclassification from Reserve to Resource;

(D) cash flow that supports mineral reserves (proven and probable only, using the commodity price estimates then-required by or acceptable to the applicable securities regulators); and

(E) sensitivity analysis of the stated mineral reserves and mineral resources to changes in the reporting commodity prices.

(x) within 40 calendar days of the end of each Calendar Year, audited annual financial statements of the Nevada JV, including the opinion of the Auditor on the financial statements and internal controls, prepared in accordance with Generally Accepted Accounting Principles and the Sarbanes-Oxley Act as referenced in Section 4.3(c);

(xi) by the 25th day of each month, summaries of interests or rights in real property acquired or disposed of during the preceding month;

(xii) copies of internal audit reports evaluating risks, processes or controls of Nevada JV, promptly following production thereof; and

(xiii) copies of such other reports as have been prepared in respect of Operations as any Member may reasonably request from time to time.

(b) Significant Information. The Operating Member shall inform the Board or cause the Board to be informed as soon as reasonably practicable of significant events that occur and significant new Technical Data that is obtained in the course of Operations.

(c) Sarbanes-Oxley Act. Without limiting Section 4.3(a), the Operating Member shall implement such internal control over financial reporting, disclosure controls and procedures and such other systems and procedures as are required by applicable Legal Requirements (at the levels of Nevada JV and its Members).

(d) Safety Reporting. Without limiting the generality of Section 4.3(b):

(i) within 24 hours after any fatality or catastrophic event at any Nevada JV Mine or facility or otherwise occurring in Operations, the Operating Member shall provide to the Board and the members of the Technical Committee a report of such fatality or catastrophic event; and

(ii) within 10 calendar days after the end of each month, the Operating Member shall provide to the Board and the members of the Technical Committee a Monthly Health and Safety Performance report for the previous month, including Total Reportable Injury Frequency Rate (TRIFR), Significant Events and Occupational Illnesses.

(e) Securities or Other Regulatory Filings. If either Member or any Affiliate of either Member is required to make any securities or other regulatory filings in connection with the formation or on-going operation of the Nevada JV, each Member shall cooperate with the other to provide the information and support necessary to comply with such securities or other regulatory filing, including providing current or historical operating or financial information related to the Newmont Contributed Assets or Barrick Contributed Assets required to prepare such filings. In the event such information is required to be separately audited by a registered public accounting firm, each Member shall cooperate with the other Member or the other Member's Affiliates to provide access and reasonable support in completing any required audit. The costs associated with any required securities or other regulatory filing or related audit procedures shall be the responsibility of the Member that has, or whose Affiliate has, such filing requirement.

(f) Annual Review of Mineral Reserves and Mineral Resources. At the option of the Operating Member, either (i) on or before November 15 of each Calendar Year, the Members shall meet to review the status of Nevada JV's mineral reserves and mineral resources, or (ii) during the fourth quarter of each calendar year, the Operating Member shall provide to the Members, as and when such information becomes available, updates with respect to mineral reserves and mineral resources.

4.4 Performance by Operating Member as to Approved Programs and Budgets.

(a) Conformance with Approved Programs and Budgets. Except as otherwise provided herein or otherwise authorized by the Board, the Operating Member shall conduct, or cause Nevada JV and its subsidiaries to conduct, Operations, incur expenses and purchase assets for Nevada JV and its subsidiaries only in accordance with Approved Programs and Budgets.

(b) Changes to Programs and Budgets.

(i) Subject to Sections 3.3(b) and 3.3(c) as well as Sections 4.4(b)(ii) and 4.4(c), the Operating Member shall have authority to approve all changes and modifications to any Approved Program and Budget and all contracts awarded thereunder that are in the Operating Member's good faith judgment reasonable and prudent under the circumstances and do not materially change the overall nature, scope or costs of Operations contemplated under such Approved Program and Budget.

(ii) The Operating Member shall promptly inform the Board of each material change or modification to an Approved Program and Budget that Operating Member has made or approved that does not require Approval of the Board.

(c) Overruns.

(i) The Operating Member shall notify the Board in monthly reports provided pursuant to Section 4.5(a) of any reasonably anticipated overruns in excess of the aggregate expenditures authorized in an Approved Budget.

(ii) Subject to Section 4.4(e), the Operating Member shall not permit the aggregate costs provided for in the Budget for an Approved Program and Budget, to increase by more than 10% in the absence of Force Majeure unless authorized by the Board or by a Supplemental Program and Budget Approved by the Board pursuant to Section 5.5(a).

(iii) The Operating Member may, to the extent reasonably necessary and subject to Section 4.4(e), scale down, or cause Nevada JV to scale down, Operations being carried out under a Nevada JV Approved Program and Budget to avoid or minimize an unauthorized overrun pending action by the Board authorizing such overrun independently or in the context of a Supplemental Program and Budget Approved by the Board.

(iv) Funds necessary to pay for permitted overruns with respect to an Approved Program and Budget shall be obtained to the extent reasonably

possible from Cash Available to Nevada JV. Unless otherwise determined by the Board, the Members shall, pursuant to Section 5.6(b), provide funding required for any shortfall as Capital Contributions to Nevada JV in their respective Proportionate Interests in accordance with Monthly Funding Statements or Special Funding Statements provided by the Operating Member pursuant to Section 4.5(b)(ii).

(d) Unauthorized Overruns. Any overruns incurred by the Operating Member in excess of expenditures authorized in an Approved Program and Budget other than as permitted under the provisions of this Agreement shall be for the sole account of the Operating Member.

(e) Emergency and Unexpected Expenditures. Notwithstanding any other provisions hereof, in case of emergency the Operating Member may take, or cause or permit Nevada JV and its subsidiaries to take, any reasonable action the Operating Member deems necessary to protect life, limb or property, to protect the Nevada JV Assets and to comply with any Legal Requirement or any Governmental Authorization. The Operating Member may make, or cause or permit Nevada JV and its subsidiaries to make, appropriate expenditures for such emergencies. The Operating Member may also make, or permit Nevada JV and its subsidiaries to make, unexpected expenditures reasonably necessary for the protection and preservation of the Nevada JV Assets and compliance with any Legal Requirement, notwithstanding that such expenditures will cause a Budget overrun. The Operating Member shall provide notice to the Board as soon as possible after any emergency expenditure or unexpected expenditure that has been made or that must be made if sufficient time is available to provide such notice in advance. Operations performed by the Operating Member pursuant to this Section 4.4(e) shall be funded by Cash Available to Nevada JV and its subsidiaries to the extent reasonably possible. Unless otherwise determined by the Board, the Members shall, pursuant to Section 5.6(b), provide funding required for such expenditures to the extent that Cash Available to Nevada JV and its subsidiaries is insufficient to cover the same as Capital Contributions to Nevada JV in their respective Proportionate Interests in accordance with Monthly Funding Statements or Special Funding Statements provided by the Operating Member pursuant to Section 4.5(b)(ii).

4.5 Accounts and Settlements.

(a) Monthly Statement. Subject to any modifying instruction given by the Board requiring more frequent submissions, the Operating Member shall promptly submit to the Board monthly statements of account showing:

(i) charges and credits to the accounts of Nevada JV and its subsidiaries, including charges and credits not provided for in an Approved Program and Budget;

(ii) estimates of the amounts needed by Nevada JV and its subsidiaries for expenditures to be made during the succeeding calendar month pursuant to the applicable Approved Programs and Budgets and otherwise including amounts needed to cover the monthly general expenses of the Operating Member;

(iii) the estimated portions of such amounts that will be funded by Nevada JV and its subsidiaries during such calendar month from general revenues, financing arrangements or prior Member Contributions; and

(iv) the estimated portions of such amounts, if any, that will need to be funded by Member Contributions to Nevada JV during such calendar month pursuant to the applicable Approved Programs and Budgets or otherwise hereunder.

(b) Funding.

(i) The Operating Member shall submit to each Member before the last day of each month separate statements (the "**Monthly Funding Statements"),** showing, among other things, (A) any cash that is to be provided to Nevada JV as Member Contributions irrespective of immediate cash needs of Nevada JV and its subsidiaries pursuant to an approved Funding Plan in a lump sum payment or in installments pursuant to an approved Funding Plan, (B) any cash that is needed by Nevada JV and its subsidiaries in respect of each Approved Program and Budget and corresponding approved Funding Plan as Member Contributions to satisfy accounts payable for the past month for which there is insufficient Cash Available to Nevada JV, estimated cash requirements for the next month that are in excess of cash remaining available from prior Member Contributions or from other Cash Available to Nevada JV and its subsidiaries, and cash needed to maintain the Cash Reserve Amount, and (C) whether such amounts are anticipated to constitute Development Capital Expenditures (which, for clarity, shall also be expressed in Special Funding Statements). The Monthly Funding Statements shall show, if appropriate, adjustments for any excess or deficiency arising from any differences between estimated and actual costs. If applicable, the Operating Member may show in such Monthly Funding Statements, or at any time include in separate statements provided to each Member (the "**Special Funding Statements"),** cash needed for expenditures that are not provided for in an Approved Program and Budget or Funding Plan but is nonetheless required by this Agreement to be provided by Member Contributions to Nevada JV. At the time of delivery of a Special Funding Statement to a Member, the Operating Member shall provide such Member with a copy of the corresponding Special Funding Statement delivered to the other Member. Required Member Contributions shown in Monthly Funding Statements or Special Funding Statements are referred to as "**Cash Requirements".**

(ii) Each Monthly Funding Statement and Special Funding Statement shall show the amounts to be contributed by each Member (based upon its Proportionate Interest) as Member Contributions needed to fund Cash Requirements, including a breakdown showing how such Member Contributions are to be made pursuant to the applicable approved Funding Plan, pursuant to separate determinations made by the Board. Subject to any applicable requirements of loan documents, any funds held by Nevada JV for the benefit of the Member to which the contribution request is directed shall be applied as a credit to such amounts. Each Member shall make the Member Contributions required of it as shown in each Monthly Funding Statement and Special Funding Statement provided by the Operating Member pursuant to Section 5.6(b).

(iii) Unless otherwise determined by the Board, the Operating Member shall at all times cause Nevada JV and its Subsidiaries to maintain cash or cash equivalents equal to the Cash Reserve Amount. All funds in excess of immediate cash requirements shall be invested for the benefit of Nevada JV and its Subsidiaries in Nevada JV Accounts.

4.6 Accounts and Records.

(a) Financial Accounts. The Operating Member shall maintain at its offices, and/or cause Nevada JV to maintain, complete financial and cost accounting books and records, on an accrual basis for financial reporting, in accordance with the Accounting Procedures and Generally Accepted Accounting Principles, showing all costs, expenditures, receipts and disbursements hereunder. These accounts shall include general ledgers and supporting and subsidiary journals, invoices, checks and other customary documentation sufficient to provide a record of revenues and expenditures and periodic statements of financial position and the results of Operations for managerial, tax, regulatory and other financial reporting purposes. Unless otherwise required by applicable Legal Requirements, such accounting books and records shall be maintained in U.S. dollars and in accordance with Generally Accepted Accounting Principles. Where funds are paid or received in the currency of any other country except the United States, the books and accounts maintained by the Operating Member shall show the value of such payments in U.S. dollars based upon actual rates incurred when such payments are made, if applicable, and otherwise to official exchange rates in effect when such payments are made. The Operating Member shall, if requested by the Board, also maintain at such offices all other records necessary, convenient or incidental to the recording of Nevada JV's and its subsidiaries' affairs, including all Operations. Irrespective of termination of this Agreement, the Operating Member shall retain, or cause Nevada JV and its subsidiaries to retain, all accounts, documents and invoices pertaining to charges and credits to accounts of Nevada JV and its subsidiaries indefinitely until destruction is authorized by the Board.

(b) Hedge Accounting. The Operating Member shall use commercially reasonable efforts to ensure that any hedging practices with respect to the purchase of inputs that are implemented by Nevada JV and its subsidiaries, if any, qualify for hedge accounting treatment in accordance with all of the Generally Accepted Accounting Principles.

(c) Technical Records. The Operating Member shall maintain at its offices, and/or cause Nevada JV to maintain, separate and complete books and records relating to all geological, geophysical, geochemical and other exploration records and reports, all maps, drawings, surveys and other records (including title records), and records pertaining to Governmental Authorizations pertaining to Operations.

4.7 Audits.

(a) As soon as possible after the close of each Calendar Year, all the books and accounts of the Operating Member relating to the performance of services hereunder shall be audited at the expense of Nevada JV by the Auditor, and the Operating Member shall promptly provide to each Member such accountant's report. Neither Nevada JV nor the Operating Member shall have any liability to any other Party relating to any charges and credits to such accounts during the period covered by such audit after the date which is the second anniversary of the date on which the audit is completed.

(b) Each Member shall have the right, at its own expense, to audit all the books and accounts of the Operating Member relating to the performance of services hereunder, and the Operating Member shall provide any Member that elects to conduct any such audit with reasonable access to such books and accounts in accordance with Section 4.8.

4.8 Inspection and Access.

A Member or any representative of such Member shall be entitled, at its own risk and expense, to enter upon any portion of the Nevada JV Assets upon reasonable advance notice to the Operating Member or to the General Manager and at convenient times during normal working hours and in accordance with applicable safety procedures to inspect the Nevada JV Assets and Operations being performed by the Operating Member or by Nevada JV and its subsidiaries hereunder. A Member or its representatives, at its own risk and expense, shall also be permitted to inspect and copy Nevada JV's, its subsidiaries' and the Operating Member's books, records and data (including the general ledgers and other financial accounts and technical records referred to in Section 4.6) pertaining to the performance of Operations and to the Nevada JV Assets, including all Technical Data upon reasonable advance notice to the Operating Member and at convenient times during normal working hours and in accordance with applicable safety procedures; provided, however, that none of Nevada JV, its subsidiaries or the Members (nor any one thereof) shall at any time have access to or any right to inspect or copy or have an interest of any kind in or to Barrick Proprietary Property or the Newmont Proprietary Property, as applicable (other than any such access, right or interest that may be granted to any of the Parties pursuant to the terms of any applicable license or other agreement entered into by any of the Parties from time to time). The rights granted to the Members in this Section 4.8 shall be subject to the confidentiality provisions in Article 15.

4.9 Access to Nevada JV Land, Infrastructure and Facilities.

Subject to the following provisions, a Member or any representative of such Member shall be entitled to access and make use of the lands, water rights, infrastructure and facilities that form part of the Nevada JV Assets for purposes of developing any Excluded Development/Exploration Properties owned by such Member or its Affiliates and/or carrying out closure obligations in respect of any Excluded Closure Properties owned by such Member or its Affiliates:

(a) such Member shall provide the Operating Member with reasonable advance written notice of its desire to access and use such lands, water rights, infrastructure and facilities, including a detailed summary of the proposed access and use;

(b) such access and use shall not adversely impact Nevada JV, its subsidiaries or the Operations, as determined by the Operating Member, acting reasonably;

(c) such Member or its representatives, as applicable, shall at all times abide by applicable safety procedures of Nevada JV and its subsidiaries; and

(d) any incremental costs incurred by Nevada JV, its subsidiaries or the Operating Member (including infrastructure or personnel related costs) or losses suffered by Nevada JV, its subsidiaries or the Operating Member as a result of such access and use shall be borne exclusively by the Member accessing and using the land, infrastructure and facilities of Nevada JV and its subsidiaries.

4.10 License to Use Nevada JV Intellectual Property.

Nevada JV (on behalf of itself and its subsidiaries) hereby grants to each Member and its Affiliates a non-exclusive license to use any intellectual property of Nevada JV or its subsidiaries, including (a) any intellectual property that is included in the Barrick Contributed Assets or the Newmont Contributed Assets (excluding any such intellectual property that is licensed to Nevada JV by a Member or Affiliate of any Member) and (b) any other intellectual property that is developed by Nevada JV or its subsidiaries or their respective employees or other representatives in the conduct of Operations. The foregoing grant of license by Nevada JV shall be subject to such additional terms set forth in the Newmont Proprietary Information License Agreement, the Newmont Software License Agreement, and the Patent Nonassertion Agreement, each between Newmont Member and Nevada JV, and the Barrick Proprietary Information License Agreement, TCM Technology License Agreement, and the Barrick Software License Agreement, each between Barrick and Nevada JV, all of which agreements are of even date herewith (collectively, the "IP Agreements"). In the event of any conflict between this Section 4.10 or this Agreement generally and any IP Agreement, the terms of the IP Agreement shall govern.

4.11 Resignation, Removal, or Change of Operating Member.

(a) Resignation of Operating Member. The Operating Member may resign as Operating Member upon not less than 90 days' notice to the Board. In any event, the Operating Member shall be deemed to have immediately resigned as Operating Member upon the occurrence of any of the following events:

(i) upon voluntary or involuntary winding up, or insolvency of the Operating Member or of its ultimate parent company, or termination of the Operating Member's, or of its ultimate corporate parent company's, corporate existence, except as may occur by reason of corporate reorganization, amalgamation or merger;

(ii) the Operating Member is a Member or an Affiliate of a Member and the Member's Proportionate Interest becomes less than 50%;

(iii) upon a final and unappealable determination of a court of law that the Operating Member has failed to perform in any material respect any of its material duties and obligations hereunder in accordance with the Operating Member's standards of care set out in this Agreement;

(iv) upon a final and unappealable decision of a court of law that (1) the Operating Member has breached in any material respect any material obligation, covenant or duty under this Agreement and (2) after notice pursuant to Section 9.2, has failed to (A) cure such default or (B) continue corrective efforts with reasonable diligence until a cure is effected, in either case, pursuant to Section 9.3; or

(v) a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for a substantial part of the Operating Member's assets or those of its ultimate parent company is appointed and such appointment is neither made ineffective nor discharged within 60 days after the making thereof,

or such appointment is consented to, requested by or acquiesced in by the Operating Member or its ultimate parent company.

(b) Replacement of Operating Member.

(i) If Barrick is the resigning Operating Member, Newmont Member shall be the replacement Operating Member; provided, however, that if Barrick has resigned as Operating Member pursuant to Sections 4.11(a)(i) through 4.11(a)(v) and Newmont Member desires that Barrick continue as Operating Member, Barrick may elect to do so. If Newmont Member is the resigning Operating Member, Barrick shall be the replacement Operating Member; provided, however, that if Newmont Member has resigned as Operating Member pursuant to Sections 4.11(a)(i) through 4.11(a)(v) and Barrick Member desires that Newmont Member continue as Operating Member, Newmont Member may elect to do so. The Members shall cause the selection of a replacement Operating Member as determined above and Approved by Nevada JV.

(ii) The resigning Operating Member, upon withdrawal, shall deliver, or cause to be delivered, to its successor custody of all Nevada JV Assets in the possession or subject to the control of the resigning Operating Member, including real and personal property, records, books, accounts, data, files and contract rights that may be held by the resigning Operating Member. The resigning Operating Member will use its best efforts to provide for continuity of Operations notwithstanding the transfer of managerial responsibility to its successor.

(iii) Upon the resignation or deemed resignation of the Operating Member hereunder, the replacement Operating Member may conduct an audit of the records of the former Operating Member with respect to Operations conducted under this Agreement within 60 days of such resignation or removal. The cost of any such audit will be borne by the Member that is the replacement Operating Member.

4.12 Right of First Offer re: Abandoned Properties

If, subject to any approval required by Section 3.3(c), the Operating Member proposes to, or to cause Nevada JV or any of its subsidiaries to, dispose of any right, title or interest in any mineral property of Nevada JV or any of its subsidiaries by abandonment, forfeiture or surrender (an "**Abandoned Property"),** then the Operating Member shall first provide written notice of such intention to the Minority Member. At any time prior to the expiration of 15 Business Days following the Minority Member's receipt of such notice, the Minority Member shall have the right to elect to have the Abandoned Property Transferred to the Minority Member or a designated Affiliate, in which case the Abandoned Property shall be Transferred to the Minority Member or its designated Affiliate, for nominal consideration, as soon as reasonably practicable following such election. All sales, stamp or other Transfer taxes, levies and expenses related to such Transfer shall be paid by the Minority Member. If no such election is made by the Minority Member within such 15 Business Day-period, the Operating Member shall be free to proceed with the abandonment, forfeiture or surrender of the Abandoned Property at any time during the 120-day period following the expiration of the 15

Business Day-period, following which the terms and conditions of this Section 4.12 will again apply to any proposed abandonment, forfeiture or surrender of such Abandoned Property.

4.13 Right of First Offer re: Dispositions.

(a) Disposition Transaction. If, subject to any approval required by Section 3.3(c), the Operating Member proposes to, or to cause Nevada JV or any of its subsidiaries to, solicit, negotiate or enter into an agreement, arrangement or understanding in respect of a sale, conveyance or other disposition, other than by abandonment or forfeiture, of any right, title or interest in any mineral property of Nevada JV or any of its subsidiaries for a proposed disposition price for such transaction, or aggregate disposition price for a series of related transactions, reasonably expected to exceed $25 million (a "**Disposition Transaction**"), then the Operating Member shall first provide written notice of such intention to the Minority Member (the "**Disposition Notice"),** which notice shall specify the applicable mineral property and the anticipated material terms (including price) and conditions at which Nevada JV may be prepared to complete a Disposition Transaction. For the avoidance of doubt, delivery by Nevada JV of a Disposition Notice shall not compel Nevada JV to complete a Disposition Transaction.

(b) Exercise Period. At any time prior to the expiration of 15 Business Days following the Minority Member's receipt of a Disposition Notice (the "**ROFO Exercise Period"),** the Minority Member shall have the right to make an offer to the Operatmg Member for a Disposition Transaction with respect to the applicable mineral property (a "**Member Transaction Offer")**. A Member Transaction Offer must be irrevocable for at least five Business Days and shall set forth all of the material terms and conditions of the Disposition Transaction that are proposed by the Minority Member (which may be the same as, or more or less favourable than, the terms and conditions set forth in the Disposition Notice). The Operating Member will use its commercially reasonable efforts to provide the Minority Member, as promptly as practicable, with such information concerning the applicable mineral property as the Minority Member may reasonably request for the purposes of determining whether to make a Member Transaction Offer.

(c) Offering Period. Provided that Nevada JV has complied with all of the provisions of this Section 4.13, and whether or not the Minority Member has delivered a Member Transaction Offer during the ROFO Exercise Period, at any time during the 120-day period following the expiration of the ROFO Exercise Period (such period, the "**Offering Period"),** the Operating Member may cause Nevada JV and its subsidiaries to consummate a Disposition Transaction with any Person with respect to the applicable mineral property that is on terms and conditions that, taken as a whole, are no more favorable to such Person, and no less favorable to Nevada JV and its subsidiaries, than the terms and conditions set forth in (i) if the Minority Member has delivered a Member Transaction Offer, such Member Transaction Offer (and, for this purpose, any such agreement shall be deemed to exclude any obligation that cannot reasonably be fulfilled by the Minority Member and its Affiliates) and (ii) in all other cases, the Disposition Notice. If no such Disposition Transaction is consummated prior to the expiry of the Offering Period, the terms and conditions of this Section 4.13 will again apply to any proposed Disposition Transaction.

ARTICLE 5

BUDGETS; FUNDING

5.1 Programs and Budgets.

(a) Operations Prior to Approval of First Operating Program and Budget. During the period after the date hereof until the first Operating Program and Budget is Approved by the Board, the Operating Member is authorized to carry out directly or through its Affiliates Operations that are (i) sufficient to maintain the Nevada JV Assets and comply with applicable Legal Requirements, (ii) in accordance with contracts in effect upon the date hereof, (iii) in furtherance of the Operations, and (iv) other activities related to the foregoing. Unless otherwise determined by the Board, the Members shall, pursuant to Section 5.6(b), provide funding for such Operations to Nevada JV in their respective Proportionate Interests in accordance with Monthly Funding Statements or Special Funding Statements provided by Operating Member pursuant to Section 4.5(b)(ii).

(b) Reporting by Calendar Year. All Operations with respect to the Nevada JV Mines and other facilities constructed or owned by Nevada JV and its subsidiaries shall be planned and conducted and all estimates, reports, and statements shall be prepared and made on the basis of a Calendar Year.

(c) Programs and Budgets.

(i) Operating Programs and Budgets. The Operating Member shall submit a draft Program and Budget for Operations, which shall cover Operations of Nevada JV and its subsidiaries, to the Board for each Calendar Year not later than October 15th of the preceding Calendar Year. Each such Program and Budget, referred to as an "**Operating Program and Budget**", shall contain the following, on a life-of-mine basis where applicable:

(A) a description of the proposed Mining Operations;

(B) a description of any proposed plan for Exploration;

(C) a detailed estimate of all costs by category, including Nevada JV Capital Costs, plus a reasonable allowance for contingencies;

(D) an estimate of the quantity and quality of the ore to be mined and the Products to be produced;

(E) an estimate of revenues to be received by Nevada JV and its subsidiaries from the sale of Products and the sale, if any, of excess power generated by any power arrangements; and

(F) such other facts as may be necessary pursuant to Section 5.7(a) or to illustrate the results intended to be achieved by the Operating Program and Budget.

(ii) Additional Programs and Budgets. The Operating Member may include in Operating Programs and Budgets, or in separate Programs and Budgets submitted to the Board ("**Additional Programs and Budgets**"), proposals for evaluations of possible expansions, additions to or modifications of the Nevada JV Mines and/or related facilities or of separate new mines and/or related facilities and/or for the construction and operation thereof.

(iii) Closure Programs and Budgets. When Operations at any Nevada JV Mine and related facilities cease, or are scheduled to cease, the Operating Member shall submit a Program and Budget for Closure Operations (a "**Closure Program and Budget**") to the Board. If Closure Operations are not completed prior to completion of the initial Closure Program and Budget, the Operating Member shall propose additional successive Closure Programs and Budgets for the continuation of Closure Operations until completed. The Operating Member shall propose an additional Closure Program and Budget to the Board by no later than 30 days prior to expiration of the initial Closure Program and Budget and of any succeeding Closure Program and Budget. Each Closure Program and Budget shall cover a Calendar Year unless otherwise determined by the Board.

(d) Funding Plans. Funding for Approved Programs and Budgets may be obtained from cash flow of Nevada JV and its subsidiaries, reserve accounts, Member Contributions, loan capital (provided by any Persons, including the Members or Affiliates of the Members), debentures, equipment leasing, other funding or financing arrangements or any combination of any of the foregoing. The Operating Member shall provide a proposed Funding Plan along with each Operating Program and Budget, Additional Program and Budget and Closure Program and Budget proposed by the Operating Member to the Board which shall set forth proposed sources of funding as above provided. Unless otherwise determined by the Board, the proposed Funding Plan shall provide that contemplated Member Contributions will be made in accordance with Section 5.6(a), to the extent the Operations contemplated by the corresponding Program and Budget cannot be funded from Cash Available to Nevada JV, and that funds for such Member Contributions shall be contributed by the Members in their respective Proportionate Interests to Nevada JV in accordance with Section 5.6(b).

(e) Approval by the Board. Each proposed Operating Program and Budget, Additional Program and Budget and Closure Program and Budget shall be subject to the requirements of Section 5.7(a) and the procedures set forth in Section 5.7(b). The Board shall seek to Approve each Operating Program and Budget, Closure Program and Budget and Additional Program and Budget that follows the initial such Program and Budget and each accompanying Funding Plan by December 1st of the year immediately preceding the Calendar Year to which such Program and Budget relates.

(f) Activities During Delay. If the Board for any reason fails timely to Approve an Operating Program and Budget, the Operating Member shall, subject to the contrary direction of the Board and to the availability of necessary funds, be authorized to continue, or to cause Nevada JV and its subsidiaries to continue, Operations sufficient to maintain the Nevada JV Assets and comply with applicable Legal Requirements and, if Mining is ongoing, to maintain production levels in effect when the failure occurs. Operations performed by the Operating Member pursuant to this Section 5.1(f) shall be funded by Cash Available to Nevada JV and its

subsidiaries to the extent reasonably possible. Unless otherwise determined by the Board, the Members shall, pursuant to Section 5.6(b), provide funding required for such expenditures to the extent that Cash Available to Nevada JV and its subsidiaries is insufficient to cover the same as Capital Contributions to Nevada JV in their respective Proportionate Interests in accordance with Monthly Funding Statements or Special Funding Statements provided by the Operating Member pursuant to Section 4.5(b)(ii).

5.2 Delivery and Sale of Gold Production.

The Parties hereby acknowledge and agree that the following arrangements will be entered into with respect to the delivery and sale of Products unless otherwise determined by the Board in accordance with Section 3.3(c)(xvi):

(a) In respect of Doré produced by Nevada JV and its subsidiaries:

(i) each Member or its designated Affiliate (each, a "**Purchaser")** will purchase from Nevada JV 100% of the refined gold and silver outturned following the refining of Doré on a *pro rata* basis according to the Proportionate Interest of the applicable Member that is, or is Affiliated with, such Purchaser, in accordance with the terms and conditions of the gold and silver bullion purchase agreement dated the date of this Agreement between Nevada JV and each Member or its designated Affiliate (as amended from time to time, the "**Bullion Purchase Agreement**");

(ii) Nevada JV shall enter into one or more Doré transportation agreements and one or more Doré refining agreements with one or more precious metals refiners whose large bars are acceptable in the London market as LBMA Good Delivery (as such standard may be replaced from time to time) pursuant to which Nevada JV will (A) deliver all Doré originating at the Nevada JV Mines for refining at such refiner's refineries, and (B) in accordance with the Bullion Purchase Agreement, arrange for the refiner to credit to designated metal accounts maintained by such Purchaser (or deliver by such alternative delivery methods as may be permitted pursuant to the Bullion Purchase Agreement) refined gold and silver purchased by each Purchaser in accordance with Section 5.2(a)(i); and

(iii) subject to the terms and conditions of the Bullion Purchase Agreement, in the event that a Purchaser defaults on its payment obligations in respect of the purchase from Nevada JV of refined gold and silver pursuant to the Bullion Purchase Agreement, (A) Nevada JV may elect to retain for its own account, as payment for such refined gold and refined silver, all Nevada JV Distributions and Member Loan Payments that such defaulting Purchaser or Member Affiliated with it, as applicable, would otherwise be entitled to receive from Nevada JV, until all amounts payable under the Bullion Purchase Agreement (including accrued interest) have been paid in full and (B) each Member hereby irrevocably authorizes and directs Nevada JV to retain for its own account such Nevada JV Distributions and Member Loan Payments until all amounts payable under the Bullion Purchase Agreement (including accrued interest) have been paid in full.

(b) In respect of all other minerals or commodities, including Concentrates (but excluding Doré), Nevada JV shall sell such mineral or commodities, including Concentrates, as applicable, to a smelter operator or other third party, on behalf of and for the benefit of the Members.

(c) The Nevada JV and Operating Member are hereby authorized to take such actions and enter into such agreements or other arrangements as the Operating Member reasonably determines are necessary in furtherance of the foregoing.

(d) For purposes of this Agreement the following terms have the following meanings:

(i) "**Concentrates**" means the Product derived from Crude Ore after waste materials have been removed through leaching, milling or other beneficiation;

(ii) "**Crude Ore**" means Products that have not, except for sizing or crushing, been subject to further processing or concentrating;

(iii) "**Doré**" means unrefined metal bars containing gold and silver that requires further refining to produce marketable gold and silver.

(iv) "**LBMA**" means the London Bullion Market Association, including its successors and assignees, and any accepted market replacement if the LBMA ceases to exist.

(v) "**LBMA Good Delivery**" means gold and silver in accordance with the requirements set forth in the "Good Delivery Rules for Gold and Silver Bars – Specifications for Good Delivery Bars and Application Procedures for Listing", January 2019, of the LBMA, as the same may be amended or otherwise modified from time to time.

5.3 Reserves.

The Board may establish one or more cash reserves as the Board determines from time to time and may apply such reserves for Operations as may be determined by the Board; provided, however, that cash reserves shall be limited only to those reserves and to such amounts as are reasonably required to support Operations.

5.4 Surety Arrangements.

(a) The Members acknowledge that (i) as of the date of this Agreement, there are outstanding Surety Arrangements provided by the Members or their Affiliates prior to the date of this Agreement that relate to the Barrick Contributed Assets or the Newmont Contributed Assets that have not been released or discharged, as described on attached Schedule K (each a "**Legacy Surety Arrangement**"), and (ii) the Legacy Surety Arrangements are subject to Section 5.15 of the Implementation Agreement, governing the substitution of such Legacy Surety Arrangements with Surety Arrangements provided by the Nevada JV or the implementation of alternative arrangements in the event substitution of any Legacy Surety Arrangement is not so substituted within one year following the date of this Agreement.

(b) Notwithstanding Section 5.4(a), if any Surety Arrangements are required by any Governmental Authority, the Members (and, if required by such Governmental Authorities, the applicable Parents) shall, to the extent such Surety Arrangements are not provided solely by Nevada JV, undertake obligations, or enable Nevada JV to undertake obligations, required to provide such Surety Arrangements (each a "**New Member Surety Arrangement**"), in each case in proportion to their respective Proportionate Interests. The portion of the New Member Surety Arrangement underwritten or provided by each Member (or, if applicable, its respective Parent) shall be adjusted to reflect any changes in the Proportionate Interests of the Members and to enable substitution of Nevada JV as the obligor to the extent permitted by applicable Legal Requirements, and each Member (and, if applicable, its respective Parent) agrees to cooperate and take such actions as are necessary to enable and ensure the same (including providing joint written directions required by or notices to any applicable Governmental Authorities notifying such Governmental Authorities of any changes in the Proportionate Interests of the Members).

(c) It is the intention of the Members that the Members will bear, directly or indirectly, in proportion to their Proportionate Interests, (i) all out-of-pocket costs and expenses incurred by each Member and Affiliate of any Member that is the obligor in respect of any Legacy Surety Arrangement or New Member Surety Arrangement (an "**Obligated Party**") that are reasonably required to maintain in place any Legacy Surety Arrangement or New Member Surety Arrangement in accordance with its terms, including but not limited to the payment of premiums or providing letters of credit, cash collateral or guaranties ("**Surety Arrangement Costs**"), and (ii) all amounts paid by an Obligated Party pursuant to the terms of any Legacy Surety Arrangement or New Member Surety Arrangement (a "**Surety Arrangement Payment**"). Accordingly, Nevada JV shall promptly indemnify and reimburse each Obligated Party and its Affiliates for (i) all Surety Arrangement Costs incurred by the Obligated Party or its Affiliates and (ii) any Surety Arrangement Payment.

5.5 Supplemental Programs and Budgets.

(a) Approval Procedures. In the event the Operating Member or a Manager believes that any Approved Operating Program and Budget, Approved Additional Program and Budget or Approved Closure Program and Budget should be revised prior to the end of the applicable Budget Period, the Operating Member or such Manager may propose one or more supplemental Programs and Budgets (each a "**Supplemental Program and Budget**") to the Board to be accomplished by the end of the then-current Budget Period. Any such proposed Supplemental Program and Budget shall be subject to the procedures set forth in Section 5.7(b).

(b) Funding Plan. The Operating Member (or the proposing Manager) shall provide a proposed Funding Plan to accompany each proposed Supplemental Program and Budget. Unless otherwise determined by the Board, the proposed Funding Plan shall provide that contemplated Member Contributions will be made in accordance with Section 5.6(a), to the extent the Operations contemplated by such Supplemental Program and Budget cannot be funded from Cash Available to Nevada JV, and that funds for such Member Contributions shall be contributed by the Members in their respective Proportionate Interests to Nevada JV in accordance with Section 5.6(b).

5.6 Member Contributions.

(a) Unless otherwise determined by the Board pursuant to Section 3.3(c)(xvii), Member Contributions to Nevada JV shall be made as Capital Contributions.

(b) Within 10 days after a Monthly Funding Statement or Special Funding Statement showing required Member Contributions is delivered to a Member by the Operating Member pursuant to Section 4.5(b)(ii), such Member shall pay to Nevada JV the amount requested of such Member in the manner prescribed in such Monthly Funding Statement or Special Funding Statement. Notwithstanding the foregoing, it is acknowledged and agreed that any Special Funding Statement in respect of any payment to be made pursuant to the Note Guaranty may specify a period of time less than 10 days in which payment of the amount requested shall be made.

5.7 Procedures Related to Programs and Budgets and Funding Plans.

(a) Content of Proposed Programs and Budgets. Each Program and Budget proposed to the Board as provided herein shall include in reasonable detail a description of the nature of the proposed Operations, designations of the land area upon which the proposed Operations will take place, the estimated period of time such Operations will take and the expenditures to be made in carrying out such Operations. Each such Program and Budget may contain provisions related to the operation and funding of Nevada JV and its subsidiaries in respect of expenditures of Nevada JV and its subsidiaries. Every proposed Program and Budget, including all proposed modifications of any proposed Program and Budget, shall, at a minimum, be sufficient to maintain the Nevada JV Assets and to satisfy applicable Legal Requirements.

(b) Review and Approval Procedures. Each Member, acting through its appointees on the Board, shall within 15 days after submission by the Operating Member of any proposed Program and Budget submit to the Managers appointed by the other Member:

(i) notice that such Member approves the proposed Program and Budget; or

(ii) proposed modifications of the proposed Program and Budget.

If a Member fails to give either of the foregoing responses within the allotted time, the failure shall be deemed to be an approval by such Member of the Operating Member's proposed Program and Budget. If a Member makes a timely submission to the Managers appointed by the other Member pursuant to Section 5.7(b)(ii), then the Board shall meet within 30 days after such proposals or objections are submitted and shall consider, acting reasonably and in good faith, the proposals of such Member and seek to develop a complete Program and Budget acceptable to each Member in light of the proposals of the Member that submitted the same. If the Managers fail, acting reasonably, to reach unanimous agreement upon such Program and Budget within 30 days after a Manager appointed by a Member has made a timely submission to the Managers appointed by the other Member pursuant to Section 5.7(b)(ii), then the Program and Budget originally submitted by the Operating Member with such modifications as the Managers have agreed upon, if any, shall be submitted to Vote and shall be adopted if Approved by the Board.

(c) Changes by Board. Subject to Sections 3.3 and 5.7(b), the Board may make such changes to any proposed Program and Budget as it deems fit prior to Approval.

ARTICLE 6

EXCLUDED DEVELOPMENT/EXPLORATION PROPERTIES; MATERIAL CAPITAL PROJECTS

6.1 Contribution of Excluded Development/Exploration Properties.

Where an Excluded Property Feasibility Study conducted in respect of an Excluded Development/Exploration Property is a Successful Study, the applicable Member that owns (or that is Affiliated with the owner of) such Excluded Development/Exploration Property (the "**Contributing Member**") shall promptly provide written notice (a "**Contribution Notice**") of the same to Nevada JV and the other Member (the "**Non-Contributing Member**") (which notice shall be accompanied by (i) to the extent not previously provided, a copy of the Excluded Property Feasibility Study, and (ii) a detailed statement as to the cost of the Excluded Property Feasibility Study together with reasonable supporting documentation) and such Excluded Development/Exploration Property shall be contributed to Nevada JV in accordance with the following provisions:

(a) the Contributing Member shall promptly cause a valuation of its interest in the Excluded Development/Exploration Property to be completed in accordance with the procedures set out in Schedule F (the "**Excluded Development/Exploration Property Value**") and shall promptly provide a copy of such valuation to the Non-Contributing Member;

(b) promptly and in any event within 15 days following the determination of the Contribution Value, subject to any extensions required to obtain necessary regulatory approvals, the Contributing Member shall (or, if applicable, shall cause its Affiliate to) contribute to Nevada JV all of its interest in the Excluded Development/Exploration Property (the "**Contribution**");

(c) the Contribution shall be valued as the sum of (i) the Excluded Development/Exploration Property Value, plus (ii) the total aggregate costs, expenses and fees incurred by the Contributing Member and its Affiliates in connection with the Excluded Property Feasibility Study (together with the Excluded Development/Exploration Property Value, the "**Contribution Value**");

(d) in connection with the Contribution, within 30 days of receiving the valuation determining the Excluded Development/Exploration Property Value the Non-Contributing Member may elect to either:

(i) pay to the Contributing Member on the date of the completion of the Contribution (the "**Contribution Date**") an amount equal to the product of:

(A) the Non-Contributing Member's Proportionate Interest (as at the time immediately prior to the Contribution), multiplied by

(B) the Contribution Value; or

(ii) permit its Proportionate Interest to be diluted, effective as of the Contribution Date, by treating such Contribution as a Capital Contribution in the amount of the Contribution Value and recalculating the

Proportionate Interests taking into account the Contribution Value contributed by the Contributing Member (in which case the Schedule of Members will be updated by the Board to give effect to such Contribution). An illustration of such recalculation is set out in Part I of Schedule G.

(e) If the Non-Contributing Member fails to make such an election within such 30 day period, it shall be deemed to have elected to have its Proportionate Interest diluted in accordance with Section 6.1(d)(ii).

(f) If an Excluded Development/Exploration Property is contributed to Nevada JV in accordance with this Section 6.1, (i) the Contributing Member shall be deemed to have made a Capital Contribution in the amount of the Contribution Value less any amount paid by the Non-Contributing Member pursuant to Section 6.1(d)(i) and (ii) the Non-Contributing Member shall be deemed to have made a Capital Contribution in the amount paid by the Non-Contributing Member pursuant to Section 6.1(d)(i), if any.

(g) In connection with the contribution of the Excluded Development/Exploration Property to Nevada JV, on the Contribution Date Nevada JV will assume all liabilities relating to or associated with the Excluded Development/Exploration Property.

For the purposes of this Section 6.1, an "**Excluded Property Feasibility Study**" means a feasibility study undertaken by the Contributing Member for the purpose of evaluating the development of the Excluded Development/Exploration Property as an integrated expansion of the Nevada JV Business, and includes any associated program of exploration (including site preparation, drilling and environmental compliance) completed in connection with the Excluded Property Feasibility Study or any previous prefeasibility study. The Operating Member shall cause Nevada JV to cooperate with either Member's conduct of an Excluded Property Feasibility Study with respect to any Excluded Development/Exploration Property of such Member or its Affiliate; provided, however, that any incremental costs incurred by Nevada JV as a result of such cooperation shall be borne exclusively by the applicable Member that is conducting an Excluded Property Feasibility Study.

6.2 Disposition of Excluded Development/Exploration Properties.

(a) No Member shall (or shall permit any of its Affiliates to) sell, convey or otherwise dispose of any of its right, title or interest in an Excluded/Development Property (an "**Excluded Property Disposition Transaction**") unless:

(i) such Member has first complied with the terms and conditions of this Section 6.2;

(ii) such Member has conducted an Excluded Property Feasibility Study in respect of such Excluded Development/Exploration Property and such study is not a Successful Study, or such Member has otherwise determined, acting reasonably, on the basis of a pre-feasibility study process, whether or not completed, that an Excluded Property Feasibility Study in respect of such Excluded Development/Exploration Property would not be a Successful Study;

(iii) copies of any Excluded Property Feasibility Study or studies or analyses prepared in connection with a pre-feasibility study process conducted in accordance with Section 6.2(a)(ii) (as applicable, the "**Applicable Study**") are promptly provided by such Member to the other Member; and

(iv) the terms and conditions of such Excluded Property Disposition Transaction preserve, in favor of Nevada JV, access rights in respect of such Excluded Development/Exploration Property substantially the similar to the access rights provided pursuant to Section 6.4.

(b) A Member proposing an Excluded Property Disposition Transaction (the "**Proposing Member**") shall give notice in writing (an "**Offer Notice**") to the other Member (the "**Offeree Member**") if a *bona fide* written offer ("**Third Party Offer**") in respect of an Excluded Property Disposition Transaction is received from an arms' length third party (whether such Third Party Offer is unsolicited from the third party or arises as a result of an outbound inquiry by the Proposing Member), and the Proposing Member is prepared to accept such Third Party Offer. The Offer Notice must (i) specify the name of the third party making the Third Party Offer, the price (including a cash equivalent if non-cash consideration is being offered) and the principal terms and conditions of the Third Party Offer and (ii) to the extent not previously provided to the Offeree Member, include a copy of the Applicable Study in respect of such Excluded Development/Exploration Property. The Offer Notice will include an offer (the "**Other Member Offer**") to sell the Excluded Development/Exploration Property that is subject to the Third Party Offer to the Offeree Member at the same price and on substantially the same terms contained in the Third Party Offer (which may be no more favorable to the Proposing Member than the terms of the Third Party Offer). If the Third Party Offer is for non-cash consideration and the Offeree Member, acting reasonably, does not agree with the value of the non-cash consideration set out by the Proposing Member in the Offer Notice, the Offeree Member shall immediately notify the Proposing Member and the parties shall negotiate in good faith to determine a mutually agreeable value.

(c) At any time prior to the expiration of the later of (i) 15 Business Days following the date of delivery of an Offer Notice, and (ii) 60 days following the date of delivery of the Applicable Study (the "**Excluded Property ROFR Exercise Period**"), the Offeree Member shall have the right, in its discretion, to accept the Other Member Offer by giving written notice to the Proposing Member; provided that if the Third Party Offer is for non-cash consideration and the Offeree Member does not agree with the value of the non-cash consideration set out by the Proposing Member in the Offer Notice, the Excluded Property ROFR Exercise Period shall automatically be extended to the date that is the later of (i) 15 Business Days following determination by the parties of a mutually agreeable value, and (ii) 60 days following the date of delivery of the Applicable Study. If requested by the Offeree Member, the Proposing Member will use its commercially reasonable efforts to provide the Offeree Member, as promptly as practicable, with such information concerning the applicable Excluded Development/Exploration Property as was made available to the Person that made the Third Party Offer for the purposes of determining whether to accept an Other Member Offer.

(d) If the Other Member Offer is accepted by the Offeree Member, then the Offeree Member shall purchase the Excluded Development/Exploration Property subject to the Other Member Offer upon the terms and conditions contained in the Other Member Offer. Such purchase shall be completed as soon as reasonably practicable following such acceptance. For the avoidance of doubt, if the Offeree Member purchases the Excluded Development/Exploration Property, (i) such Excluded Development/Exploration Property shall

no longer be subject to Section 6.1 or this Section 6.2, and (ii) the Offeree Member and its representatives shall continue to have the access and use rights described in Section 4.9 in respect of the development of such Excluded Development/Exploration Property.

(e) Provided that the Proposing Member has complied with all of the provisions of this Section 6.2, and that the Offeree Member has not delivered an acceptance of the Other Member Offer during the Excluded Property ROFR Exercise Period (or has notified the Proposing Member in writing that it will not deliver such an acceptance), then, at any time during the 120-day period following the expiration of the Excluded Property ROFR Exercise Period (or such earlier date on which the Proposing Member receives notice in writing from the Offeree Member that it will not deliver an acceptance), the Proposing Member or its Affiliate may consummate an Excluded Property Disposition Transaction with any Person with respect to the applicable Excluded Development/Exploration Property that is at the same or greater price and on terms and conditions that, taken as a whole, are no more favorable to such Person, and no less favorable to the Proposing Member, than the terms and conditions set forth in the Other Member Offer (and, for this purpose, any such agreement shall be deemed to exclude any obligation that cannot reasonably be fulfilled by the Offeree Member and its Affiliates). If no such Disposition Transaction is consummated prior to the expiry of such 120-day period, the terms and conditions of this Section 6.2 will again apply to any proposed Excluded Property Disposition Transaction.

6.3 **Material Capital Projects.**

The following provisions shall govern the Development of a proposed Material Capital Project:

(a) Where a feasibility study conducted in respect of a proposed Material Capital Project is a Successful Study, the Operating Member may cause the General Manager to prepare a Capital Project Budget in respect of the proposed Material Capital Project. A Material Capital Project that is not supported by a Successful Study may not proceed, and the Operating Member shall not direct the General Manager to prepare a Capital Project Budget, unless the unanimous approval of the Board is first obtained.

(b) Following completion of a Capital Project Budget, a decision to proceed with the Development of the Material Capital Project in accordance with the Capital Project Budget will be put to the Board for its Approval. If the Board Approves the Development of the Material Capital Project, either Member may, by providing written notice (an "**Opt-Out Notice**") to the other Member within 30 days of the approval of the Material Capital Project by the Board, elect not to participate in the Material Capital Project (such Member, the "**Non-Funding Member**"). If no Member has delivered an Opt-Out Notice within the 30 day period prescribed by this Section 6.3(b), both Members shall be deemed to have agreed to fund the Material Capital Project (a "**Co-Funded Capital Project**") and shall be required to satisfy any Member Contributions related to the Co-Funded Capital Project in proportion to their Proportionate Interest.

(c) If a Member receives an Opt-Out Notice within the timeframe prescribed by Section 6.3(b), such Member may, within 30 days from the receipt of the Opt-Out Notice, elect to sole fund the Material Capital Project by providing notice to this effect to the Non-Funding Member (a "**Sole Funding Notice**"). A failure to

provide a Sole Funding Notice within the prescribed 30-day period shall be deemed a decision not to proceed unilaterally with the Material Capital Project. A Member that elects to sole fund in accordance with this Section 6.3(c) is referred to as the "**Sole Funding Member**." For clarity, a Material Capital Project that is proceeding with a Sole Funding Member shall be funded, to the extent that the expenditures thereon constitute Development Capital Expenditures, solely by the Sole Funding Member's Member Contributions contributed for such purpose and not by other Cash Available to Nevada JV.

(d) The Proportionate Interests of the Members shall be recalculated, and the Schedule of Members shall be updated, to give effect to the Member Contributions made to fund the Material Capital Project. For the avoidance of doubt, any cost overruns that exceed the Capital Project Budget but which are funded by Member Contributions by the Sole Funding Member shall nonetheless dilute the interest of the Non-Funding Member. An illustration of such recalculation is set out in Part II of Schedule G.

(e) Any failure to make a required Member Contribution within 10 Business Days following a Monthly Funding Statement or Special Funding Statement in respect of the Co-Funded Capital Project shall constitute a Funding Default.

6.4 Access to Excluded Development/Exploration Properties.

Subject to the following provisions, Nevada JV or its subsidiaries or any of their respective representatives shall be entitled to access and make use of the lands of any Excluded Development/Exploration Property for purposes of bona fide Nevada JV Operations:

(a) the Operating Member shall provide the Member that owns, or whose Affiliate owns, such Excluded Development/Exploration Property with reasonable advance written notice of its desire to access and use such lands, including a detailed summary of the proposed access and use;

(b) such access and use shall not adversely impact the value or use of the Excluded Development/Exploration Property by such Member or its Affiliate, as determined by such Member, acting reasonably;

(c) Nevada JV shall at all times abide by applicable safety procedures of such Member;

(d) Nevada JV shall be solely responsible for performing, at its sole cost, all reclamation, restoration and Environmental Compliance related to or arising out of its use of such Property;

(e) any incremental costs incurred by such Member or its Affiliate (including personnel related costs) or losses suffered by such Member or its Affiliates as a result of such access and use shall be borne exclusively by Nevada JV.

6.5 No Other Restrictions.

Except for the provisions of Sections 6.1, 6.2 and 6.3, nothing in this Agreement is intended to, or shall, limit either Member in its activities with respect to, or disposition of any interest in, any of its respective Excluded Development/Exploration Properties.

ARTICLE 7

EXCLUDED CLOSURE PROPERTIES

7.1 Treatment of Excluded Closure Properties.

For certainty, it is acknowledged that none of the Excluded Closure Properties were, and none shall be, contributed to the Nevada JV. Nothing in this Agreement is intended to, or shall, limit either Member in its activities with respect to, or disposition of any interest in, any of its respective Excluded Closure Properties.

7.2 Excluded Closure Properties

The Parties acknowledge and agree that a Member may, by notice in writing to the Operating Member, appoint the Operating Member to manage and carry out all operations related to the shutdown and closure of any Excluded Closure Property owned by such Member pursuant to the applicable Closure Plans. The appointment of the Operating Member following a notice given by a Member under this Section 7.2 shall be conditional on such Member and the Operating Member, each acting reasonably and in good faith, negotiating and entering into a mutually acceptable agreement setting out the terms and conditions upon which the Operating Member shall manage such closure operations. Among other things, such terms and conditions shall provide that the Operating Member shall have the right to recover from the applicable Member that owns an Excluded Closure Property, and such Member will reimburse the Operating Member for, all costs and expenses incurred by the Operating Member in respect of such closure operations and any losses and damages it suffers from the conduct of such closure operations, except to the extent caused by or attributable to the Operating Member's gross negligence or willful misconduct.

ARTICLE 8

DISTRIBUTIONS.

8.1 Distributions.

(a) Cash Available For Distribution. "**Cash Available for Distribution**" means, as of the date of any distribution pursuant to Section 8.1(b) or Section 8.1(c), the positive difference resulting from:

(i) the amount of cash, and cash equivalents, in all accounts (excluding any funds received from lenders or Member Contributions that, in either case, are dedicated to a particular use);

(ii) less the sum of the following items (the "**Cash Reserve Amount**"):

(A) current liabilities payable during the period of 21 calendar days following that date, including all current liabilities for taxes payable;

(B) debt service requirements for all third-party company debt payable within 21-calendar days following that date, if any;

(C) budgeted operating and capital expenditures forecast for within 21-calendar days following that date, and reasonable and normal reserve accounts; and

(D) contingencies as calculated or reasonably estimated by the Operating Member.

(b) Payments from Cash Available for Distribution. Unless otherwise determined by a Vote of the Board pursuant to Section 3.3(c)(xviii) and subject to applicable Legal Requirements, Cash Available for Distribution (excluding amounts required to be distributed under Sections 8.1(c) or (d)) shall be disbursed monthly, and shall be used:

(i) first, to pay, as required pursuant to the terms of any Member Loans that may have been made to Nevada JV by the Members or their respective Affiliates, unless waived by both Members; and

(ii) second, as distributions to the Members, in accordance with each Member's Proportionate Interest, subject to Section 5.2(a)(iii) and Section 9.5(c)(i).

(c) Special Distributions of Proceeds. As soon as practicable following consummation of any sale or other disposition of Nevada JV Assets in one or a series of related transactions with a value of $50 million or more (other than a sale of Products or a sale of all or substantially all of the assets of Nevada JV, which is subject to Section 8.1(d)), Nevada JV shall distribute to the Members, in accordance with each Member's Proportionate Interest, the proceeds of such sale or other disposition, net of related transaction costs and reserves for transaction-related liabilities determined by the Board.

(d) Distributions Upon Liquidation. Distributions upon the winding up of Nevada JV, including proceeds from a liquidation of the assets of Nevada JV, or a sale of all or substantially all of the assets of Nevada JV, shall, after compliance with Section 17.1(c), be distributed to Members in accordance with Section 8.1(b).

ARTICLE 9

DEFAULTS AND REMEDIES

9.1 Defaults.

A Member defaulting in the performance of any of its obligations or duties under this Agreement, including a Member in its capacity as Operating Member, shall be referred to as the "**Defaulting Member**", and the other Member (including a Member in its capacity as Operating Member) shall be referred to as the "**Non-Defaulting Member**".

9.2 Notice of Default.

A Non-Defaulting Member shall give the Defaulting Member a written notice of default (a "**Notice of Default**"), which shall describe the default in reasonable detail and state the date by which the default must be cured, which date for curing or commencing to cure shall be not less than 30 days after receipt of the Notice of Default, except in the case of a failure to advance funds, in which case the date for cure shall be not less than 10 days after receipt of the Notice of Default; provided, however, that advance notice shall not be required prior to the taking of action by the Non-Defaulting Member to provide funds pursuant to Section 9.5(b) or Section 9.5(c) to rectify the default in an emergency or if necessary to avoid losses or breaches of contractual or governmental obligations. Failure of a Non-Defaulting Member to give a Notice of Default shall not release the Defaulting Member from any of its duties under this Agreement.

9.3 Opportunity to Cure.

If within the applicable period described in Section 9.2 the Defaulting Member cures the default, or if the failure is one (other than the failure to make payments or to advance funds) that cannot in good faith be corrected within such period and the Defaulting Member begins to correct the default within the applicable period and continues corrective efforts with reasonable diligence until a cure is effected, the Notice of Default shall be inoperative, and the Defaulting Member shall lose no rights under this Agreement and shall not be considered in breach of this Agreement and the Non-Defaulting Member shall take no further action with respect thereto. If, within the specified period, the Defaulting Member does not cure the default or begin to cure the default as provided above, the Non-Defaulting Member at the expiration of the applicable period, or upon notice where no cure period is allowed, shall have the rights specified in Section 9.4; provided, however, that if the Defaulting Member in good faith contests whether the alleged default has in fact occurred (other than the failure to make payments or to advance funds), the Defaulting Member shall give notice thereof to the Non-Defaulting Member within the applicable cure period described in Section 9.2. The provisions of Article 14 shall then be applicable (except as otherwise provided herein) and the rights of the Non-Defaulting Member to pursue its remedies shall be suspended until a final determination is made as to the existence of the alleged default. If the determination confirms that a default has occurred, the Defaulting Member shall be deemed upon receipt of the determination to have received a further notice of default pursuant to Section 9.2 and shall have the opportunity to cure as provided above in this Section 9.3 (with no further right to contest the default).

9.4 Rights Upon Default.

The Non-Defaulting Member, after providing notice and an opportunity to cure as provided in Sections 9.2 and 9.3, shall have the right (but not the duty) to exercise any remedy provided in Section 9.5, which remedies are cumulative and are in addition to and not in substitution for any other rights or remedies that the Non-Defaulting Member may have in law or equity. The Members acknowledge that if either Member defaults in making a contribution required by Section 5.6(b), Section 6.3(b) (relating to a Co-Funded Capital Project) or any other provision of this Agreement, or in repaying a loan as required under Section 9.5(c), it will be difficult to measure the damages resulting from such default (it being hereby understood and agreed that the Members have attempted to determine such damages in advance and determined that the calculation of such damages cannot be ascertained with reasonable certainty). Both Members acknowledge and recognize that the damage to the Non-Defaulting Member could be significant.

9.5 Failure to Provide Funds.

(a) Default. If a default referred to in Section 9.1 is a failure of the Defaulting Member to provide Member Contributions as required pursuant to Section 5.6(b), Section 6.3(b) (relating to a Co-Funded Capital Project) or otherwise herein (a "**Funding Default**"), the Non-Defaulting Member may, *inter alia*, exercise any of the remedies set forth in Section 9.5(b) or Section 9.5(c) with respect to the defaulted amount (the "**Defaulted Amount**").

(b) Additional Contribution to Cover Funding Default. The Non-Defaulting Member may, within five Business Days following the last day of the cure period, elect to cover the Funding Default by contributing the Defaulted Amount as an additional Member Contribution in the form of a Capital Contribution.

(c) Default Loan.

(i) The Non-Defaulting Member may, within five Business Days following the last day of the cure period, elect to pay the Defaulted Amount to Nevada JV and have such payment deemed to be a loan from the Non-Defaulting Member to the Defaulting Member (a "**Default Loan**"). The Default Loan shall be due and payable on demand upon 30 days' notice given no sooner than 90 days after the advance or assumption is made, and shall bear interest from the date advanced at an annual rate equal to 6% over the LIBOR Rate as the same shall change from time to time or at the maximum rate permitted by law, whichever is less, computed monthly in arrears and compounded (at the same interest rate as is applicable to principal) at the end of each Calendar Year until repaid in full. If more than one Default Loan is made by a Non-Defaulting Member to the Defaulting Member, all such Default Loans shall be aggregated, and the rights and remedies described herein pertaining to an individual advance shall apply to the aggregated amount. Upon the making of a Default Loan, the Non-Defaulting Member may require the Defaulting Member to, and the Defaulting Member shall, execute promissory notes or other documents evidencing the Default Loan reasonably requested by the Non-Defaulting Member. Notwithstanding the foregoing, each Member irrevocably agrees that as a Defaulting Member it shall pay the amount of the Default Loan together with accrued interest to the Non-Defaulting Member when due. If the aggregate amount payable is not discharged by the Defaulting Member when due, the Non-Defaulting Member, without waiver of other remedies, may exercise the remedies set forth below to the extent permitted by applicable Legal Requirements.

(ii) The Non-Defaulting Member may by notice to Nevada JV and the Defaulting Member elect to, and upon such election shall be entitled to, receive all Nevada JV Distributions and Member Loan Payments that the Defaulting Member would otherwise be entitled to receive from Nevada JV until an amount that is equal to the amount of the Default Loan (aggregated if applicable) plus interest as provided in Section 9.5(c)(i) has been recovered by the Non-Defaulting Member. All such amounts received by the Non-Defaulting Member shall be first applied to accrued interest and then to the principal amount of the Default Loan. Each Member hereby irrevocably authorizes and directs Nevada JV to retain

and hold in trust all of Nevada JV Distributions and Member Loan Payments that such Member would be entitled to receive after the Non-Defaulting Member has elected to receive same as provided above and to pay such amounts to the Non-Defaulting Member on the Defaulting Member's behalf until an amount that is equal to the amount of the Default Loan plus interest as provided in Section 9.5(c)(i) has been recovered by the Non-Defaulting Member.

(d) Indemnification. Each Member agrees to indemnify, defend and hold harmless Nevada JV and the other Member from and against each loss, cost, damage, expense (including attorneys' fees and costs), liability and claim therefor, paid or accrued by reason of, and to the extent caused by, any failure described in Section 9.5(a), subject to the damage limitations set forth in Section 18.14; provided, however, that if the Non-Defaulting Member proceeds in accordance with either Section 9.5(b) or 9.5(c), it shall be deemed to have elected the remedies in such Section to the exclusion of all other remedies.

9.6 Dilution Mechanism.

If a Funding Default occurs, if and to the extent required by the definitions of Barrick Notional Capital Account and Newmont Notional Capital Account, the Proportionate Interest of each Member will be recalculated to reflect the Funding Default and, if applicable, any election by the Non-Defaulting Member to cover the Funding Default by making an additional Member Contribution in accordance with Section 9.5(b) and the Schedule of Members shall be updated. An illustration of such recalculation is set out in Part III of Schedule G. For certainty, if a Funding Default occurs and the Non-Defaulting Member has elected to fund the Defaulted Amount as a Default Loan in accordance with Section 9.5(c), the Defaulting Member's Proportionate Interest will not be diluted as a result of such Funding Default.

9.7 Limited Powers of Attorney.

(a) Appointment by Barrick Member. Each of Barrick Member and Barrick hereby irrevocably appoints Newmont Member to be its attorney acting on its respective behalf and in its respective name or otherwise to execute and do all such assurances, acts and things which it ought to do under the covenants and provisions contained in this Agreement relating to the execution and delivery of promissory notes or other documents evidencing a loan from Newmont Member as provided in Section 9.5(c). Such appointment and power of attorney is coupled with an interest, and Barrick Member and Barrick hereby ratify and confirm and agree to ratify and confirm whatever Newmont Member shall in good faith do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in such Section. Barrick Member and Barrick agree to and shall reaffirm the powers granted in this Section 9.7(a) upon the permitted succession of any Person to the interests of Newmont Member under this Agreement and (in its capacity as the successor) upon the permitted succession of any Person to the interests of Barrick Member or Barrick under this Agreement.

(b) Appointment by Newmont Member. Each of Newmont Member and Newmont hereby irrevocably appoint Barrick Member to be its attorney acting on its respective behalf and in its respective name or otherwise to execute and do all such assurances, acts and things which it ought to do under the covenants and provisions contained in this Agreement relating to the execution and delivery of promissory notes or other documents evidencing a loan from Barrick Member as provided in Section 9.5(c). Such appointment and power of attorney is coupled with an interest, and Newmont Member and Newmont hereby ratify and confirm and

agree to ratify and confirm whatever Barrick Member shall in good faith do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in such Section. Newmont Member and Newmont agree to and shall reaffirm the powers granted in this Section 9.7(b) upon the permitted succession of any Person to the interests of Barrick Member under this Agreement and (in its capacity as the successor) upon the permitted succession of any Person to the interests of Newmont Member or Newmont under this Agreement.

9.8 Remedies Not Exclusive; No Waiver.

Except as otherwise provided in this Agreement, (i) each and every power and remedy specifically given to the Non-Defaulting Member shall be in addition to every other power and remedy now or hereafter available at law or in equity (including the right to specific performance), and (ii) each and every power and remedy may be exercised from time to time and as often and in such order as may be deemed expedient. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other. No delay or omission in the exercise of any such power or remedy and no extension of time for making any payments due under this Agreement shall impair any such power or remedy or shall be construed to be a waiver of any default.

9.9 Elimination of Minority Interest by Redemption for Royalty.

At any time on or following such time as the Proportionate Interest of either Member is diluted to less than 10% (such diluted Member being the "**Minority Interest Holder**"), at the option of the other Member, the Membership Interests and Member Loans held directly or indirectly by the Minority Interest Holder and its Affiliates shall respectively be redeemed and cancelled by Nevada JV in exchange for a net smelter returns royalty (a "**Minority Royalty**") of one and one-half percent on all Product. Upon such redemption and cancellation, (i) the Minority Interest Holder shall immediately execute and deliver all such conveyances, instruments of Transfer and other documents as may be necessary or desirable to effect the foregoing, and (ii) Nevada JV and the Minority Interest Holder shall forthwith execute a Minority Royalty agreement the principal terms of which are stated on Schedule H.

ARTICLE 10

RETAINED ROYALTIES

10.1 Retained Royalties.

(a) (i) On the date hereof, Nevada JV and Barrick Cortez shall execute, acknowledge and deliver to Barrick a Net Smelter Returns Royalty Deed in the form attached as Schedule I-A with respect to the properties included in the Barrick Contributed Assets, and (ii) on the first day immediately following the execution and delivery of this Agreement, Nevada JV and Leeville Holdco shall execute, acknowledge and deliver to Newmont a Net Smelter Returns Royalty Deed in the form attached as Schedule I-B with respect to the properties included in the Newmont Contributed Assets (each a "**Retained Royalty Deed**").

(b) If and when an Excluded Development/Exploration Property is contributed to Nevada JV by a Member or an Affiliate of such Member in accordance with Section 6.1, such Member, Nevada JV and the other grantor (i.e., either Barrick Cortez or Leeville Holdco) under the Retained Royalty Deed to which such Member is a party shall amend such Retained Royalty

Deed to: (i) include the contributed properties in the "Properties" that are subject to such Retained Royalty Deed, and (ii) increase the Threshold Amount as stated in such Retained Royalty Deed by the amounts of all mineral reserves (proven and probable) and mineral resources (measured, indicated and inferred) of gold and, if applicable, copper, if any, for such Excluded Development/Exploration Property, as stated in the most recent public filings of such Member's Parent.

(c) If Nevada JV or any subsidiary of Nevada JV sells, abandons or otherwise disposes of any Nevada JV property that is subject to a Retained Royalty Deed, then:

(i) such property shall cease to be subject to such Retained Royalty Deed;

(ii) the parties to such Retained Royalty Deed shall amend such Retained Royalty Deed to exclude such property;

(iii) the "Threshold Amount" as stated in such Retained Royalty Deed shall be reduced by (A) the amounts of all mineral reserves (proven and probable) and mineral resources (measured, indicated and inferred) of gold and copper, if applicable, if any, that were attributable to such property on the date of the Implementation Agreement for purposes of calculating such Threshold Amount (or, in the case of a contributed Excluded Development/Exploration Property, the date of its contribution in accordance with Section 6.1), less (B) the quantities of gold and, if applicable, copper that were produced by Nevada JV and its subsidiaries from such property and credited towards the Threshold Amount prior to the date of such disposition; and

(iv) the conveyance of such property shall be made subject to the retention in favor of the Member that contributed, or whose Affiliate contributed, such property (or the entity holding such property) to Nevada JV, of a royalty equal to (A) 1.5% of net smelter returns on all production from such property, net of (B) the amount of any other royalties on such property as of the date of such conveyance ("**Existing Royalties**"), on the same terms and conditions as the applicable Retained Royalty Deed but without including any "Threshold Amount" or similar concept, in form reasonably acceptable to such Member; provided that the royalty retained by such Member shall in no event be less than 0.5% of net smelter returns on all production from such property. By way of example, if, as of the date of such conveyance, such property is subject to an Existing Royalty in the amount of (1) 0.5% of net smelter returns on production, then the amount of the royalty retained by the Member that contributed, or whose Affiliate contributed, such property shall be equal to 1.0% or net smelter returns, or (2) 1.5% of net smelter returns or more, then the amount of the royalty retained by the Member that contributed, or whose Affiliate contributed, such property shall be 0.5% of net smelter returns. If any Existing Royalty is other than a net smelter returns royalty, then the Members shall negotiate in good faith to agree on an equivalent value net smelter returns royalty for purposes of determining the amount of such Existing Royalty that is netted pursuant to clause (B) above.

ARTICLE 11

PARENT GUARANTEES

11.1 Barrick Guarantee.

(a) Barrick hereby absolutely, unconditionally and irrevocably guarantees in favour of Newmont Member, Newmont and Nevada JV the prompt and complete payment on demand of all amounts due and owing under this Agreement by Barrick Member and under any bonds or other Surety Arrangements provided by Barrick Member (and, if applicable, Barrick) pursuant to Section 5.4, and the observance and performance by Barrick Member of all the terms, covenants, conditions and provisions to be observed or performed by Barrick Member under this Agreement and by Barrick Member (and, if applicable, Barrick) under any such bonds or other Surety Arrangements other than any failure by Barrick Member to provide funds pursuant to Section 5.6(b), which failure shall be governed exclusively by Section 9.5 (collectively, the "**Barrick Guaranteed Obligations**"), and Barrick shall promptly make such payments on demand and shall promptly perform such Barrick Guaranteed Obligations, upon the non-payment, default or non-performance thereof by Barrick Member. The foregoing agreement of Barrick is absolute, unconditional, present and continuing and is in no way conditional or contingent upon any event, circumstance, action or omission which might in any way discharge a guarantor or surety in whole or in part. Without limiting the generality of the foregoing, in the event that Barrick Member shall default in the full and timely payment or performance of any Barrick Guaranteed Obligation, Barrick will promptly pay or perform, as applicable, such Barrick Guaranteed Obligation and Newmont Member, Newmont or Nevada JV, as applicable, may maintain an action upon this Agreement whether or not Barrick Member is joined therein or separate action is brought against Barrick Member.

(b) Barrick agrees that it shall so pay or perform the Barrick Guaranteed Obligations on demand regardless of: (i) any bankruptcy, insolvency, liquidation, reorganization, moratorium or similar event with respect to or affecting Barrick Member; (ii) any change of name, any change or restructuring or termination of the corporate structure, ownership or existence of Barrick Member; or (iii) any other event or circumstance which would or might otherwise constitute a legal or equitable discharge of or defense available to any guarantor or surety.

(c) Barrick agrees that it shall not be necessary to institute or exhaust any remedies or causes of action against Barrick Member or others as a condition of the obligations of Barrick hereunder.

(d) Barrick hereby waives diligence, notice of demand, notice of default and all other notices and demands of any kind, and consents to any and all extensions of time or indulgences which may be given to Barrick Member.

(e) Barrick shall take all such actions as are required to cause Barrick Member to perform fully and on a timely basis all of the Barrick Guaranteed Obligations.

(f) The respective rights of each of Newmont Member, Newmont and Nevada JV, as applicable, under this Section 11.1 are cumulative and shall not be exhausted by the exercise of any of such rights hereunder or otherwise against Barrick or by any successive actions until and unless all indebtedness and liability hereby guaranteed has been paid and Barrick's obligations under this Agreement have been fully performed.

11.2 Newmont Guarantee.

(a) Newmont hereby absolutely, unconditionally and irrevocably guarantees in favour of Barrick Member, Barrick and Nevada JV the prompt and complete payment on demand of all amounts due and owing under this Agreement by Newmont Member and under any bonds or other Surety Arrangements provided by Newmont Member (and, if applicable, Newmont) pursuant to Section 5.4, and the observance and performance by Newmont Member of all the terms, covenants, conditions and provisions to be observed or performed by Newmont Member under this Agreement and by Newmont Member (and, if applicable, Newmont) under any such bonds or other Surety Arrangements other than any failure by Newmont Member to provide funds pursuant to Section 5.6(b), which failure shall be governed exclusively by Section 9.5 (collectively, the "**Newmont Guaranteed Obligations**"), and Newmont shall promptly make such payments on demand and shall promptly perform such Newmont Guaranteed Obligations, upon the non-payment, default or non-performance thereof by Newmont Member. The foregoing agreement of Newmont is absolute, unconditional, present and continuing and is in no way conditional or contingent upon any event, circumstance, action or omission which might in any way discharge a guarantor or surety in whole or in part. Without limiting the generality of the foregoing, in the event that Newmont Member shall default in the full and timely payment or performance of any Newmont Guaranteed Obligation, Newmont will promptly pay or perform, as applicable, such Newmont Guaranteed Obligation and Barrick Member, Barrick or Nevada JV, as applicable, may maintain an action upon this Agreement whether or not Newmont Member is joined therein or separate action is brought against Newmont Member.

(b) Newmont agrees that it shall so pay or perform the Newmont Guaranteed Obligations on demand regardless of: (i) any bankruptcy, insolvency, liquidation, reorganization, moratorium or similar event with respect to or affecting Newmont Member; (ii) any change of name, any change or restructuring or termination of the corporate structure, ownership or existence of Newmont Member; or (iii) any other event or circumstance which would or might otherwise constitute a legal or equitable discharge of or defense available to any guarantor or surety.

(c) Newmont agrees that it shall not be necessary to institute or exhaust any remedies or causes of action against Newmont Member or others as a condition of the obligations of Newmont hereunder.

(d) Newmont hereby waives diligence, notice of demand, notice of default and all other notices and demands of any kind, and consents to any and all extensions of time or indulgences which may be given to Newmont Member.

(e) Newmont shall take all such actions as are required to cause Newmont Member to perform fully and on a timely basis all of the Newmont Guaranteed Obligations.

(f) The respective rights of each of Barrick Member, Barrick and Nevada JV, as applicable, under this Section 11.2 are cumulative and shall not be exhausted by the exercise of any of such rights hereunder or otherwise against Newmont or by any successive actions until and unless all indebtedness and liability hereby guaranteed has been paid and Newmont's obligations under this Agreement have been fully performed.

ARTICLE 12

NOTE GUARANTY

12.1 Note Guaranty.

(a) The Parties acknowledge that on or about the date hereof, Nevada JV has provided a guaranty and assumed the due and punctual performance and observance of all of the covenants and conditions of Newmont Member under the Note Indenture pursuant to a first supplemental indenture dated as of the date hereof (the "**Note Guaranty**") among Newmont, Newmont Member, Nevada JV and the trustee under the Note Indenture. Upon the payment by Nevada JV of any amount pursuant to the Note Guaranty, the Proportionate Interest of the Newmont Member will be diluted by the Note Guaranty Dilution Amount, in the manner set out herein. An illustration of such recalculation is set out in Part IV of Schedule G.

(b) If demand for payment is made to Nevada JV pursuant to the Note Guaranty, the Operator shall, in its sole discretion, determine (i) whether Nevada JV is required to make any payment pursuant to the Note Guaranty, and (ii) whether any such payment shall be funded by (A) additional Member Contributions from Barrick Member for that purpose, (B) other Cash Available to Nevada JV, or (C) any combination of the foregoing. For clarity, in the case of the foregoing clause (A), any such Member Contributions shall be funded solely by Barrick Member, and not Newmont Member.

ARTICLE 13

AREA OF INTEREST

13.1 Area of Interest.

(a) Notwithstanding Section 3.3(c)(xiv), Nevada JV and its subsidiaries may, from time to time, directly or indirectly, apply for or acquire mineral rights, surface rights and or ancillary rights including water rights, over areas that fall in whole within the Area of Interest, or that constitute a single property interest or group of contiguous property interests that falls in part within the Area of Interest. Only if approved in accordance with Section 3.3(c)(xiv), Nevada JV and its subsidiaries may, from time to time, apply for or acquire other mineral rights, surface rights and or ancillary rights including water rights, over areas that fall in whole outside the Area of Interest but in the State of Nevada. Without the approval of the Members, Nevada JV and its subsidiaries may not, directly or indirectly, apply for or acquire mineral rights, surface rights and or ancillary rights including water rights, over areas that fall outside the State of Nevada .

(b) Subject to Section 13.2, if, from time to time, after the date hereof, any interest whatsoever in any real property or any mineral concessions, leases, claims or other form of mineral rights whatsoever, including mineral rights, surface rights and/or ancillary rights, including water rights, are issued, transferred to or acquired, directly or indirectly, by a Member or an Affiliate of a Member (other than Nevada JV and its subsidiaries) (the "**Acquiring Member**") that (i) fall in whole within the Area of Interest, (ii) constitute a single property interest or group of contiguous property interests that falls predominantly within the Area of Interest, or (iii) constitute a single property interest or group of contiguous property interests that falls in part (but not predominantly) within the Area of Interest (in the case of (i) and (ii), all of such interests or rights, and in the case of (iii), only the portion of such interests or rights that falls within the Area of Interest, are referred to as the "**Additional Rights**"), then upon the date of such

acquisition the Acquiring Member shall promptly provide notice containing the full particulars of the Additional Rights to the Board. Notwithstanding the foregoing, Additional Rights shall not include any royalty or other interest in any Excluded Property that is retained by or granted to any Member or Affiliate of any Member in connection with any sale or other disposition of such Excluded Property by such Member or Affiliate to an arms' length third party.

(c) Subject to Section 13.2, the Acquiring Member shall or shall cause its Affiliate, as applicable, to contribute such Additional Rights, free and clear of all Encumbrances, other than Permitted Encumbrances and any other Encumbrances existing on the date of the acquisition of such Additional Rights by the Acquiring Member, to Nevada JV such that they will form part of the Nevada JV Assets for no additional consideration. The Members (or their respective Affiliates, as applicable) shall endeavour to close such acquisition of Additional Rights by Nevada JV as soon as practicable following the acquisition of such Additional Rights by the Acquiring Member. The Acquiring Member and the other Member shall, and, if applicable, shall cause their respective Affiliates, to cooperate with each other to effect such transfer and contribution of Additional Rights to Nevada JV in the most tax efficient manner reasonably practicable. Any such transfer of Additional Rights shall not be deemed to be a Member Contribution. For greater certainty, upon such transfer of Additional Rights to Nevada JV as aforesaid neither Member's Proportionate Interest shall be diluted.

13.2 Exceptions.

(a) For greater certainty, Section 13.1 shall not apply to the equity interests in a publicly-listed entity (or, unless Section 13.1(c) applies, any Additional Rights held by such entity) that are held, directly or indirectly, by a Member or any of its Affiliates on the date hereof. For greater certainty, such equity interests shall not constitute Barrick Contributed Assets or Newmont Contributed Assets.

(b) Section 13.1 does not apply to an acquisition by a Member or its Affiliate of an entity that owns Additional Rights if such Additional Rights are not the primary purpose of the acquisition and constitute less than 20% of the net asset value of such entity.

(c) If a Member or any of its Affiliates proposes to acquire control of a publicly-traded entity that owns Additional Rights or proposes to acquire control of any other entity that owns Additional Rights (an "**Acquisition Target**"), whether or not such Member owns any equity interest on the date hereof in the Acquisition Target, in each case where the Additional Rights constitute 20% or more of the operating net asset value of such Acquisition Target, then such acquisition of control shall not be subject to Section 13.1, and instead the following procedures shall apply:

(i) the Member proposing to solicit, negotiate or enter into an agreement, arrangement, understanding or commitment in respect of the acquisition of control of the Acquisition Target (the "**Purchasing Member**") shall first provide written notice of such intention to the other Member (the "**Acquisition Notice**"), which notice shall provide all relevant and available details regarding the Acquisition Target, the Additional Rights held by such Acquisition Target and the price and all other proposed terms and conditions on which the Member is proposing to acquire the Acquisition Target;

(ii) the Purchasing Member shall keep the other Member reasonably apprised of the status of the proposed acquisition of the Acquisition Target;

(iii) within 30 Business Days following the receipt of the Acquisition Notice, the Member receiving the Acquisition Notice shall have the right to elect that, if the Purchasing Member completes the acquisition of the Acquisition Target, Nevada JV will purchase the Additional Rights that form part of the Acquisition Target's assets, free and clear of all Encumbrances, other than Permitted Encumbrances and any other Encumbrances existing on the date of the acquisition of such Additional Rights by the Acquiring Member, for a price, payable in cash by Nevada JV to the Purchasing Member, equal to the fair market value of such Additional Rights as determined in accordance with Schedule F. If this election is made the Members shall take all reasonable steps to ensure that Nevada JV purchases the Additional Rights on the terms set out herein as promptly as practicable following the closing of the acquisition of the Acquisition Target; provided, for certainty, that if no such election is made within such 30 Business Day period, then Nevada JV shall not purchase such Additional Rights; and

(iv) if any Member purchases an Acquisition Target without complying with the provisions of this Section 13.2(c), such Member shall contribute the Additional Rights to Nevada JV for no consideration.

(d) For greater certainty, Section 13.1 does not apply to any acquisition by a Member or any of its Affiliates pursuant to a Member Transaction Offer in accordance with Section 4.13.

ARTICLE 14

APPLICABLE LAW; DISPUTES

14.1 Applicable Law; Consent to Jurisdiction.

This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without regard to choice of laws or conflict of laws principles that would require or permit the application of the laws of any other jurisdiction. Each of the Parties hereby irrevocably attorns and submits to the exclusive jurisdiction of the courts of the State of Nevada or federal courts of Nevada respecting all matters relating to this Agreement and the rights and obligations of the Parties hereunder. Each of the Parties hereby agrees that service of any legal proceedings relating to this Agreement may be made by physical delivery thereof to its address provided in, or in accordance with, Section 18.1.

14.2 Dispute Resolution.

(a) Except as otherwise provided herein, in the event of any dispute, claim or difference arising between the Parties, including the Member acting as the Operating Member, in respect of the subject matter, the interpretation or the effect of this Agreement, such Parties (the "**Involved Parties**") shall use their best endeavors to settle successfully such dispute, question or difference. To this effect, they shall consult and negotiate with each other, in good

faith and understanding of their mutual interests, to reach an equitable solution satisfactory to the Involved Parties.

(b) If the Involved Parties do not reach a solution within a period of 30 days from the date a party first notifies the other Involved Parties in writing of a dispute , then the matter shall be submitted to the Dispute Committee who shall consult and negotiate with each other, in good faith, to attempt to resolve the matter within 21 days of it being referred to them. Subject to Section 14.2(c), if the Dispute Committee is unable to resolve the matter within such 21-day period, then either party may submit such matter to the courts of the State of Nevada or federal courts of Nevada.

(c) Where a dispute, claim or difference arising between the Parties relates to the characterization of expenditures as Development Capital Expenditures or sustaining capital expenditures, and the Dispute Committee is unable to resolve the matter in accordance with Section 14.2(b), then Nevada JV will submit the dispute to the Auditor who shall be instructed to make a determination as to the characterization of the expenditures within 30 days. Such determination by the Auditor shall be conclusive and binding on the Parties.

14.3 Continuing Obligations.

Pending settlement of any dispute, the Parties shall abide by their obligations under this Agreement without prejudice to a final adjustment in accordance with an order of a court settling such dispute.

14.4 Waiver of Jury Trial.

EACH PARTY IRREVOCABLY WAIVES ITS RESPECTIVE RIGHTS TO JURY TRIAL OF ANY DISPUTE BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OTHER AGREEMENTS RELATING HERETO OR ANY DEALINGS AMONG THE PARTIES RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. The Parties each acknowledge that this waiver is a material inducement to enter into a business relationship and that they will continue to rely on the waiver in their related future dealings.

ARTICLE 15

CONFIDENTIALITY; PUBLIC ANNOUNCEMENTS

15.1 General.

Confidential Information shall not be disclosed by a Member or any of its Affiliates to any third party or the public without the prior written consent of Newmont Member with respect to a disclosure by Barrick Member or its Affiliates or of Barrick Member with respect to a disclosure by Newmont Member or its Affiliates. Nevada JV shall not disclose Confidential Information except as permitted pursuant to Section 15.2 without the Approval of the Board.

15.2 Exceptions.

The restriction imposed by Section 15.1 shall not apply to a disclosure of Confidential Information:

(a) to government agencies as required by the terms of any Governmental Authorizations;

(b) to employees of a Party or to an Affiliate, consultant or to a contractor or subcontractor that has a bona fide need to be informed;

(c) to any third party (i) to whom the disclosing Member lawfully contemplates a Transfer of all or any part of its interest in or to this Agreement and its Membership Interest (in accordance with the terms hereof) or (ii) by a Member or its Affiliates to a party with which such Member or Affiliate is engaged in bona fide discussions with respect to a potential acquisition of Control of the Parent of the disclosing Member where shares of the Parent are posted for trading on a recognized stock exchange;

(d) to a governmental agency or stock exchange or to the public which the disclosing Member believes in good faith is required to be made by (i) any applicable Legal Requirements, (ii) any order, decree or directive of any competent judicial, legislative or regulatory body or authority applicable to the disclosing Party or (iii) the rules of any relevant stock exchange or securities regulatory authority; provided that any obligation to file all or a portion of this Agreement with any securities regulatory authority shall be in accordance with Section 15.5;

(e) to actual or potential lenders, brokers, bankers, investment bankers or underwriters as to the disclosing Party who have a bona fide need to be informed;

(f) to independent accountants, legal counsel or other technical or professional advisors engaged by a Party or by the Operating Member for the purpose only of enabling such accountants, legal counsel or other professional advisors to give appropriate advice in respect of matters arising under this Agreement related to Operations or in respect of the normal business operations of the disclosing Member or its Affiliates;

(g) to any recognized merchant or investment banking firm engaged in giving ad vice to the disclosing Member in connection with this Agreement or in respect of the normal business operations of the disclosing Member or its Affiliates;

(h) in connection with any legal proceeding arising in connection with this Agreement, but any such disclosure shall be subject to such confidentiality procedures as may be reasonably requested by the disclosing Party and approved by the court; or

(i) which is made with the written consent of the other Parties.

In any case involving disclosure by a Member to which Section 15.2(a), (c), (d), (e) or (g) is applicable (subject to Section 15.3 with respect to disclosures required by applicable Legal Requirements), the disclosing Member shall, except as provided in Section 15.3, give notice to Barrick Member with respect to any disclosure by Newmont Member or its Affiliates or to Newmont Member with respect to any disclosure by Barrick Member or its Affiliates, in each case, at least 48 hours in advance of the making of such disclosure; provided, however, that such notice shall not be required with respect to information disclosed pursuant to Section

15.2(a) on a regular basis in the ordinary course of business. Such notice shall identify the Confidential Information to be disclosed and the recipient. As to any disclosure pursuant to Section 15.2(b), (c), (e), (f) or (g), only such Confidential Information as such third party shall have a legitimate business need to know shall be disclosed. As to any disclosure pursuant to Section 15.2(a) or (d), the disclosing Member shall disclose, or permit the disclosure of, only that portion of Confidential Information required to be disclosed and shall take all reasonable steps to preserve the confidentiality thereof, including availing itself of the full benefits of any laws, rules, regulations, or contractual rights as to disclosure on a confidential basis to which it may be entitled including, to the extent permitted by Legal Requirements, redacting all proprietary, structural or other Confidential Information of the other Member prior to making such disclosure and where practicable, only following prior review of the other Member. As to any disclosure pursuant to Section 15.2(c), (e) or (g), such third party shall first agree in writing to protect the Confidential Information from further disclosure to the same extent as the Parties are obligated under this Article 15, and the disclosing Member shall concurrently with the making of such disclosure give notice to Barrick Member with respect to any disclosure by Newmont Member or its Affiliates or to Newmont Member with respect to any disclosure by Barrick Member or its Affiliates that the required agreement in writing has been completed. Notwithstanding the absence of a required written agreement, the disclosing Party shall be responsible for assuring that no unauthorized disclosure of information to be kept confidential pursuant to Section 15.1 is made by any Person receiving information pursuant to Section 15.2(b) or (f); provided that no Party shall be liable to any other Party for the fraudulent or negligent disclosure of Confidential Information by any such Person if the Party who seeks to take the benefit of this clause shall have taken reasonable steps to ensure the preservation and confidential nature of the information.

15.3 Public Announcements.

Each Member shall, to the extent practicable, in advance of making, or any of its Affiliates making, a public announcement to a stock exchange or otherwise concerning this Agreement or Operations, advise the other Member of the text of the proposed report and provide the other Member with the opportunity to comment upon the form and content thereof before the same is issued; provided, however, that a Member or an Affiliate may make a public disclosure it believes in good faith is required by applicable Legal Requirements or any listing or trading agreement concerning the publicly traded securities of its direct or indirect parent (in which case the disclosing Member will use its reasonable best efforts to advise the other Member prior to the disclosure). If the other Member does not respond within 48 hours (excluding days that are not Business Days) or such lesser time specified as the maximum by the issuing Member or Affiliate, the announcement or report may be issued. The final text of the same and the timing, manner and mode of release shall be the sole responsibility of the issuing Member who shall indemnify, defend and hold the other Member and its Affiliates, together with Nevada JV and its subsidiaries, harmless in respect of any third-party claims arising therefrom.

15.4 Duration of Confidentiality.

The provisions of this Article 15 shall apply to Confidential Information during the term of this Agreement and for two years following termination of this Agreement and, as to any Member who Transfers its Membership Interest, for two years following the date of such occurrence with the exception in either case that the provisions of this Article 15 shall continue to apply to any information qualifying as a trade secret under applicable Legal Requirements until such time as the information no longer qualifies as Confidential Information.

15.5 Redacted Filings.

If a Parent or Member determines that this Agreement is or has become a material contract that is required to be filed pursuant to applicable securities laws or other Legal Requirement, such Parent or Member covenants:

(a) to file on EDGAR and/or SEDAR, as applicable, a redacted version of this Agreement in order not to prejudicially affect the interests of the Members or Parents; and

(b) to consult with the other Parent and Member on the preparation of such redacted Agreement prior to filing.

15.6 Disclosure of Party's Own Confidential Information

Notwithstanding any other provision of this Agreement, nothing in this Agreement shall prevent (i) Barrick or its Affiliates from using or disclosing Barrick Proprietary Property without the consent of Newmont Member or Nevada JV or (b) Newmont and its Affiliates from using or disclosing Newmont Proprietary Property without the consent of Barrick Member or Nevada JV.

ARTICLE 16

TRANSFERS; PREFERENTIAL PURCHASE RIGHTS; EXEMPT TRANSFERS

16.1 Transfer Procedures.

For purposes of this Article 16, Membership Interests and Member Loans held by Newmont or any of its Affiliates are referred to as the "**Newmont Nevada JV Interests**", and Membership Interests and Member Loans held by Barrick Member and any of its Affiliates are referred to as the "**Barrick Nevada JV Interests**". The Newmont Nevada JV Interests and the Barrick Nevada JV Interests are referred to individually and collectively as the "**Nevada JV Interests**". A Member shall have the right to Transfer its Nevada JV Interests to any third party solely as provided in, and subject to, this Article 16 and may not otherwise Transfer such Nevada JV Interests.

(a) Consent. No Member shall Transfer less than all of its Nevada JV Interests or Transfer its Nevada JV Interests to a Transferee that is not just one Person without the written consent of the other Member, which may be withheld or conditioned at such Member's sole discretion.

(b) Notice and Undertaking by Transferee; Substituted Member. No Transfer shall be effective and no transferee of a Member's Nevada JV Interests shall have the rights of such Member hereunder unless (i) the Transfer was completed in compliance herewith (including compliance with Section 16.2, if applicable), (ii) the transferring Member has provided to the other Member notice of such Transfer and (iii) the transferee, as of the effective date of the Transfer, has covenanted by a written undertaking with the other Member to be bound by this Agreement to the same extent as the transferring Member in a form satisfactory to the other Member. Subject thereto, the transferee shall be deemed to be a party to this Agreement and shall become a substituted Member on the effective date of such Transfer, with a Proportionate

Interest equal to the Proportionate Interest held by the transferring Member as of the effective date of such Transfer.

(c) Transferor Not Relieved from Liability. A Member who Transfers its Nevada JV Interests shall be subject to Section 17.2.

(d) Encumbrances. If the Transfer is the grant of an Encumbrance in a Member's Membership Interest to secure a loan or other indebtedness of a Member in a bona fide transaction, such Encumbrance shall be granted only in connection with financing payment or performance of such Member's obligations under this Agreement and shall be subject to the terms of this Agreement and the rights and interests of the other Member hereunder, and shall be subject to the condition that the secured party first enters into a written agreement with the other Member in form satisfactory to the other Member, acting reasonably, binding upon the secured party, to the effect that the secured party's remedies under the Encumbrance shall be limited to the sale of the whole (and only the whole) of the encumbering Member's Membership Interest and shall be subject to a provision that, in the event such security becomes enforceable and is enforced, such Membership Interest shall first be offered to the other Member subject to the following terms: (i) the price of any preemptive sale to the other Member shall be the remaining principal amount of the loan plus accrued interest and related expenses owing to the secured party, (ii) such preemptive sale shall occur within 60 days of the notice to the other Member of the secured party's intent to enforce its security and (iii) failure of the other Member to accept the offer or, if the offer is accepted, failure of the sale to close by the end of the 60-day period, unless such failure is caused by either the encumbering Member or by the secured party, shall permit the secured party to sell the encumbering Member's Membership Interest in accordance with the terms of the Encumbrance and with applicable Legal Requirements; provided, however, that such sale shall be subject to the purchaser covenanting with the remaining Member to be bound by the terms of this Agreement.

(e) Taxes. The transferring Member and the transferee of any Nevada JV Interests (except as is provided in Section 16.2(d)) shall be responsible for payment of any taxes, fees, levies or other governmental charges payable under applicable Legal Requirements in respect of the Transfer and shall indemnify and hold harmless the other Member and Nevada JV in respect thereof.

16.2 Preferential Purchase Rights.

(a) Obligation to Give Offer Prior to Sale. Each Member agrees that, except as provided in Section 16.3 and other than changes in ownership of its Parent, such Member will not, directly or indirectly, Transfer or suffer the Transfer to any third party of its Nevada JV Interests, whether now owned or hereafter acquired, or whether by sale or otherwise, and whether voluntary or involuntary, until and unless such Member shall have first made the offer to sell as set forth in this Section 16.2.

(b) Procedures for Offer. The offering Member shall deliver a written notice of the proposed Transfer to the other Member and shall provide a copy of such notice to the Board. The notice shall contain a description of the proposed Transfer, the identity of the transferee (which shall not be stated in the alternative), details concerning the financial capacity and operational experience of such transferee, the terms thereof and a description of the consideration to be received by the offering Member upon Transfer of the Nevada JV Interests ; provided that if the consideration for the proposed Transfer is in whole or in part, other than monetary, the notice shall describe such consideration and state its monetary equivalent (based

upon the fair market value of the non-monetary consideration as stated in terms of U.S. dollars). The notice shall further state that the offeree Member or its designee may acquire the Nevada JV Interests proposed to be Transferred upon the terms and conditions and for the price (monetary equivalent) set forth in such notice.

(c) Response to Offer. Subject to any limitations imposed by law, the offeree Member shall have a period of 60 days after receipt of the notice described in Section 16.2(b) in which to elect to purchase the Nevada JV Interests proposed to be Transferred by delivering written notice to the offering Member, with a copy of such notice provided to Board.

(d) Failure to Accept Offer. If the offeree Member does not elect within the 60-day period provided for in Section 16.2(c) to purchase the Nevada JV Interests proposed to be Transferred, the offering Member may either withdraw its offer to Transfer such Nevada JV Interests or Transfer all such Nevada JV Interests to the identified transferee at a price and on terms no less favorable to the offering Member than those offered by the offering Member in the notice; provided that the transferee provides the written undertaking agreeing to be bound by the terms of this Agreement pursuant to Section 16.1(b). The offering Member shall provide information to the offeree Member sufficient to enable the offeree Member to verify the price and terms of the sale. If such Transfer to the third party transferee is not made within 90 days following the termination of the 60-day period provided for in Section 16.2(c), then a new offer must be made pursuant to the provisions of Section 16.2(a) before the offering Member can Transfer its Nevada JV Interests and the provisions of this Section 16.2 shall again apply to such Transfer.

(e) Closing. The closing of any sale and purchase of Nevada JV Interests between the Members pursuant to Section 16.2(c) shall be held at a time and place as is mutually agreeable to the Members. In the absence of such agreement, the closing shall be held at the office of the Operating Member within 30 days after the offeree Member has pursuant to Section 16.2(c) accepted the offer made by the offering Member. At the closing, the offering Member shall Transfer and deliver duly completed Transfers and the certificate(s), if any, for the applicable Membership Interest and shall assign any applicable Member Loans to the offeree Member or its designee, free and clear of all Encumbrances except as expressly provided herein and shall execute and deliver such other instruments, documents, certificates and opinions as the offeree Member reasonably deems necessary or appropriate to properly effect the Transfer of such Nevada JV Interests. Nevada JV shall, upon receipt of the Transfer documents and instruments, cause an appropriate entry to be made in the Schedule of Members to reflect the new ownership. All sales, stamp and similar Transfer taxes and expenses related to such Transfer shall be paid by the offeree Member.

(f) Applicability of Section 16.1. Any Transfer made pursuant to this Section 16.2 shall be subject to the provisions of Section 16.1.

16.3 Exempt Transfers.

Section 16.2 shall not apply to (i) a Transfer by Barrick Member or any successor of Barrick Member as to the Barrick Nevada JV Interests pursuant to this Section 16.3 to an Affiliate that is a direct or indirect wholly-owned subsidiary of Barrick (a "**Barrick Transferee Affiliate**"), (ii) a Transfer by Newmont Member or any successor of Newmont Member as to the Newmont Nevada JV Interests pursuant to this Section 16.3 to an Affiliate that is a direct or indirect wholly-owned subsidiary of Newmont (a "**Newmont Transferee Affiliate**"); provided that, in the case of each of clauses (i) and (ii), such Affiliate shall assume the obligations of the

Member and become a party to this Agreement in accordance with Section 16.1(b) or (iii) a Transfer to the State of Nevada or its designee by any Member that occurs as a result of an expropriation by the State of Nevada.

16.4 Loss of Affiliate Status.

(a) By Newmont Member or Newmont Transferee Affiliate. If Newmont Member or any Newmont Transferee Affiliate should at any time while it holds the Newmont Nevada JV Interests lose its status as a direct or indirect wholly-owned subsidiary of Newmont, it shall promptly give notice thereof to the holder of the Barrick Nevada JV Interests if such holder of the Barrick Nevada JV Interests is a direct or indirect wholly-owned subsidiary of Barrick. If within 30 days after the receipt of such notice, or at any time if Newmont Member or the Newmont Transferee Affiliate, as the case may be, fails to give such notice, the holder of the Barrick Nevada JV Interests (provided that such holder is a direct or indirect wholly-owned subsidiary of Barrick) gives written notice (the "**Barrick Re-Transfer Notice**") to Newmont Member or such Newmont Transferee Affiliate, as the case may be, demanding that the Newmont Nevada JV Interests be assigned or reassigned to a direct or indirect wholly-owned subsidiary of Newmont, then Newmont Member or such Newmont Transferee Affiliate, as the case may be, shall forthwith Transfer the Newmont Nevada JV Interests to a direct or indirect wholly-owned subsidiary of Newmont, which shall assume the obligations of Newmont Member or the transferring Newmont Transferee Affiliate, as the case may be, and become a party to this Agreement in accordance with Section 16.1(b). If such holder of the Barrick Nevada JV Interests fails to give the Barrick Re-Transfer Notice within 30 days after receiving notice from the holder of the Newmont Nevada JV Interests as above provided, it shall be deemed to have waived the right to give such Barrick Re-Transfer Notice.

(b) By Barrick Member or Barrick Transferee Affiliate. If Barrick Member or any Barrick Transferee Affiliate should at any time while it holds the Barrick Nevada JV Interests lose its status as a wholly-owned direct or indirect subsidiary of Barrick, it shall promptly give notice thereof to the holder of the Newmont Nevada JV Interests, if such holder of the Newmont Nevada JV Interests is a direct or indirect wholly-owned subsidiary of Newmont. If within 30 days after the receipt of such notice, or at any time if Barrick Member or the Barrick Transferee Affiliate, as the case may be, fails to give such notice, the holder of the Newmont Nevada JV Interests (provided that such holder is a direct or indirect wholly-owned subsidiary of Newmont Incorporated) gives written notice (the "**Newmont Re-Transfer Notice**") to Barrick Member or such Barrick Transferee Affiliate, as the case may be, demanding that the Barrick Nevada JV Interests be assigned or reassigned to a wholly-owned direct or indirect subsidiary of Barrick, then Barrick Member or such Barrick Transferee Affiliate, as the case may be, shall forthwith Transfer the Barrick Nevada JV Interests to a direct or indirect wholly-owned subsidiary of Barrick, which shall assume the obligations of Barrick Member or the transferring Barrick Transferee Affiliate, as the case may be, and become a party to this Agreement in accordance with Section 16.1(b). If such holder of the Newmont Nevada JV Interests fails to give the Newmont Re-Transfer Notice within 30 days after receiving notice from the holder of the Barrick Nevada JV Interests as above provided, it shall be deemed to have waived the right to give such Newmont Re-Transfer Notice.

16.5 Corporate Approvals.

The Members shall take, or shall cause Nevada JV to take, any actions as may be required to approve any Transfers of Membership Interests that are authorized in accordance with the provisions of this Article 16.

ARTICLE 17

TERMINATION

17.1 Termination of Agreement.

(a) Termination. Except as otherwise provided herein, this Agreement shall continue in full force and effect without limit until the earliest of the following events:

(i) all the Members agree in writing to terminate this Agreement;

(ii) Nevada JV is dissolved in accordance with Section 17.1(b); or

(iii) there remains only one Member;

provided, however, that this Agreement shall cease to have effect with regards to any Person who ceases to hold directly or indirectly any Membership Interest or Member Loans pursuant to and in accordance with the terms of this Agreement save for any provisions hereof which, expressly or by implication, are to continue in full force and effect thereafter.

(b) Dissolution.

(i) The existence of Nevada JV shall be perpetual; provided that Nevada JV shall be dissolved, and its affairs shall be wound up, upon the first to occur of the following: (A) the Approval by the Board of a voluntary winding up or (B) the entry of a decree of judicial dissolution of Nevada JV under Section 18-802 of the Act. Except as provided in this Section 17.1(b)(i), Nevada JV shall not dissolve due to any circumstances described, or to which reference is made, in Section 18-801 of the Act.

(ii) The bankruptcy or other event described in Section 18 -304 of the Act with respect to any Member will not cause such Member to cease to be a member of Nevada JV and upon the occurrence of any such event, the business of Nevada JV shall continue without dissolution.

(c) Winding Up by Liquidator. If Nevada JV is dissolved pursuant to Section 17.1(b), the Members shall procure a liquidator that is acceptable to each of the Members (the "**Liquidator**"), which shall wind-up the affairs of Nevada JV as follows:

(i) as promptly as possible after dissolution, cause a proper accounting to be made of Nevada JV's assets, liabilities and Operations through the last day of the month in which the dissolution occurs;

(ii) pay all of the debts and liabilities of Nevada JV or otherwise make adequate provision for such debts and liabilities (including, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the Liquidator may reasonably determine) to the extent required by the Act; and

(iii) then, by payment of cash or property, distribute to the Members such amounts or property as are required to distribute all remaining amounts or property to the Members in accordance with Section 8.1(b).

Upon completion of the winding-up of Nevada JV, the Liquidator or the Board, as applicable, shall (i) prepare and submit to each Member a final statement with respect thereto and (ii) file a certificate of cancellation with the Secretary of State of the State of Delaware and cancel any other filings and take such other actions as may be necessary to terminate Nevada JV.

17.2 Continuing Obligations Upon Withdrawal or Transfer.

(a) If any Member surrenders, relinquishes, Transfers or is divested of its Membership Interest, whether in accordance with provisions of this Agreement or otherwise, other than pursuant to Section 9.9 (any such event, a "**Withdrawal**"), then, unless otherwise agreed by the non-withdrawing Member in its sole discretion, the withdrawing Member shall be required to pay to Nevada JV, on demand by the non-withdrawing Member, an amount equal to the withdrawing Member's share of funds required by Nevada JV to satisfy liabilities of Nevada JV to third parties for Continuing Obligations, whether such liability accrues and is payable before or after such Withdrawal, arising out of Operations conducted during the term of this Agreement but prior to such Withdrawal, if Cash Available to Nevada JV (without receiving additional Member Contributions) is insufficient to satisfy such liabilities as they come due. For purposes of this Section 17.2(a), such withdrawing Member's share of such liability for Continuing Obligations (which liability shall be offset by the amount of funds in any reserve account established to satisfy such Continuing Obligations) shall be in proportion to its Proportionate Interest at the time such liability was incurred or when it accrued and, for that purpose, Continuing Obligations that are included in Newmont Assumed Liabilities or Barrick Assumed Liabilities, as applicable, shall be deemed to have been incurred by Nevada JV as of the date of this Agreement. The obligations of a withdrawing Member under this Section 16.2 shall extend to, and be enforceable by, only the non-withdrawing Member and shall not extend to or be enforceable by Nevada JV or any other Person.

(b) Any funds paid by a withdrawing Member to Nevada JV pursuant to Section 17.2(a) shall be dedicated to satisfying the applicable Continuing Obligations, and shall not be used by Nevada JV for any other purpose.

17.3 Right to Data After Termination.

After termination of this Agreement by written agreement of all Parties, each Member shall be entitled to copies of all information related to Operations during the term of this Agreement not previously furnished to it, but a Member shall not be entitled to any such copies after any other termination for any other reason.

ARTICLE 18

GENERAL PROVISIONS

18.1 Notices.

All notices and other communications hereunder shall be in writing, and shall be effective (i) when personally delivered, including delivery by express courier service, (ii) on the day of receipt specified in any return receipt if it shall have been deposited in the mails or (iii) if

transmitted by fax or electronic mail, on the date of transmission, in each case, to the addressee Party's principal address stated below, whichever of the foregoing shall first occur; provided that any notice received after normal business hours at the place of delivery shall not be effective until the next Business Day at the place of delivery. Until otherwise specified by notice, the addresses for any notices shall be:

(a) If to Nevada JV to:

Nevada Gold Mines LLC
1655 Mountain City Highway
Elko, Nevada 89801

Attention: General Counsel
Fax No.: 775.748.1255
Email: Hiliary.Wilson@nevadagoldmines.com

with copies to Barrick and Newmont (at the addresses specified below)

(b) If to Barrick Member or Barrick, to:

Barrick Gold Corporation
Brookfield Place, Suite 3700
161 Bay Street, P.O. Box 212
Toronto, ON M5J 2S1

Attention: Kevin J. Thomson
Fax No.: 416.307.5150
Email: k.thomson@barrick.com

with copies (which shall not constitute notice) to:

Barrick Gold of North America, Inc.
310 South Main Street
Suite 1150
Salt Lake City, Utah 84101

Attention: General Counsel, U.S.
Email: PWebster@barrick.com and USLegalNotices@barrick.com
Fax No.: 801.359.0875

and

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Attention: Melanie Shishler, Richard Fridman and Jared Solinger
Email: mshishler@dwpv.com, rfridman@dwpv.com and jsolinger@dwpv.com

(c) If to Newmont Member or Newmont, to:

Newmont Mining Corporation
6363 South Fiddler's Green Circle, Suite 800
Greenwood Village, Colorado 80111

Attention: Nancy Lipson, Executive Vice President and General Counsel
Email: Nancy.Lipson@newmont.com

with copies (which shall not constitute notice) to:

Newmont Goldcorp Corporation
6363 South Fiddler's Green Circle, Suite 800
Greenwood Village, Colorado 80111

Attention: Land Department
Email: land@newmont.com

Goodmans LLP
Bay-Adelaide Centre, West Tower
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Attention: Neill May and Chris Sunstrum
Email: nmay@goodmans.ca and csunstrum@goodmans.ca

and

Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

Attention: Bruce Stocks and Mark Bussey
Email: Bruce.Stocks@dgslaw.com and
Mark.Bussey@dgslaw.com

A Party may change its address from time to time by notice to the other Parties.

18.2 Assignment.

No Party may Transfer all or any portion of its rights and/or obligations under this Agreement except in accordance with the applicable provisions hereof. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

18.3 Waiver.

Except as otherwise provided in this Agreement, failure on the part of any Party to exercise any right hereunder or to insist upon strict compliance by any other Party with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such right, term,

covenant or condition or limit the Party's right thereafter to enforce any provision or exercise any right, power or remedy. No provision of this Agreement shall be construed to be a waiver by any of the Parties of any rights or remedies such Party may have against any other Party for failure to comply with the provisions of this Agreement and, except as expressly provided in this Agreement, no remedy or right herein conferred is intended to be exclusive of any other remedy or right, but every such remedy or right shall be cumulative and shall be in addition to every other remedy or right herein conferred or hereafter existing at law or in equity.

18.4 Amendments.

This Agreement may not be amended or modified except by a written instrument signed by all of the Parties, and Nevada JV shall be bound by any such amendment or modification. No Member shall be bound by any modification or amendment of this Agreement or waiver of any provision hereof unless such modification, amendment or waiver is set forth in a written instrument signed by each of the Members.

18.5 Force Majeure.

The obligations of a Party shall be suspended to the extent and for the period that performance by such Party is prevented by any event of Force Majeure; provided that the affected Party shall give notice to the other Parties promptly, but in no event later than 30 days after the suspension of performance, stating in such notice the nature of the suspension, the reasons for the suspension and the expected duration of the suspension. The affected Party shall resume performance as soon as reasonably possible. Any time period during which performance must be achieved and as to which such performance is delayed because of Force Majeure shall be extended by a period equal to the period of suspension. Notwithstanding anything in this Section 18.5 to the contrary, an event of Force Majeure shall not excuse any payment obligation of any Party hereunder.

18.6 Further Assurances.

Each Party shall take from time to time upon request of another Party, for no additional consideration, such actions and shall execute and acknowledge in form required by law for recording or registering with the proper Person and shall deliver to the requesting Party such notices, deeds or other instruments incorporating, referring to, or carrying out the provisions of this Agreement as the requesting Party may reasonably deem necessary in order to preserve or protect its interest under this Agreement or as may be reasonably necessary or convenient to implement and carry out the intent, provisions of and purpose of this Agreement.

18.7 Survival of Terms and Conditions.

Subject to Section 2.14(b), the provisions of this Agreement shall survive its termination to the full extent necessary for their enforcement and the protection of the Party in whose favor they run. Without limiting the generality of the foregoing, the following provisions of this Agreement shall survive termination: Sections 2.9 and 2.11; Sections 4.2(a)(ii) and (iii); Sections 9.1 through 9.4; Sections 9.5(c)(ii) and 9.5(d); Article 11; Article 14; Article 17; and Sections 18.1, 18.2, 18.3, 18.4, 18.6 and 18.14.

18.8 Entire Agreement.

This Agreement, including all attached Schedules, and the Implementation Agreement contain the entire and final understanding of the Members and supersede all other prior agreements and understandings between the Members related to the subject matter of this Agreement.

18.9 Severability.

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. The validity of remaining sections, provisions, terms and parts of this Agreement shall not be affected by a court, administrative board or other proceeding of competent jurisdiction deciding that a provision, term or part of this Agreement is illegal, unenforceable, in conflict with any law or contrary to public policy. In such event the Parties shall undertake good faith efforts to amend this Agreement in order to replace such provision by a reasonable new provision or provisions which, as far as legally possible, shall approximate what the Parties intended by such original provision and the purpose thereof. Without limiting the generality of the foregoing, nothing in this Agreement shall require any Manager to act in contravention of the duties imposed on such Manager by applicable Legal Requirements.

18.10 Computation of Interest.

Where the accumulation of interest at the LIBOR Rate is provided for hereunder, such interest shall be determined for each full or partial calendar month in which interest accrues under any obligation to which it applies or any note or other instrument executed pursuant hereto, and shall apply to all interest obligations accruing in such month. The interest rate shall be determined monthly based upon the stated LIBOR Rate in effect on the first (1st) business day of each calendar month. As used in this definition, "business day" means a day on which the London and New York banks are open for business and on which a quotation of the LIBOR Rate may be obtained.

18.11 No Third-Party Beneficiary.

Except as specifically provided herein, no term or provision of this Agreement or the Schedules hereto is intended to be, or shall be construed to be, for the benefit of any Person, including any investment banker, broker, agent or creditor, and no such other Person shall have any right of cause of action hereunder. Without limiting the foregoing, any continuing liability of a Member pursuant to Section 17.2 shall extend to and be enforceable only by the other Member.

18.12 No Implied Covenants.

It is expressly understood and agreed that no implied covenant or condition whatsoever shall be read into this Agreement relating to Exploration, Development, Mining, production or marketing or to any obligation of the Members hereunder, or to the time therefor or the measure of diligence thereof. Notwithstanding the foregoing, each Member and Parent agrees that it shall act in good faith, and shall cause an Affiliate acting in its stead as Operating Member pursuant to Section 4.1(c) to act in good faith, in the performance of such Member's obligations pursuant to the provisions of this Agreement.

18.13 Time is of the Essence.

A material consideration of the Members and the Parents entering into this Agreement is that the other Members will make all contributions and other payments as and when due and will perform all other obligations under this Agreement in a timely manner. Except as otherwise specifically provided in this Agreement, time is of the essence for each and every provision of this Agreement.

18.14 Limitation of Liability.

Each Party waives any claim for incidental or consequential damages hereunder (other than incidental or consequential damages paid to a third party in respect of a third -party claim), including damages for lost profits or for the speculative value or development potential of the Nevada JV Business.

18.15 Counterparts.

This Agreement may be executed in any number of counterparts and by facsimile signatures, each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

BARRICK GOLD CORPORATION

by */s/ Mark Bristow*
Name: Mark Bristow
Title: President and Chief Executive Officer

/s/ Graham Shuttleworth
Name: Graham Shuttleworth
Title: SEVP, Chief Financial Officer

BARRICK NEVADA HOLDING LLC

by */s/ Paul Judd*
Name: Paul Judd
Title: Tax Director

Amended and Restated Limited Liability Company Agreement
of
Nevada Gold Mines LLC

NEWMONT GOLDCORP CORPORATION

by */s/ Gary J. Goldberg*
Name: Gary J. Goldberg
Title: Chief Executive Officer

NEWMONT USA LIMITED

by */s/ Blake M. Rhodes*
Name: Blake M. Rhodes
Title: Vice President

Amended and Restated Limited Liability Company Agreement
of
Nevada Gold Mines LLC

NEVADA GOLD MINES LLC

by */s/ Patrick Malone*
Name: Patrick Malone
Title: Officer

/s/ Blake M. Rhodes
Name: Blake M. Rhodes
Title: Officer

Amended and Restated Limited Liability Company Agreement
of
Nevada Gold Mines LLC

SCHEDULE A

ACCOUNTING PROCEDURES

The financial and accounting procedures to be followed by the Operating Member and Nevada JV and its subsidiaries are set forth below. All Accounting Procedures set forth in this Schedule A are subject to compliance with all applicable Legal Requirements, including the Sarbanes-Oxley Act. These Accounting Procedures may be reflected in one or more technical services agreements or other services agreements directly between Nevada JV and the Operating Member. For purposes of this Schedule A, Article and Section references are to Articles and Sections of this Schedule A unless otherwise specified.

ARTICLE 1

GENERAL PROVISIONS

1.1 General Accounting Records.

The Operating Member shall maintain, and shall cause Nevada JV and its subsidiaries to maintain detailed and comprehensive financial and cost accounting books and records as provided in Section 4.6 of the Agreement and other applicable provisions of the Agreement. Subject to applicable Legal Requirements, the Operating Member and Nevada JV and its subsidiaries shall maintain records and accounts in accordance with Generally Accepted Accounting Principles.

1.2 Statement and Billings.

The Operating Member shall submit statements for charges authorized herein to Nevada JV with respect to Operations pursuant to Section 4.2(b)(i) of the Agreement and other applicable provisions of the Agreement. Payment of any such billings by Nevada JV shall not prejudice the right of Nevada JV or a Member to protest or question the correctness thereof for a period not to exceed 24 months following the Calendar Year during which such billings were received by Nevada JV, subject, however, to Section 4.7 of the Agreement concerning audits in such regard (after which no claim therefor shall be made).

1.3 Bank Accounts.

The Operating Member shall cause all cash receipts for Nevada JV and its subsidiaries to be deposited in and all payments from Nevada JV and its subsidiaries to be made from Nevada JV Accounts.

1.4 Conflict With Agreement.

In the event of a conflict between the provisions of these Accounting Procedures and the provisions of the Agreement, the provisions of the Agreement shall take precedence.

ARTICLE 2

CHARGES TO THE ACCOUNT OF NEVADA JV

Subject to Section 4.2(a)(ii) of the Agreement and other provisions of the Agreement, Nevada JV shall compensate the Operating Member for all costs and expenses incurred directly by the Operating Member or its Affiliates in the performance of Operations on behalf of Nevada JV. The Operating Member shall be provided with funds in advance or be reimbursed by Nevada JV for any such costs or expenses.

Subject to the provisions hereof and of the Agreement, the Operating Member shall charge to the accounts of Nevada JV the following, with the term "Operating Member" with respect to reimbursable expenditures being deemed to include the Operating Member or any Affiliate thereof:

2.1 Labor and Employee Benefits.

(a) Costs (defined below) of the Operating Member's or its Affiliates' employees directly engaged in Operations (including employees of the Operating Member or its Affiliates who provide services to the Nevada JV and its subsidiaries or who are temporarily assigned to and directly employed by the Operating Member), who, provide skills and services that the Operating Member determines, acting reasonably, are beneficial to Nevada JV and its subsidiaries.

(b) Costs for employees who spend part of their time on Operations and part of their time on unrelated matters shall be charged on a "percentage allocation assessment". Such charges (i) shall not exceed the actual cost thereof to the Operating Member, (ii) shall be posted to the appropriate account, cost center and/or site based on the nature of the activities performed, and (iii) shall be reported upon in detail to the Finance Committee on a quarterly basis.

(c) For purposes of this Section 2.1 "**Costs**" means the Operating Member's actual costs of: (i) salary and annual bonus entitlements (including share based entitlements), (ii) holiday, vacation, sickness and disability benefits, and other customary allowances applicable to salaries; (iii) established plans for employees' group life insurance, medical, pension, retirement, stock purchase, thrift, bonus and other benefit plans of a like nature; and (iv) cost of assessments imposed by Government Authorities which are applicable to salaries chargeable under this Section, including all penalties (subject to Section 4.2(a)(ii) of the Agreement).

(d) For certainty, the Costs referred to in this Section 2.1 shall not include any Costs in respect of executive officers of Barrick. For purposes of this Section 2.1, "**executive officers**" shall mean officers holding the following titles (or other comparable titles): (i) Executive Chairman, (ii) President and Chief Executive Officer, (iii) Senior Executive Vice-President, Chief Financial Officer, (iv) Senior Executive Vice-President, Strategic Matters, (iv) Chief Operating Officer, North America, (v) Chief Operating Officer, Africa and Middle East and (vi) Chief Operating Officer, LATAM and Australia Pacific.

2.2 Contract Service and Utilities.

The cost of contract services and utilities procured from outside sources that are not charged directly to Nevada JV and its subsidiaries. If contract services are performed by the

Operating Member or an Affiliate thereof, the cost charged to the account of Nevada JV shall not be greater than that for which comparable services and utilities are available in the open market within the vicinity of the Operations.

2.3 Insurance Premiums.

Subject to Section 4.2(b)(i) of the Agreement, net premiums paid for insurance required to be carried for Operations including for the protection of the Operating Member and Nevada JV that is not procured in the name of Nevada JV (which shall include only incremental costs if such insurance is provided under general policies or self-insurance maintained by the Operating Member or its Affiliates).

2.4 Legal and Regulatory Expenses.

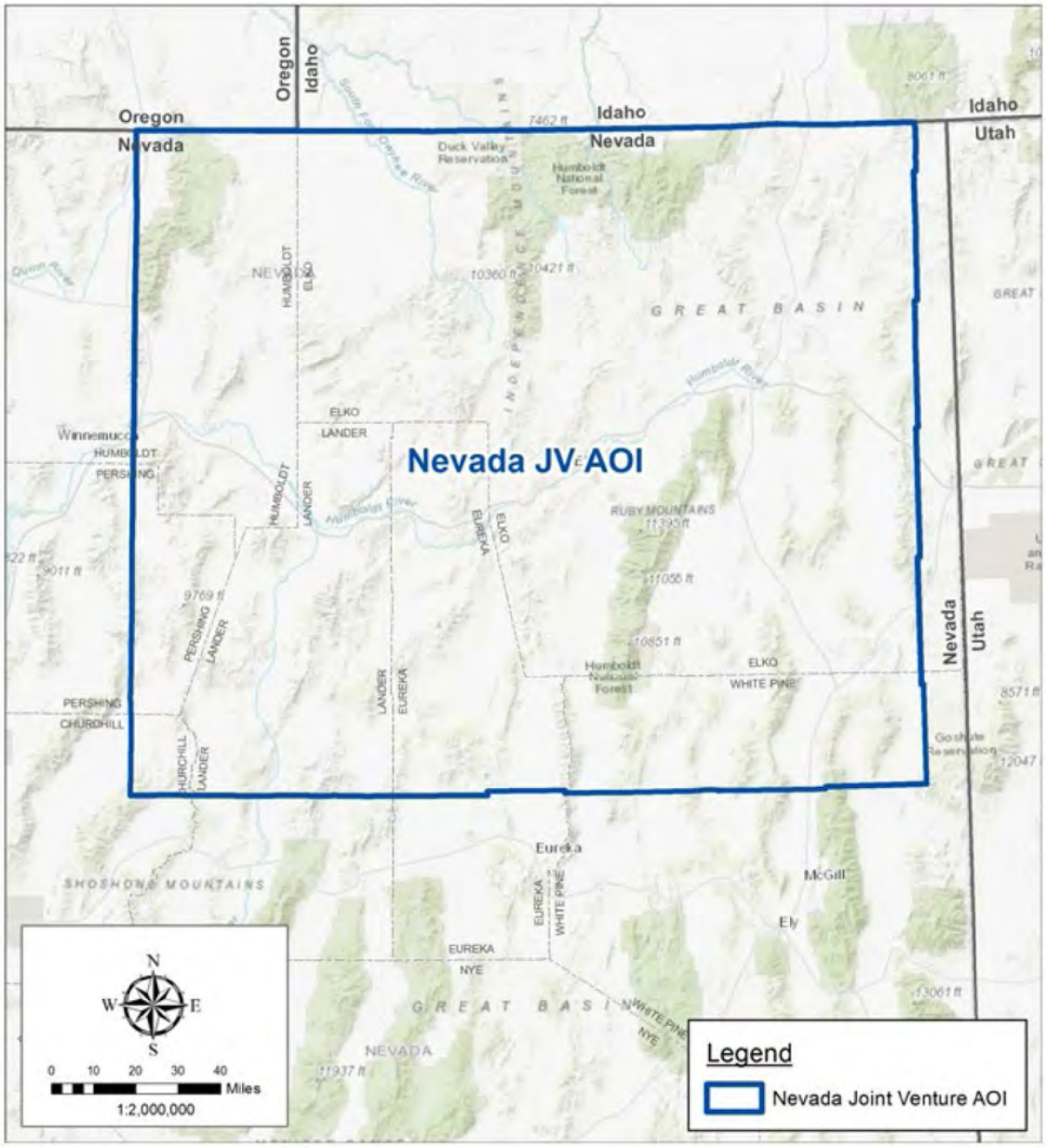
All reasonable legal costs and expenses and all regulatory costs and expenses, including assessments, fees, fines and penalties (subject to Sections 4.2(a)(ii) and 4.2(f) of the Agreement), incurred in or resulting from Operations or necessary to protect or recover the Nevada JV Assets.

2.5 Regulatory Costs.

Subject to Section 4.2(a)(ii) of the Agreement, fines, penalties or awards imposed for violations of environmental or safety regulations or for causing adverse environmental impacts or damages.

SCHEDULE B

AREA OF INTEREST

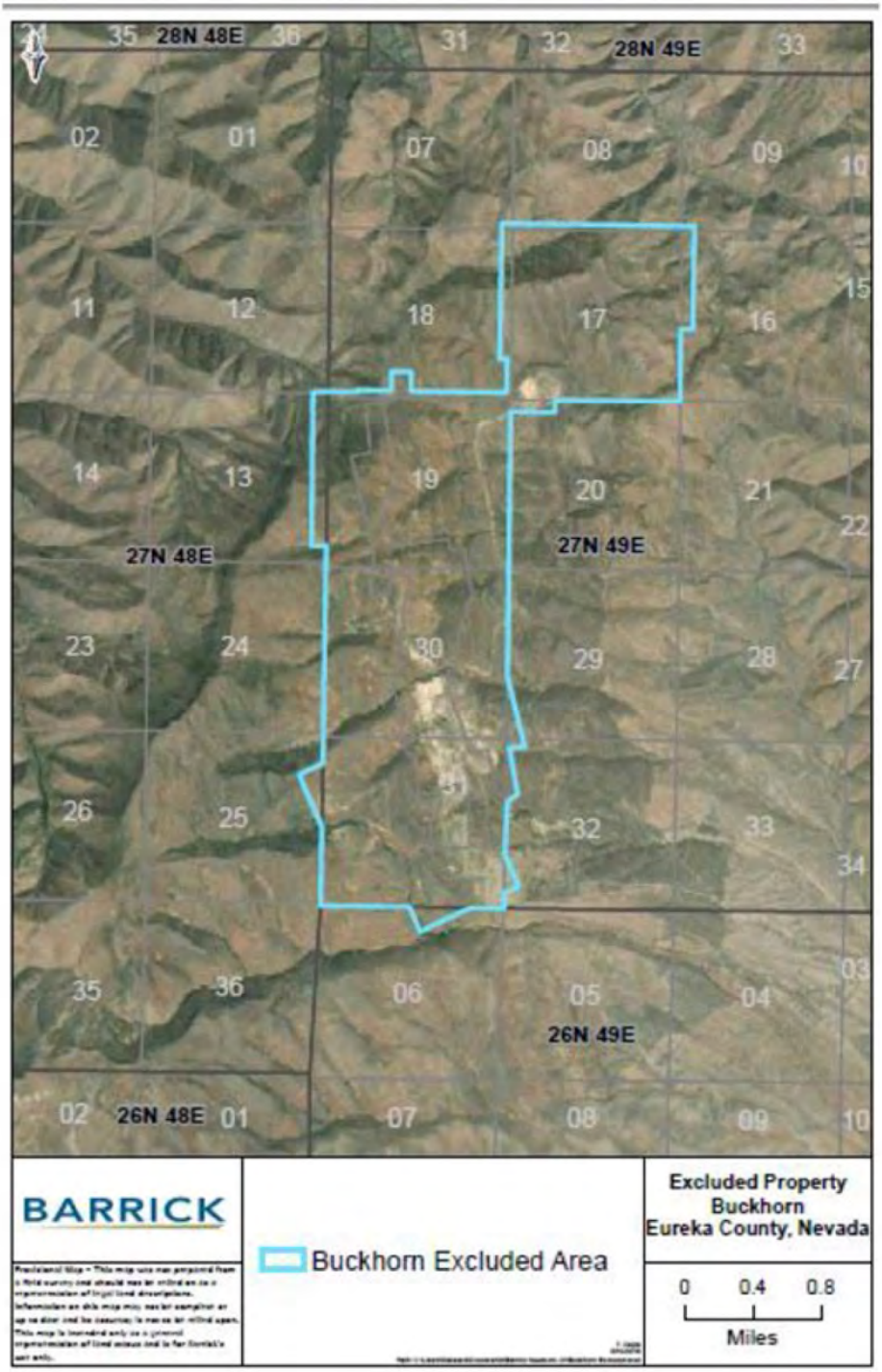


All property within the area extending from and including Township 22 North, Mount Diablo Principal Meridian, north to the northern boundary of the State of Nevada, and extending from and including Range 38 East to the eastern boundary of Range 68 East of the Mount Diablo Principal Meridian, situated within Churchill, Elko, Eureka, Humboldt, Lander, Pershing and White Pine Counties, Nevada; excepting and excluding the following described property:

1. **Four Mile Excluded Property in Eureka County, Nevada:**

See Schedule D.

2. **Buckhorn Excluded Property in Eureka County, Nevada:**



Township 27 North, Range 49 East

Section 17: All
Section 19: All
Section 30: All
Section 31: All
Portions of Sections: 7, 8, 9, 16, 18, 20, 29 and 32

Township 26 North, Range 49 East

Portion of Section: 6

Township 27 North, Range 48 East

Portions of Sections: 13 & 25

As to those areas encompassed by the following unpatented mining claims and patented mining claims:

Unpatented Claims

Claim Name	BLM Serial Number
MTB 223	NMC 1079791
MTB 225	NMC 1079793
MTB 227	NMC 1079795
MTB 229	NMC 1079797
MTB 231	NMC 1079799
MTB 233	NMC 1079801
MTB 235	NMC 1079803
MTB 237	NMC 1079805
MTB 292	NMC 1099618
MTB 294	NMC 1099620
MTB 296	NMC 1099622
MTB 298	NMC 1099624
MTB 300	NMC 1099626
MTB 302	NMC 1099628
MTB 304	NMC 1099630
MTB 323	NMC 1099649
MTB 324	NMC 1099650
MTB 325	NMC 1099651
MTB 326	NMC 1099652
MTB 327	NMC 1099653
MTB 328	NMC 1099654
MTB 329	NMC 1099655
MTB 330	NMC 1099656
MTB 331	NMC 1099657
MTB 332	NMC 1099658
MTB 333	NMC 1099659
MTB 334	NMC 1099660

Claim Name	BLM Serial Number
MTB 335	NMC 1099661
MTB 336	NMC 1099662
MTB 337	NMC 1099663
MTB 359	NMC 1099685
MTB 361	NMC 1099687
MTB 363	NMC 1099689
MTB 365	NMC 1099691
MTB 367	NMC 1099693
MTB 369	NMC 1099695
BUC - 1	NMC 368060
BUC - 2	NMC 368061
BUC - 3	NMC 368062
BUC - 4	NMC 368063
BUC - 5	NMC 368064
BUC - 6	NMC 368065
BUC - 7	NMC 368066
ASPEN # 2	NMC 116388
ASPEN # 3	NMC 116389
ASPEN # 4	NMC 116390
ASPEN # 12	NMC 116398
ASPEN # 13	NMC 116399
ASPEN # 14	NMC 116400
ASPEN # 15	NMC 116401
ASPEN # 17	NMC 116403
ASPEN # 18	NMC 116404
ASPEN # 20	NMC 116406
ASPEN # 21	NMC 116407
ASPEN # 22	NMC 116408
ASPEN # 23	NMC 116409
ASPEN # 24	NMC 116410
ASPEN # 25	NMC 116411
ASPEN # 26	NMC 116412
ASPEN NO. 35	NMC 116421
ASPEN NO. 48	NMC 116434
ASPEN NO. 57	NMC 116443
BUCKHORN FRACTION	NMC 116451
CITIZEN FRACTION # 1	NMC 116452
HUMBOLDT # 3	NMC 116453
LAME BULL FRACTION	NMC 116454

Claim Name	BLM Serial Number
ORO	NMC 116455
ORO # 1	NMC 116456
ORO # 2	NMC 116457
ORO # 3	NMC 116458
ORO # 4	NMC 116459
ORO # 5	NMC 116460
ORO # 6	NMC 116461
ORO # 7	NMC 116462
ORO FINO	NMC 116463
SANTA FE FRACTION	NMC 116464
U.P. # 7	NMC 116471
U.P. # 9	NMC 116473
BUCKAROO # 1	NMC 116476
BUCKAROO # 2	NMC 116477
BUCKAROO # 3	NMC 116478
BUCKAROO # 4	NMC 116479
BUCKAROO # 5	NMC 116480
BUCKAROO # 6	NMC 116481
BUCKAROO # 7	NMC 116482
BUCKAROO # 8	NMC 116483
BUCKAROO # 9	NMC 116484
BUCKAROO # 10	NMC 116485
BUCKAROO # 11	NMC 116486
BUCKAROO # 13	NMC 116488
BUCKAROO # 15	NMC 116490
BUCKAROO # 17	NMC 116492
BUCKAROO # 19	NMC 116494
BUCKAROO # 21	NMC 116496
BUCKAROO # 23	NMC 116498
BUCKAROO # 25	NMC 116500
BUCKAROO # 27	NMC 116502
BUCKAROO # 29	NMC 116504
BUCKAROO # 31	NMC 116506
BUCKAROO # 229	NMC 116608
BUCKAROO # 230	NMC 116609
BUCKAROO # 361	NMC 116639
BUCKAROO # 362	NMC 116640
PINON # 1	NMC 247024

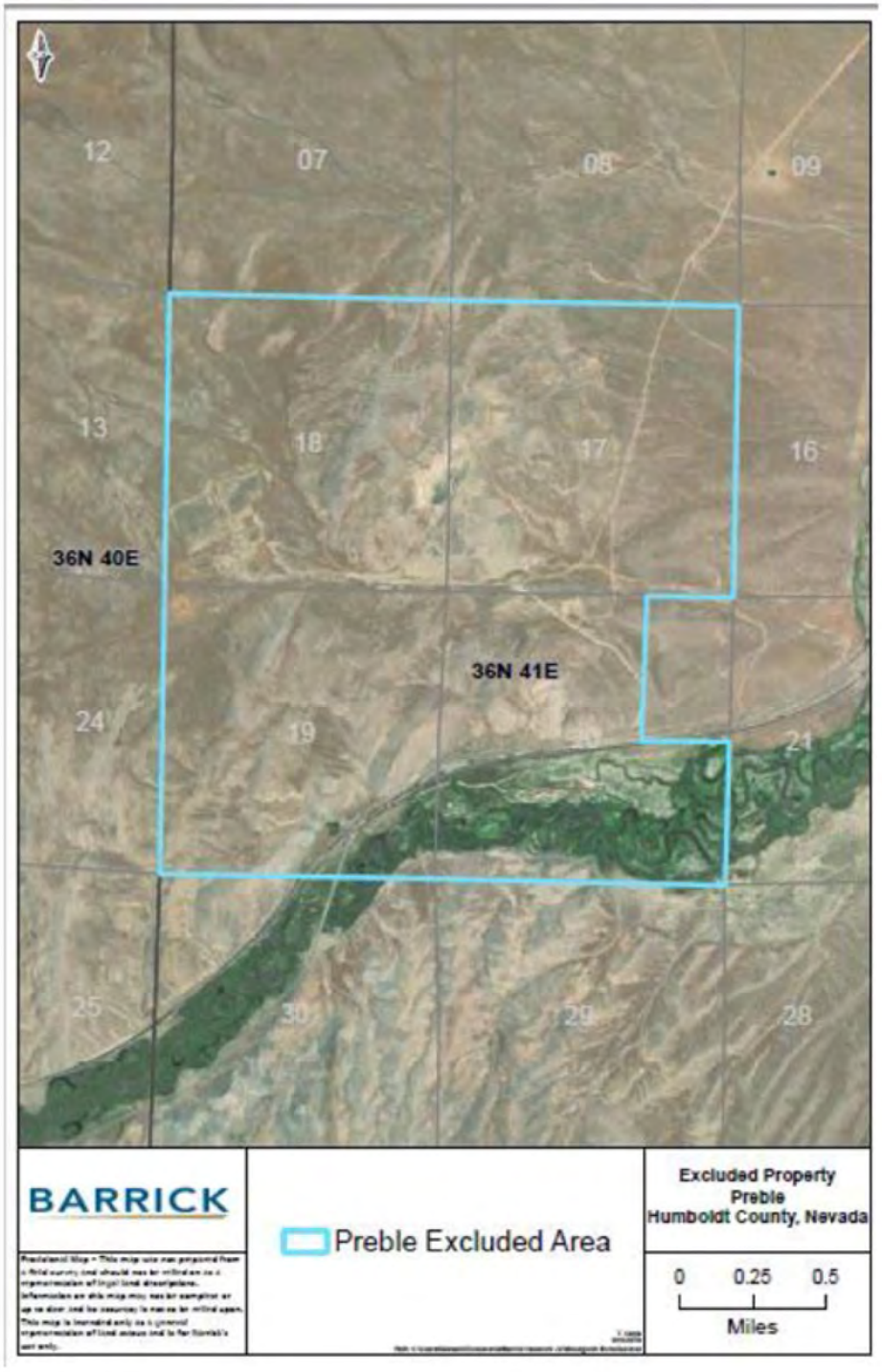
Claim Name	BLM Serial Number
PINON # 2	NMC 247025
SAGE 100	NMC 287515
SAGE 101	NMC 287516
SAGE 102	NMC 287517
SAGE 103	NMC 287518
SAGE 104	NMC 287519
SAGE 105	NMC 287520
SAGE 106	NMC 287521
SAGE 107	NMC 287522
SAGE 108	NMC 287523
SAGE 109	NMC 287524
SAGE 110	NMC 287525
SAGE 125	NMC 287540
NEW CITIZENS FRACTION	NMC 293033
GFR 1	NMC 1053091
GFR 2	NMC 1053092
GFR 3	NMC 1053093
TUFA	NMC 116465

Patented Claims

Parcel Number	Patent Claim Name
009-080-02	Monarch
009-080-02	Buckhorn No. 10
009-080-02	Buckhorn No. 1
009-080-02	Buckhorn No. 2
009-080-02	Buckhorn No. 3
009-080-02	Buckhorn No. 4
009-080-02	Buckhorn No. 5
009-080-02	Buckhorn No. 6
009-080-02	Buckhorn No. 7
009-080-02	Buckhorn No. 8
009-080-02	Buckhorn No. 9
009-080-02	E and P Fraction
009-080-02	Narrow Gauge
009-080-02	Humboldt No. 1
009-080-02	Humboldt No. 2
009-080-02	Sunset
009-080-02	Easter No. 1

Parcel Number	Patent Claim Name
009-080-02	Easter No. 2
009-080-02	D.P.M. Fraction
009-080-02	Eagle
009-080-01	Eva Lee
009-080-01	Huntington Mine
009-080-01	J.B. Rouig
009-080-02	Lame Bull No. 1
009-080-02	Lame Bull No. 2
009-080-02	Lone Star Fraction
009-080-02	M & M Fraction
009-080-02	Noon Day Fraction
009-080-01	North Side Mine
009-080-01	One Hundred Proof
009-080-02	Red Ant
009-080-02	Sunday Fraction
009-080-02	Lame Bull Fraction

3. **Preble Excluded Property in Humboldt County, Nevada:**



Township 36 North, Range 41 East

Section 17: All

Section 18: All
Section 19: All
Section 20: S1/2; NW1/4; W1/2NE1/4

As to those areas encompassed by the following unpatented mining claims:

Claim Name	BLM Serial Number
PREBLE # 1 A	NMC 319914
PREBLE # 2 A	NMC 319915
PREBLE # 3 A	NMC 319916
PREBLE # 4 A	NMC 319917
PREBLE # 6 A	NMC 319919
PREBLE # 7 A	NMC 319920
PREBLE # 8 A	NMC 319921
PREBLE # 9 A	NMC 319922
PREBLE # 10 A	NMC 319923
PREBLE # 11 A	NMC 319924
PREBLE # 20 A	NMC 319925
PREBLE # 21 A	NMC 319926
PREBLE # 22 A	NMC 319927
PREBLE # 23 A	NMC 319928
PREBLE # 24 A	NMC 319929
PREBLE # 25 A	NMC 319930
PREBLE # 26 A	NMC 319931
PREBLE # 27 A	NMC 319932
PREBLE # 28 A	NMC 319933
PREBLE # 29 A	NMC 319934
PREBLE # 30 A	NMC 319935
PREBLE # 31 A	NMC 319936
PREBLE # 32 A	NMC 319937
PREBLE # 33 A	NMC 319938
PREBLE # 34 A	NMC 319939
PREBLE # 35 A	NMC 319940
PREBLE # 36 A	NMC 319941
PREBLE # 37 A	NMC 319942
PREBLE # 38 A	NMC 319943
PREBLE # 39 A	NMC 319944
PREBLE # 40 A	NMC 319945
PREBLE # 41 A	NMC 319946
PREBLE # 5 AA	NMC 425608
PREBLE # 70 A	NMC 319947
PREBLE # 71 A	NMC 319948
PREBLE # 72 A	NMC 319949
PREBLE # 73 A	NMC 319950

Claim Name	BLM Serial Number
PREBLE # 74 A	NMC 319951
PREBLE # 75 A	NMC 319952
PREBLE # 76 A	NMC 319953
PREBLE # 77 A	NMC 319954
PREBLE # 78 A	NMC 319955
PREBLE # 79 A	NMC 319956
PREBLE # 80 A	NMC 319957
PREBLE # 81 A	NMC 319958
DOLOMITE # 1	NMC 319798
DOLOMITE # 2	NMC 319799
DOLOMITE # 3	NMC 319800
DOLOMITE # 4	NMC 319801

4. **Woodgulch Excluded Property in Elko County, Nevada:**

Township 44 North, Range 53 East

Section 23: All
Section 24: All
Section 25: All
Section 26: All

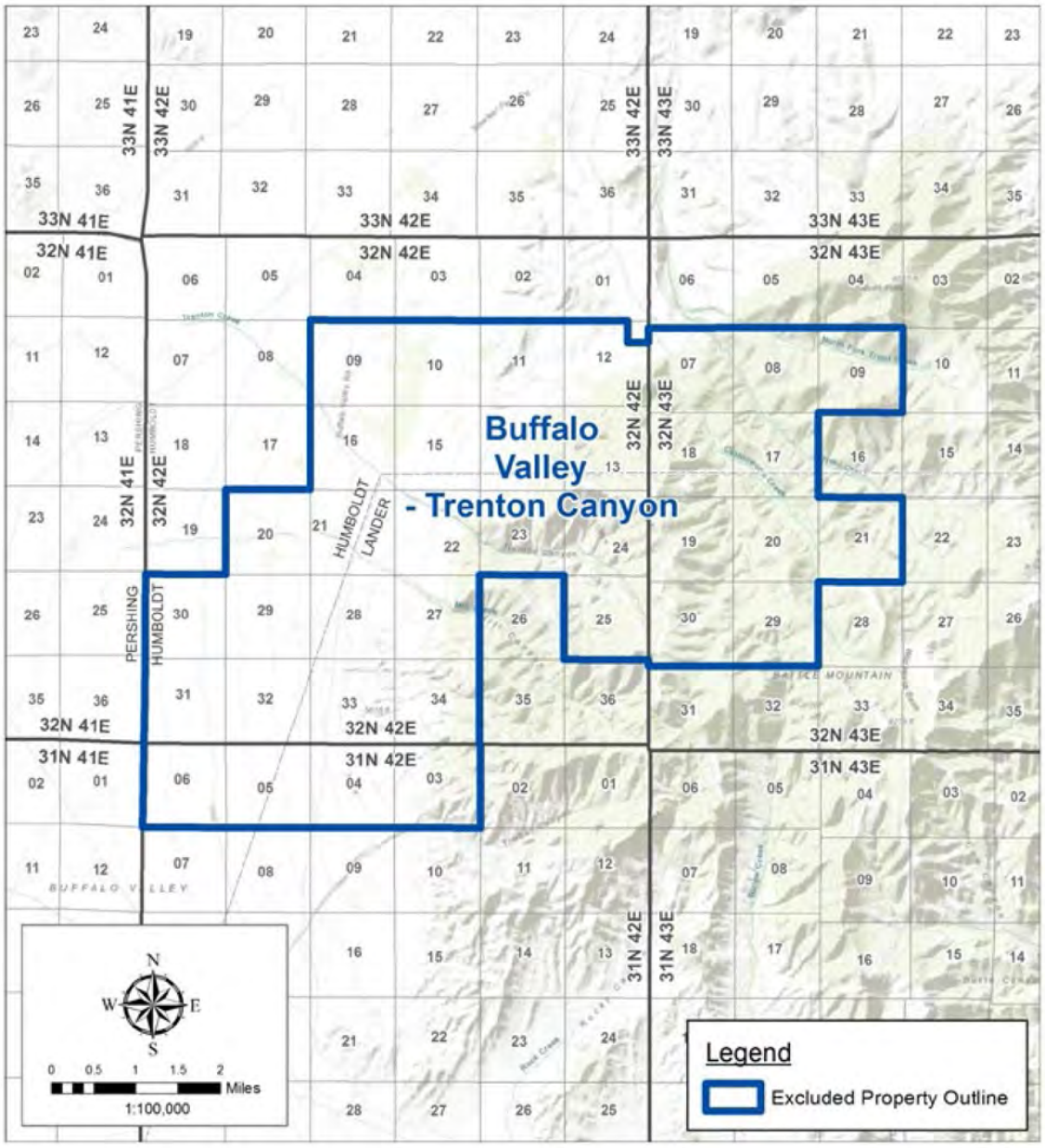
5. **Fiberline Excluded Property in Humboldt County, Nevada:**

See Schedule C.

6. **Mike Excluded Property in Eureka County, Nevada:**

See Schedule E.

7. **Buffalo Valley-Trenton Canyon Excluded Property in Humboldt and Lander County, Nevada:**



Township 31 North, Range 42East, MDM

Section 03: All
Section 04: All
Section 05: All
Section 06: All

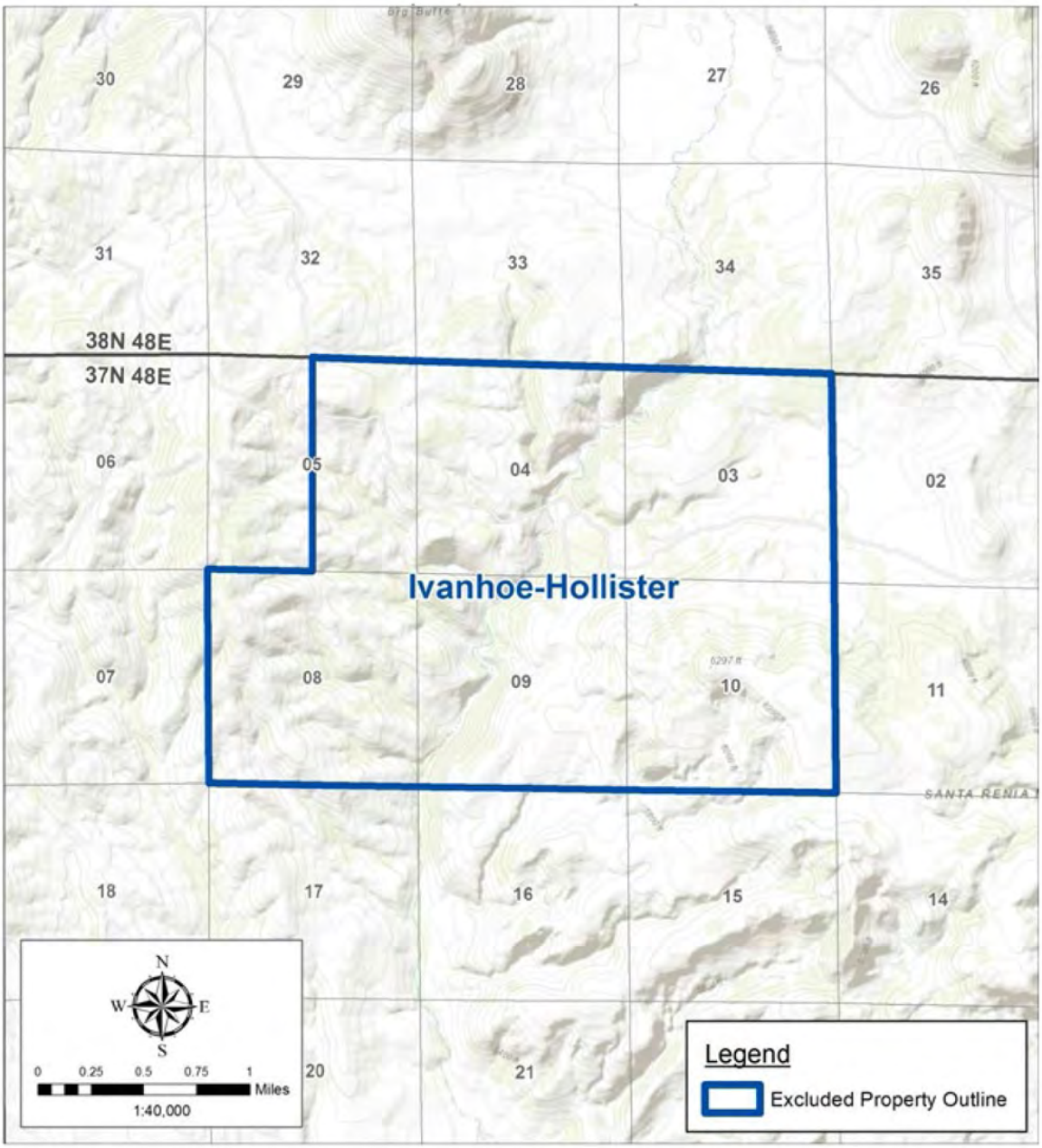
Township 32 North, Range 42East, MDM

Section 09: All
Section 10: All
Section 11: All
Section 12: S/2, NW/4, S/2NE/4, NW/4NE/4
Section 13: All
Section 14: All
Section 15: All
Section 16: All
Section 20: All
Section 21: All
Section 22: All
Section 23: All
Section 24: All
Section 25: All
Section 27: All
Section 28: All
Section 29: All
Section 30: All
Section 31: All
Section 32: All
Section 33: All
Section 34: All

Township 32 North, Range 43East, MDM

Section 07: All
Section 08: All
Section 09: All
Section 17: All
Section 18: All
Section 19: All
Section 20: All
Section 21: All
Section 29: All
Section 30: All

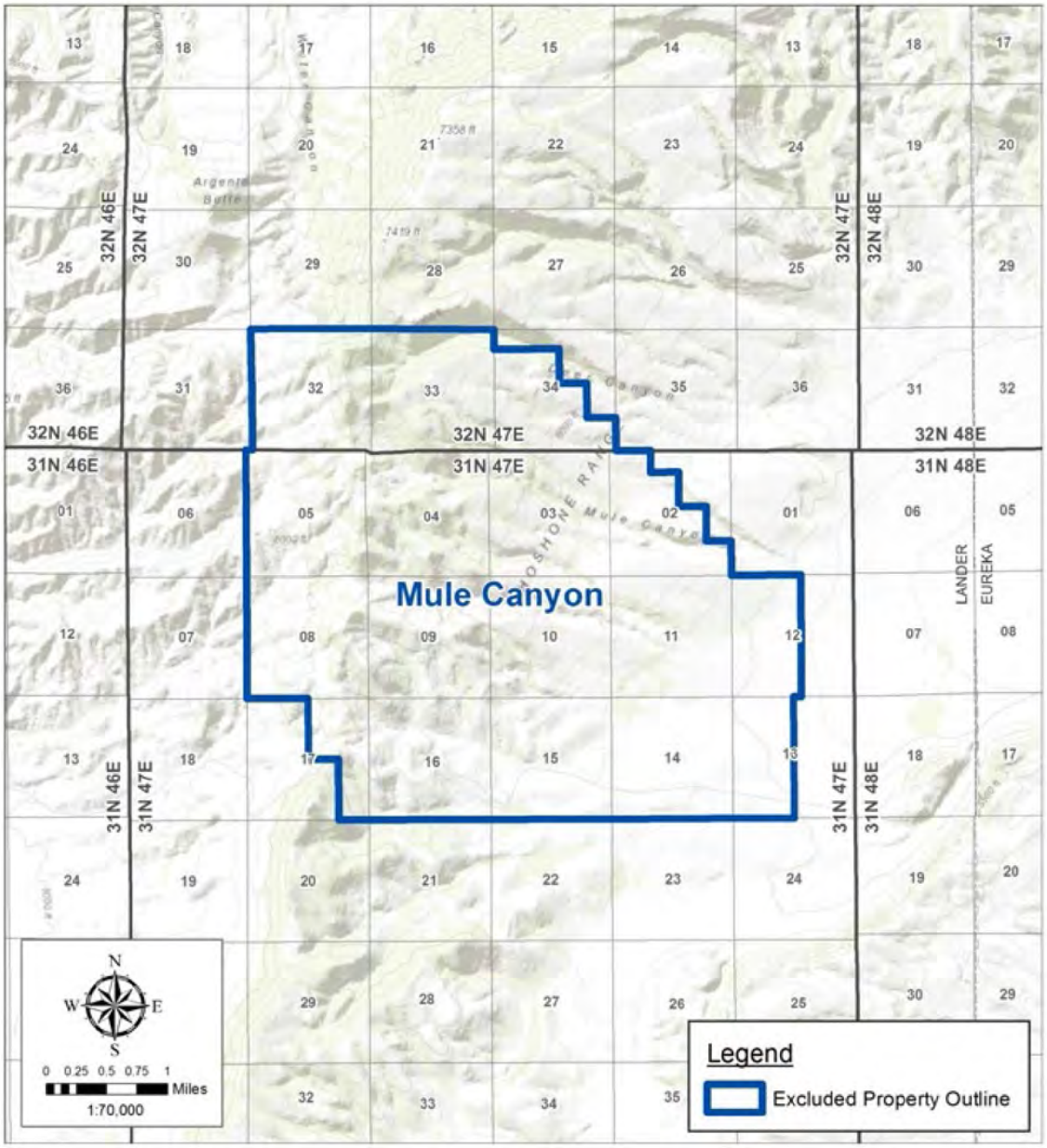
8. **Ivanhoe-Hollister Excluded Property in Elko County, Nevada:**



Township 37 North, Range 48 East, MDM

Section 03: All
Section 04: All
Section 05: E/2
Section 08: All
Section 09: All
Section 10: All

9. **Mule Canyon Excluded Property in Lander County, Nevada:**



Township 31 North, Range 47 East, MDM

Section 2: The area encompassed by the following unpatented lode mining claims:

Claim Name	BLM Serial Number
Elk 101	384311
Elk 103	384313
Elk 105	384315

Elk 106	384316
Elk 107	384317
Elk 108	384318
Elk 109	384319
Elk 110	384320
Elk 111	384321
Elk 112	384322
Elk 113	384323
Elk 114	384324
Elk 115	384325
Elk 116	384326
Elk 117	384327
Elk 118	384328
Elk 127	384337
Elk 129	384339
Elk 131	384341
Elk 132	384342
Elk 133	384343
Elk 134	384344
Elk 135	384345
Elk 136	384346

Section 3: All
Section 4: All
Section 5: All
Section 8: All
Section 9: All
Section 10: All
Section 11: All
Section 12: The area encompassed by the following unpatented lode mining claims:

Claim Name	BLM Serial Number
Ram 9	613899
Ram 10	613900
Ram 11	613901
Ram 12	613902
Ram 13	613903
Ram 14	613904
Ram 15	613905
Ram 16	613906
Ram 17	613907
Ram 18	613908
Ram 27	613917
Ram 28	613918

Ram 29	613919
Ram 30	613920
Ram 31	613921
Ram 32	613922
Ram 33	613923
Ram 34	613924
Ram 35	613925
Ram 36	613926

Section 13: W/2
Section 14: All
Section 15: All
Section 16: All
Section 17: NE/4, E/2SE/4

Township 32 North, Range 47 East, MDM

Section 32: All
Section 33: All
Section 34: The area encompassed by the following unpatented lode mining claims:

Claim Name	BLM Serial Number
Mule 401	525085
Mule 403	525087
Mule 405	525089
Mule 406	525090
Mule 407	525091
Mule 408	525092
Mule 409	525093
Mule 410	525094
Mule 411	525095
Mule 412	525096
Mule 413	525097
Mule 414	525098
Mule 415	525099
Mule 416	525100
Mule 417	525101
Mule 418	525102
Mule 427	525111
Mule 429	525113
Mule 431	525115
Mule 433	525117
Mule 435	525119

SCHEDULE C

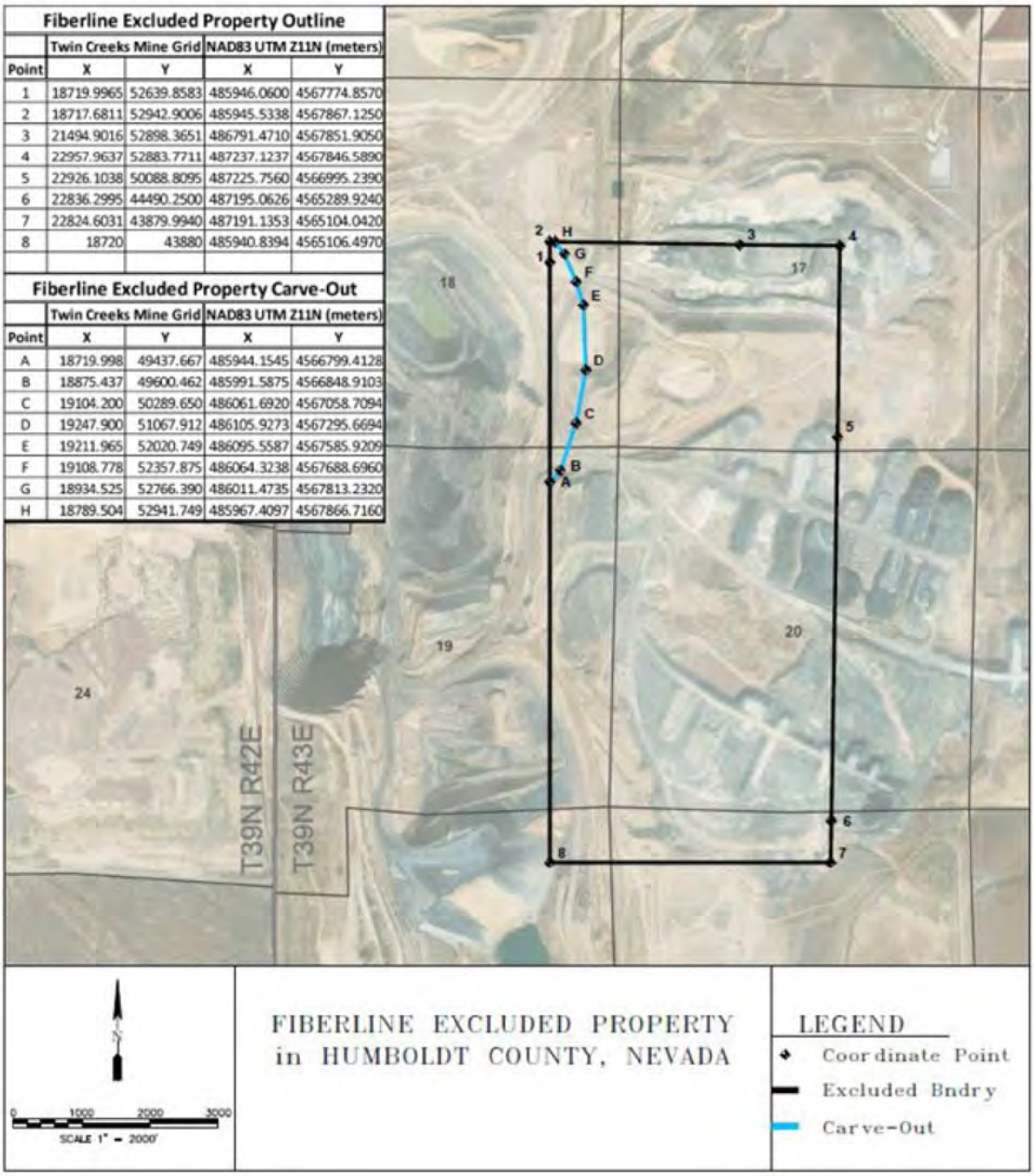
FIBERLINE PROJECT

Fiberline Excluded Property Outline

	Twin Creeks Mine Grid		NAD83 UTM Z11N (meters)	
Point	X	Y	X	Y
1	18719.9965	52639.8583	485946.0600	4567774.8570
2	18717.6811	52942.9006	485945.5338	4567867.1250
3	21494.9016	52898.3651	486791.4710	4567851.9050
4	22957.9637	52883.7711	487237.1237	4567846.5890
5	22926.1038	50088.8095	487225.7560	4566995.2390
6	22836.2995	44490.2500	487195.0626	4565289.9240
7	22824.6031	43879.9940	487191.1353	4565104.0420
8	18720	43880	485940.8394	4565106.4970

Fiberline Excluded Property Carve-Out

	Twin Creeks Mine Grid		NAD83 UTM Z11N (meters)	
Point	X	Y	X	Y
A	18719.998	49437.667	485944.1545	4566799.4128
B	18875.437	49600.462	485991.5875	4566848.9103
C	19104.200	50289.650	486061.6920	4567058.7094
D	19247.900	51067.912	486105.9273	4567295.6694
E	19211.965	52020.749	486095.5587	4567585.9209
F	19108.778	52357.875	486064.3238	4567688.6960
G	18934.525	52766.390	486011.4735	4567813.2320
H	18789.504	52941.749	485967.4097	4567866.7160



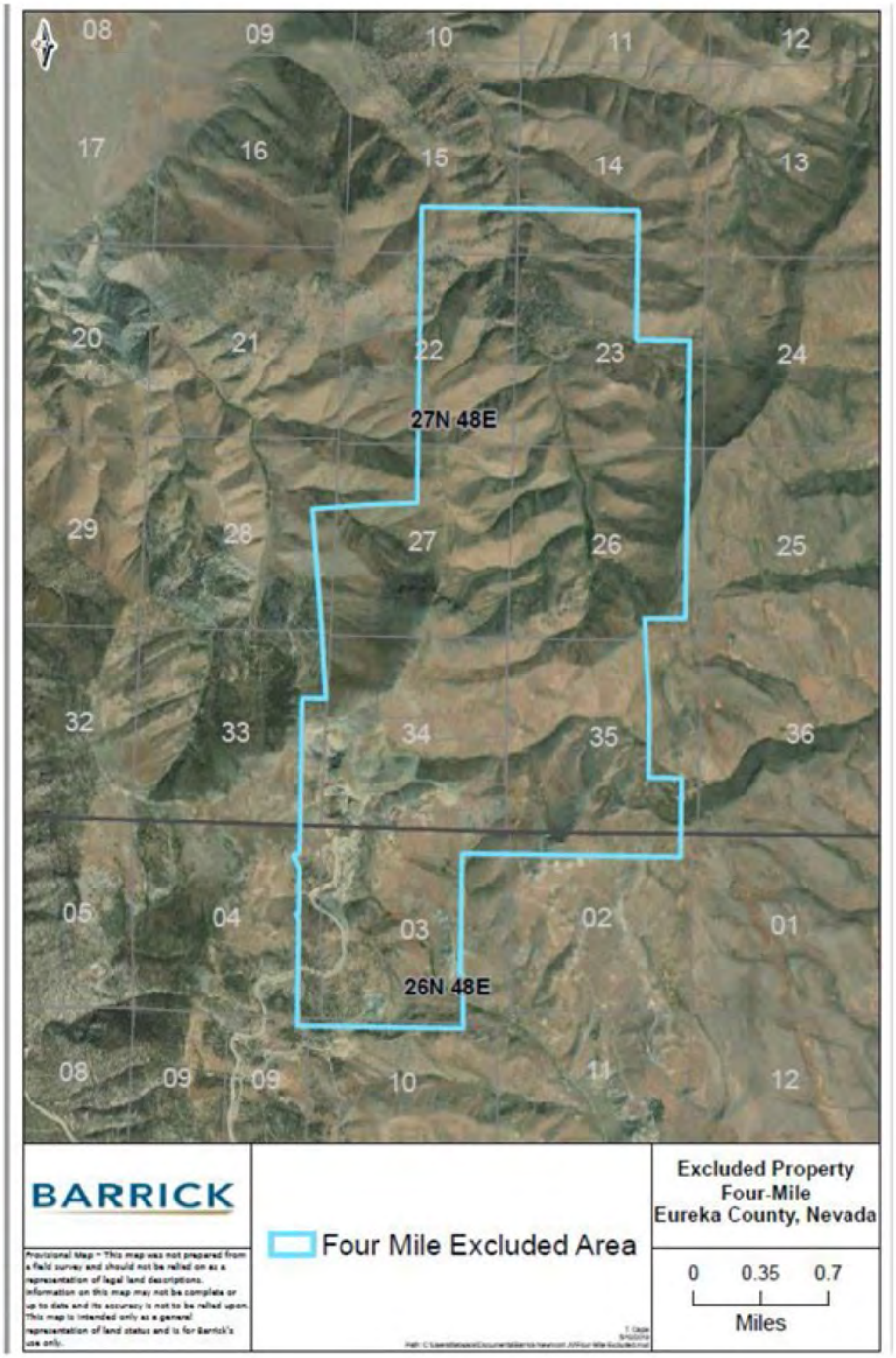
The Fiberline Project consists of (i) those portions of Sections 17 - 20, 29 and 30, Township 39 North, Range 43 East, MDM situated within the Fiberline Excluded Property Outline, other than areas within the Fiberline Excluded Property Carve-Out, lying below the elevation 20 feet above the contact between the surface alluvium and bedrock; and (ii) those portions of Sections 18

and 19, Township 39 North, Range 43 East, MDM situated within the Fiberline Excluded Property Carve-Out lying below the elevation of 4500 feet above MSL. For clarification, the Newmont Parties and their Affiliates, successors and assigns shall have the right to use the surface and other contributed portions of the properties situated within the Fiberline Excluded Property Boundary in accordance with Section 4.9 of the Agreement.

The Fiberline Excluded Property Boundary and the Fiberline Excluded Property Carve-Out are described in the tables set forth above in this Schedule and generally depicted in the figure set forth above. To the extent there is any conflict between the descriptions in the table and the areas generally depicted on the figure, the descriptions in the tables will govern.

SCHEDULE D

FOURMILE PROJECT



Township 26 North, Range 48 East

Section 3: SW1/4SE1/4; NE1/4SW1/4

Township 27 North, Range 48 East

Section 34: All
Portions of Sections 14, 15, 22, 23, 26, 27, 28, 33, 34 and 35

Township 26 North, Range 48 East

Portions of Sections 2, 3, 4, 9 and 10

As to those areas encompassed by the following unpatented mining claims:

Claim Name	BLM Serial Number
BTO 160	NMC 1049055
BTO 161	NMC 1049056
BTO 162	NMC 1049057
BTO 163	NMC 1049058
BTO 164	NMC 1049059
BTO 165	NMC 1049060
BTO 166	NMC 1049061
BTO 167	NMC 1049062
BTO 168	NMC 1049063
BTO 169	NMC 1049064
BTO 170	NMC 1049065
BTO 171	NMC 1049066
BTO 174	NMC 1049069
BTO 175	NMC 1049070
BTO 176	NMC 1049071
BTO 177	NMC 1049072
BTO 178	NMC 1049073
BTO 179	NMC 1049074
BTO 180	NMC 1049075
BTO 181	NMC 1049076
BTO 182	NMC 1049077
BTO 183	NMC 1049078
BTO 184	NMC 1049079
BTO 185	NMC 1049080
BTO 186	NMC 1049081
BTO 187	NMC 1049082
BTO 204	NMC 1049099
BTO 205	NMC 1049100
BTO 206	NMC 1049101
BTO 207	NMC 1049102
BTO 208	NMC 1049103
BTO 209	NMC 1049104

Claim Name	BLM Serial Number
BTO 210	NMC 1049105
BTO 211	NMC 1049106
BTO 212	NMC 1049107
BTO 213	NMC 1049108
BTO 214	NMC 1049109
BTO 215	NMC 1049110
BTO 216	NMC 1049111
BTO 217	NMC 1049112
BTO 218	NMC 1049113
BTO 219	NMC 1049114
BTO 220	NMC 1049115
BTO 221	NMC 1049116
BTO 222	NMC 1049117
BTO 223	NMC 1049118
BTO 224	NMC 1049119
BTO 225	NMC 1049120
BTO 226	NMC 1049121
BTO 227	NMC 1049122
BTO 228	NMC 1049123
BTO 229	NMC 1049124
BTO 230	NMC 1049125
BTO 231	NMC 1049126
BTO 232	NMC 1049127
BTO 233	NMC 1049128
BTO 234	NMC 1049129
BTO 235	NMC 1049130
BTO 236	NMC 1049131
BTO 237	NMC 1049132
BTO 238	NMC 1049133
BTO 239	NMC 1049134
BTO 240	NMC 1049135
BTO 241	NMC 1049136
BTO 245	NMC 1049140
BTO 246	NMC 1049141
BTO 247	NMC 1049142
BTO 248	NMC 1049143
BTO 249	NMC 1049144
BTO 250	NMC 1049145
BTO 251	NMC 1049146
BTO 252	NMC 1049147
BTO 253	NMC 1049148
BTO 254	NMC 1049149

Claim Name	BLM Serial Number
BTO 255	NMC 1049150
BTO 256	NMC 1049151
BTO 257	NMC 1049152
BTO 258	NMC 1049153
BTO 259	NMC 1049154
HOPE NO 1	NMC 19757
HOPE NO 2	NMC 19758
HOPE NO 3	NMC 19759
HOPE NO 4	NMC 19760
TINA # 1	NMC 19761
TINA NO. 2	NMC 19762
FM NO. 1	NMC 245697
FM NO. 2	NMC 245698
FM NO. 3	NMC 245699
FM NO. 4	NMC 245700
FM NO. 5	NMC 245701
FM NO. 6	NMC 245702
FM NO. 7	NMC 245703
FM NO. 8	NMC 245704
FM NO. 9	NMC 245705
FM NO. 10	NMC 245706
FM NO. 11	NMC 245707
FM NO. 12	NMC 245708
FM NO. 13	NMC 245709
FM NO. 14	NMC 245710
FM NO. 15	NMC 245711
FM NO. 16	NMC 245712
FM NO. 17	NMC 245713
FM NO. 18	NMC 245714
FM NO. 19	NMC 245715
FM NO. 20	NMC 245716
FM NO. 21	NMC 245717
FM NO. 22	NMC 245718
FM NO. 23	NMC 245719
FM NO. 24	NMC 245720
FM NO. 25	NMC 245721
FM NO. 26	NMC 245722
FM NO. 27	NMC 245723
FM NO. 28	NMC 245724
FM NO. 29	NMC 245725
FM NO. 30	NMC 245726
FM NO. 31	NMC 245727

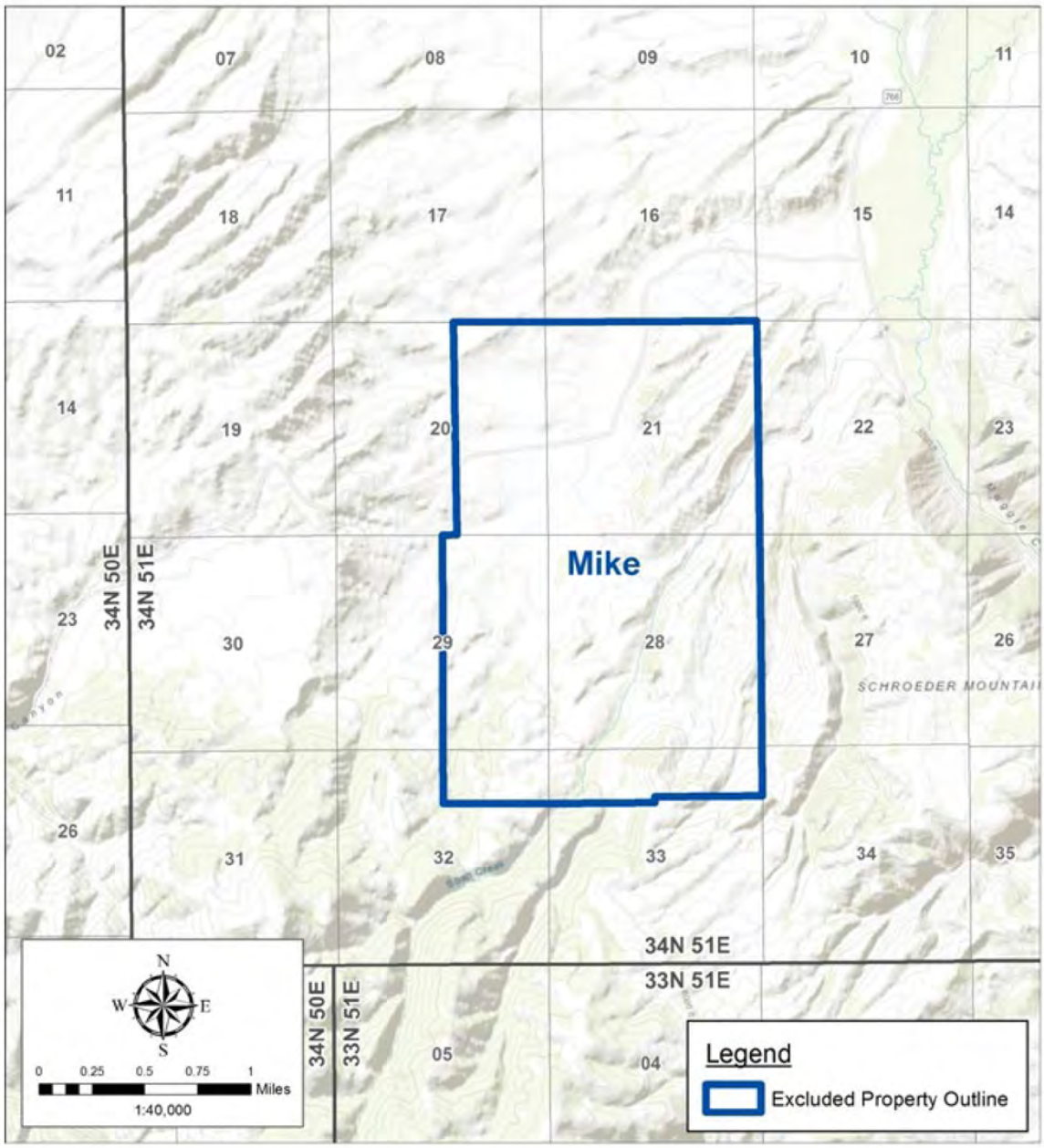
Claim Name	BLM Serial Number
FM NO. 32	NMC 245728
FM NO. 33	NMC 245729
FM NO. 34	NMC 245730
FM NO. 35	NMC 245731
FM NO. 36	NMC 245732
FM NO. 37	NMC 245733
FM NO. 38	NMC 245734
FM NO. 39	NMC 245735
FM NO. 40	NMC 245736
FM NO. 41	NMC 245737
FM NO. 42	NMC 245738
FM NO. 43	NMC 245739
FM NO. 44	NMC 245740
FM NO. 45	NMC 245741
FM NO. 46	NMC 245742
FM NO. 47	NMC 245743
FM NO. 48	NMC 245744
FM NO. 49	NMC 245745
FM NO. 50	NMC 245746
FM NO. 51	NMC 245747
FM NO. 52	NMC 245748
FM NO. 53	NMC 245749
FM NO. 54	NMC 245750
FM NO. 55	NMC 245751
FM NO. 56	NMC 245752
FM NO. 57	NMC 245753
FM NO. 58	NMC 245754
FM NO. 59	NMC 245755
FM NO. 60	NMC 245756
FM NO. 61	NMC 245757
FM NO. 62	NMC 245758
FM NO. 63	NMC 245759
FM NO. 64	NMC 245760
FM NO. 65	NMC 245761
FM NO. 66	NMC 245762
FM NO. 67	NMC 245763
FM NO. 68	NMC 245764
FM NO. 69	NMC 245765
FM NO. 70	NMC 245766
FM NO. 71	NMC 245767
FM NO. 72	NMC 245768
FM NO. 73	NMC 245769

Claim Name	BLM Serial Number
FM NO. 74	NMC 245770
FM NO. 75	NMC 245771
FM NO. 76	NMC 245772
FM NO. 77	NMC 245773
FM NO. 89	NMC 245774
FM NO. 90	NMC 245775
FM NO. 91	NMC 245776
FM NO. 92	NMC 245777
FM NO. 93	NMC 245778
FM NO. 94	NMC 245779
BLACK LADY	NMC 26684
FUM 3	NMC 61414
MUF 2	NMC 61423
NEE 53	NMC 65787
NEE 55	NMC 65789
NEE 57	NMC 65791
NEE 59	NMC 65793
NEE 67	NMC 65801
NEE 69	NMC 65803
NEE 70	NMC 65804
NEE 71	NMC 65805
NEE 72	NMC 65806
NEE 73	NMC 65807
NEE 74	NMC 65808
NEE 75	NMC 65809
NEE 76	NMC 65810
NEE 77	NMC 65811
NEE 78	NMC 65812
NEE 79	NMC 65813
NEE 80	NMC 65814
NEE 81	NMC 65815
NEE 82	NMC 65816
NEE 83	NMC 65817
NEE 84	NMC 65818
NEE 85	NMC 65819
NEE 90	NMC 65824
NEE 91	NMC 65825
NEE 92	NMC 65826
NEE 93	NMC 65827
NEE 94	NMC 65828
NEE 95	NMC 65829
NEE 96	NMC 65830

Claim Name	BLM Serial Number
NEE 97	NMC 65831
NEE 98	NMC 65832
NEE 99	NMC 65833
NEE 102	NMC 65836
NEE 103	NMC 65837
NEE 104	NMC 65838
NEE 105	NMC 65839
NEE 106	NMC 65840
NEE 107	NMC 65841
NEE 108	NMC 65842
NEE 109	NMC 65843
NEE 112	NMC 65846
NEE 113	NMC 65847
NEE 114	NMC 65848
NEE 115	NMC 65849
NEE 116	NMC 65850
NEE 117	NMC 65851

SCHEDULE E

MIKE PROJECT



Township 34 North, Range 51 East, MDM

Section 20: The area encompassed by the following unpatented lode mining claims:

Claim Name	BLM Serial Number
WP #186	560364

WP #187	560365
WP #188	560366
WP #189	560367
WP #195	560373
WP #196	560374
WP #197	560375
WP #198	560376
WP #204	560382
WP #205	560383
WP #206	560384
WP #207	560385
WP #213	560391
WP #214	560392
WP #215	560393
WP #216	560394

Section 21: All
Section 28: All
Section 29: E/2
Section 32: NW/4NE/4, and the area encompassed by the following unpatented lode mining claims:

Claim Name	BLM Serial Number
Soap #1	674167
Soap #2	674168
Soap #3	674169

Section 33: N/2NW/4, and the area encompassed by the following unpatented lode mining claims:

Claim Name	BLM Serial Number
Elements No. 1	112759
Elements No. 2	112760
Elements No. 8	112766
Elements No. 9	112767
Tusc No. 1	455041
Tusc No. 2	455042
Tusc No. 8	455048
Tusc No. 9	455049

SCHEDULE F

EXCLUDED DEVELOPMENT/EXPLORATION PROPERTY VALUATION

1. The Fair Market Value (as defined in paragraph 11) of an Excluded Development/Exploration Property under the Agreement shall be determined in accordance with this Schedule F.

2. Upon a Member providing a Contribution Notice under Section 6.1 of the Agreement that an Excluded Development/Exploration Property is required to be contributed to the Nevada JV, the Members shall, for a period of 30 Business Days following such notice, each use their respective commercially reasonable efforts to mutually agree upon the Fair Market Value of the Excluded Development/Exploration Property.

3. To the extent the Members are unable to agree on the Fair Market Value of an Excluded Development/Exploration Property within the period specified in paragraph 1, the Fair Market Value of the Excluded Development/Exploration Property shall be the simple average of the valuations prepared by two Independent Experts (the "**Original Experts**") using the methodology described within this Schedule F, provided that such average is no more than 15% above or below either of such valuations. In the event that such average is more than 15% above or below either of the two valuations, the Fair Market Value of the Excluded Development/Exploration Property shall be the simple average of: (i) a valuation prepared by a third Independent Expert (the "**Third Expert**") using the methodology described within this Schedule F; and (ii) the valuation prepared by the Original Expert in accordance with the foregoing that is closest to the valuation prepared by the Third Expert.

4. The "valuations" referred to in paragraph 3 shall be: (i) if a single value is provided, such single value; or (ii) if only a range of values has been provided, the simple average of the highest and lowest value in such range, in each case, as set out in the Valuation Certificate prepared by the applicable Independent Expert.

5. The Members shall ensure that each Independent Expert has access to such books, records and information in the possession or control of such Members, their respective Affiliates or the Nevada JV as any Independent Expert may reasonably request for the purpose of determining the Fair Market Value of the Excluded Development/Exploration Property, with the exception of valuation material prepared by another Independent Expert.

6. Each Independent Expert shall act as an expert and not as an arbitrator and its decision shall, in the absence of material proven error, be final and binding on the Members. Each Independent Expert shall provide: (i) a written determination of the value with respect to the Fair Market Value of the Excluded Development/Exploration Property; and (ii) a written explanation of all methodologies used in its valuation (each, collectively, a "**Valuation Certificate**").

7. The costs of obtaining any Valuation Certificates provided by an Independent Expert pursuant to this Schedule F shall be borne by the Nevada JV.

8. The Valuation Certificates shall be issued to each of the Members by the Independent Experts within 30 days of such Independent Expert's appointment hereunder, unless otherwise agreed by each of Barrick and Newmont.

9. Each Independent Expert shall determine the Fair Market Value of the Excluded Development/Exploration Property, which shall be the cash purchase price that a knowledgeable party would pay for the Excluded Development/Exploration Property in an arm's length transaction (subject to subparagraph (c) below). Each Independent Expert's determination of the Fair Market Value of the Excluded Development/Exploration Property shall be prepared using a valuation methodology that takes into account all factors the Independent Expert considers relevant, which shall include the following:

   (a) the economic terms of the Agreement;

   (b) appropriate price projections for refined gold, and, if applicable, silver, copper and other commodities based on the median of recently published prices for refined gold issued by not less than ten reputable third party consultants, analysts and financial institutions selected by the Independent Experts;

   (c) each Excluded Development/Exploration Property will have the benefit of the Nevada JV Mines that form part of the Nevada JV Assets, and any cost savings and other synergies that stem therefrom will be factored into any calculations made pursuant to this paragraph 9, taking into consideration the impact on the Nevada JV Mines;

   (d) country and political risk;

   (e) social and political environment;

   (f) tenure security;

   (g) technical risk;

   (h) quantum and nature of mineral reserves and mineral resources;

   (i) the current life of mine plan, if any, in relation to the Excluded Development/Exploration Property or the most recently completed Excluded Development/Exploration Property Feasibility Study;

   (j) likely timing and scale of developments and/or expansion and/or reductions;

   (k) regulatory considerations (including environmental and tax) to the extent affecting development or production;

   (l) median broker discount rates used in valuing the Nevada JV Mines;

   (m) relevant multiples for comparable companies and precedent transactions (price to net asset value, price to cash flow and/or any other conventional multiples used in the industry at the time); and

(n) any other material factors the Independent Expert believes should be considered in the valuation methodology.

10. The Independent Experts shall be selected under this Schedule F as follows:

(a) the Original Experts shall be mutually agreed upon between the Members within 15 days following the failure of Barrick and Newmont to reach an agreement on Fair Market Value pursuant to paragraph 1;

(b) if the Members do not reach agreement on the Original Experts within the 15-day period set out in paragraph 10(a), within 10 days following the expiration of such period, each of the Members shall designate one Independent Expert to serve, together, as the Original Experts;

(c) if a Third Expert is required pursuant to paragraph 3, the Original Experts shall appoint the Third Expert within 10 days of such Third Expert becoming required pursuant to the terms of paragraph 10(b); and

(d) if the Members fail to appoint an Independent Expert within the 10-day period set out in paragraph 10(b), or if each of the Members has designated an Independent Expert pursuant to paragraph 10(b), and the Original Experts fail to designate a Third Expert within the 10-day period set out in paragraph 10(c), then the missing Independent Experts will be designated upon the request of either Member by a judge of the courts of the State of Nevada.

11. For the purposes of this Schedule F:

(a) "**Independent Expert**" means a suitably qualified investment banking firm, accounting firm or other firm of professional valuators of internationally recognised standing, with input from an individual with requisite technical expertise as appropriate; provided that unless the Members agree otherwise, an Independent Expert shall be a firm that: (i) is independent of both of the Members and their respective Affiliates; and (ii) has not acted for either of the Members or their respective Affiliates in any material capacity for at least one year before the date of appointment of such Independent Expert; and

(b) "**Fair Market Value**" means the value of the Excluded Development/Exploration Property, as determined in accordance with this Schedule F.

SCHEDULE G

ILLUSTRATIVE DILUTION EXAMPLES

[REDACTED]

SCHEDULE H

TERMS OF MINORITY ROYALTY AGREEMENT

See attached.

SCHEDULE H

MINORITY ROYALTY

Pursuant to Section 9.9 of the Agreement, a Minority Interest Holder is entitled to a Net Smelter Return Royalty on all Product produced from properties included in the Nevada JV Assets. To implement the provisions of Section 9.9, Nevada JV will convey such royalty by deed (the "Royalty Deed"), which shall incorporate the following principles.

1. Property Subject to Production Royalty. The Minority Royalty of the Minority Interest Holder shall be a royalty interest in and a burden upon the properties included in the Nevada JV Assets existing as of the date it becomes a Minority Interest Holder (the "Royalty Property"), which will be more particularly described in the Royalty Deed.

2. Grantor and Grantee. Nevada JV will be the "Grantor" under the Royalty Deed and the Minority Interest Holder will be the "Grantee" under the Royalty Deed.

3. Production Royalty. The Royalty Deed will provide that Grantor shall pay to Grantee a perpetual royalty, determined in accordance with this Schedule E, in an amount equal to 1.50% of Net Smelter Returns (the "Royalty Percentage") from all Product produced from the Royalty Property.

4. Net Smelter Returns. "Net Smelter Returns" shall be determined as follows:

(a) For Gold or Silver Bullion. Net Smelter Returns, in the case of Products produced from the Royalty Property for sale as gold bullion or silver bullion that is refined to a form that meets good delivery standards in the London Bullion Market, or comparable terminal market ("Gold Bullion" or "Silver Bullion," respectively), shall be determined by multiplying (i) the gross number of troy ounces of Gold Bullion or Silver Bullion recovered from production from the Royalty Property and returned to or credited to Grantor or purchased and paid for by the smelter, refiner, processor, purchaser or other recipient of such bullion during a calendar quarter, by (ii) the average of the London Gold Market Fixing Limited Afternoon Fix prices reported for Gold Bullion for the calendar quarter or the average of the London Silver Market Fixing Limited Fix prices reported for Silver Bullion for the calendar quarter, and (iii) by deducting from the product of (i) times (ii) the Allowable Deductions permitted in Section 5(a) below.

(b) For Copper. Net Smelter Returns for copper produced from the Royalty Property shall be equal to (i) the actual sales price received by Grantor from the sale of such copper (whether in concentrate or as cathode or other product) ("Copper") to a smelter, refiner, processor, purchaser or other recipient of such copper during a calendar quarter, less (ii) the Allowable Deductions permitted in Section 5(b) below.

(c) For Other Products. For all other Products produced from the Royalty Property and sold other than as Gold Bullion or Silver Bullion or Copper ("Other Products"), Net Smelter returns shall be equal to (i) the actual sales price received by Grantor from the sale of

Other Products to a smelter, refiner, processor, purchaser or other recipient of such products during a calendar quarter, less (ii) the Allowable Deductions permitted in Section 5(b) below.

(c) Insurance Proceeds. In the event Grantor receives insurance proceeds for Products lost or damaged, Net Smelter Returns for such Products shall equal any such insurance proceeds that are received by Grantor for such loss.

5. Allowable Deductions.

(a) For Gold or Silver Bullion. For Products produced and sold as Gold or Silver Bullion, "Allowable Deductions" means, to the extent actually incurred:

(i) charges imposed by the smelter or refinery for refining Gold or Silver Bullion from doré or concentrates produced in Grantor's mill or other processing plant; however, charges imposed by the Grantor for processing raw or crushed ore or other preliminary Products in Grantor's mill or other processing plant shall not be subtracted in determining Net Smelter Returns;

(ii) penalty substance, assaying, and sampling charges imposed by Grantor for refining Gold or Silver Bullion contained in such production;

(iii) charges and costs, if any, for transportation and insurance of doré or concentrates produced in Grantor's mill or other processing plant to places where such doré or concentrates are smelted, refined and/or sold or otherwise disposed of; and

(iv) all taxes paid on production of Gold or Silver Bullion, except income tax, including but not limited to, production, severance, sales and privilege taxes and all local, state and federal royalties that are based on the production of Gold or Silver Bullion.

(b) For Copper and Other Products. For Copper and Other Products, "Allowable Deductions" means, to the extent actually incurred:

(i) charges imposed by the smelter, refiner or other processor for smelting, refining or processing Copper or Other Products, but excluding any and all charges and costs related to Grantor's mill or other processing plant constructed for the purpose of milling or processing Copper or Other Products;

(ii) penalty substance, assaying, and sampling charges imposed by the smelter, refiner or other processor for smelting, refining, or processing Copper or Other Products, but excluding any and all charges and costs of or related to Grantor's mill or other processing plant constructed for the purpose of milling or processing Copper or Other Products;

(iii) charges and costs, if any, for transportation and insurance of Copper or Other Products and the beneficiated products thereof from Grantor's mill or other processing plant to places where such Copper or Other Products or the beneficiated products thereof are smelted, refined and/or sold or otherwise disposed of; and

(iv) all taxes paid on production of Copper or Other Products, except income tax, including but not limited to, production, severance, sales and privilege taxes and all local, state and federal royalties that are based on the production of Copper or Other Products.

(c) Custom Facilities. In the event Grantor carries out smelting, refining or other processing operations to produce Gold and Silver Bullion, Copper or Other Products in facilities owned or controlled, in whole or in part, by Grantor, which facilities were not constructed for the sole purpose of milling or processing raw or intermediate Products produced from the Royalty Property, then charges, costs and penalties for such smelting, refining or processing shall mean the amount Grantor would have incurred as "Allowable Deductions" under subsections (a)(i) or (b)(i) above if such smelting, refining or other processing operations were carried out at facilities not owned or controlled by Grantor, but in no event will such Allowable Deductions be greater than actual costs incurred by Grantor with respect to such smelting, refining or other processing.

6. Calculating and Paying Royalty.

(a) Calculation. The dollar amount of the Net Smelter Returns Royalty due to Grantee for each calendar quarter shall be the product of: (i) the sum of the Net Smelter Returns for Gold and Silver Bullion for such quarter plus the Net Smelter Returns for Copper or Other Products for such quarter (ii) multiplied by the Royalty Percentage.

(b) Payment. Payment of the Net Smelter Returns Royalty shall be due by the last day of the month following each calendar quarter in which Gold or Silver Bullion or Copper or Other Products are sold (the "Payment Date"). If for any reason, all information necessary to calculate and make a payment on the Payment Date is not available, Grantor shall make a provisional payment on the Payment Date and provide a final reconciliation for such payment promptly after all needed information becomes available to Grantor. In the event that Grantee has been underpaid for any provisional payment, Grantor shall promptly pay the difference to Grantee in cash or other readily available funds and if Grantee has been overpaid for any provisional payment Grantee will promptly pay to Grantor of the difference by cash or other readily available funds.

(c) Detailed Statement. All payments of Net Smelter Returns Royalty shall be accompanied by a detailed statement explaining the calculation thereof together with any available settlement sheets receiver by Grantor from the smelter, refiner or other purchaser of Gold or Silver Bullion or Copper or Other Products.

7. Other Provisions Related to Payment.

(a) Hedging Transactions. All profits and losses resulting from Grantor's actual sale of Gold or Silver Bullion, or Grantor's engaging in any commodity futures trading, option trading, or metals trading, or any combination thereof, and any other hedging transactions including trading transactions designed to avoid losses and obtain possible gains due to metal price fluctuations are specifically excluded from calculation of Net Smelter Returns and shall be solely for Grantor's account.

(b) Commingling. Grantor shall have the right to commingle, either underground, at the surface, in stockpiles or at the mill, autoclave, roaster or other processing facility used by Grantor, ore or concentrates, minerals and other material mined and removed from the Royalty Property with ore, concentrates, minerals and other material mined and removed from the other property. Before commingling, the average grade of the commingled materials and other measures as are appropriate shall first be calculated by Grantor from representative samples, and the weight of such materials shall be determined before commingling using Grantor's standard practices. In obtaining representative samples, calculating the average grade of the ore and average recovery percentages, the procedures typically used by Grantor in its other operations in the vicinity of the Royalty Property may be used. Representative samples of the materials to be commingled shall be retained by Grantor and assays (including moisture and penalty substances) and other appropriate analyses of these samples shall be retained for a reasonable amount of time, but not less than 18 months, after receipt by Grantee of the applicable royalty payment.

(c) No Obligation to Mine. Grantor shall have sole discretion to determine the extent of its mining of the Royalty Property and the time or the times for beginning, continuing or resuming mining operations with respect thereto. Grantor shall have no obligation to Grantee (in its capacity as the holder of this royalty) or otherwise to mine any of the Royalty Property, such obligation being governed solely by the Agreement.

8. Books, Records, Inspections and Confidentiality.

(a) Grantee shall have the right, upon reasonable notice to Grantor, to inspect and copy all books, records, technical data, information and materials (the "Data") pertaining to calculation of royalty payments, including those with respect to commingling; provided that such inspections shall not unreasonably interfere with Grantor's operations. Grantor makes no representations or warranties to Grantee concerning any of the Data and Grantee agrees that if it elects to rely on any such Data or information, it does so at its sole risk, except in the event of fraud.

(b) Grantee shall have the right to audit the books and records pertaining to production from the Royalty Property and contest payments of the Net Smelter Returns Royalty for 24 months after receipt by Grantee of the payments to which such books and records pertain. Each royalty payment shall be deemed conclusively correct unless Grantee objects to it in writing within 24 months after receipt thereof. If any such audit or inspection reveals that

royalty payments for any calendar year are underpaid by more than five percent, Grantor shall reimburse Grantee for its reasonable costs incurred in such audit or inspection.

(c) Grantee shall have the right, upon reasonable notice, to inspect the facilities associated with the Royalty Property to the extent necessary to confirm Grantor's proper performance of its obligations in this Exhibit. Such inspection shall be at the sole risk of Grantee, and Grantee shall indemnify Grantor from any liability caused by Grantee's exercise of inspection rights, unless such liability is caused by the gross negligence or intentional acts of Grantor or its employees or agents.

(d) Grantee shall be bound by the confidentiality provisions of Article 13 of the Agreement.

9. Tailings and other Waste Material. All tailings, residues, waste rock, spoiled leach materials, and other materials resulting from Grantor's operations and activities with respect to the Royalty Property shall be the sole property of Grantor.

10. Real Property Interest. Grantor and Grantee intend that the Net Smelter Returns Royalty shall be perpetual and, to the extent allowed by law, shall constitute a vested interest in and a covenant running with the Royalty Property and shall inure to the benefit of and be binding upon the parties and their respective, successors and assigns so long as Grantor or any successor or assign of Grantor holds any rights or interests in the Royalty Property. The royalty shall attach to any amendments, relocations or conversions of any mining claim, license, or lease, concession, permit, patent or other tenure comprising the Royalty Property, or to any renewals or extensions thereof. If Grantor or any affiliate or successor or assignee of Grantor surrenders, allows to lapse or otherwise relinquishes or terminates its interest in any of the Royalty Property, and reacquires a direct or indirect interest in the land or minerals covered by the former Royalty Property, then from and after the date of such reacquisition such reacquired properties shall be included in the Royalty Property and the royalty shall apply to such interest so acquired. Grantor shall give written notice to Grantee within thirty (30) days of any acquisition or reacquisition of an interest in the Royalty Property. The Parties do not intend that there be any violation of the rule of perpetuities. Accordingly, any right that is subject to such rules shall be exercised within the maximum time periods permitted under applicable law.

11. General Provisions.

(a) The relationship of Grantor and Grantee with respect to the Net Smelter Returns Royalty shall not be construed to create, expressly or by implication, a joint venture, mining partnership, commercial partnership, or other partnership relationship.

(b) As used in the Deed, the term "Grantee" shall include all of Grantee's successors-in-interest and the term "Grantor" shall include all of Grantor's successors-in-interest.

(c) Grantor may convey, transfer, assign or abandon all or any portion of its interest in the Royalty Property, provided that in the event of any conveyance, transfer or assignment, it shall require the party or parties acquiring such interest to assume in a written

agreement with Grantee the obligations of Grantor under the Deed in respect of such interest, and thereupon Grantor shall be relieved of all liability under the Deed as to such interest in the Royalty Property, except for liabilities existing as of the date of such conveyance, transfer, or assignment.

(d) Grantee may at any time convey or transfer its rights, interests and obligations under the Deed to any person, without the approval of Grantor, provided that Grantor shall not be bound by any such conveyance or transfer unless and until it has received a notice signed by Grantee and its transferee, which includes the details of such person's address for notices and payments. Any transfer of the right to receive any royalty payments shall in no event require Grantor to make payments to more than one person or entity. If the right to receive royalty payments is transferred to more than one person or entity, such transfer shall not be binding upon Grantor until the first day of the month following the date on which Grantor receives written notice signed by Grantee and its transferee designating a single agent for future royalty payments and for exercising all rights of Grantee under the Deed.

SCHEDULE I-A

RETAINED ROYALTY DEED (BARRICK)

See attached.

APN #: N/A (mineral royalty interest)

Recorded at the request of, and
when recorded, return to:

Barrick Nevada Holding LLC
1655 Mountain City Highway
Elko, Nevada 89801
Attention: Land Manager

Mail Tax Statement to: N/A (mineral royalty interest)

Space above for County Recorder's Use

Affirmation Statement: The undersigned affirms that this document does not contain any social security numbers or other personal information of any person (Per NRS 239B.030).

NET SMELTER RETURNS ROYALTY DEED

This Net Smelter Returns Royalty Deed (this "Deed"), executed to be effective at 12:02 a.m. Pacific Daylight Time on July 1, 2019 ("Effective Date") is from Nevada Gold Mines LLC, a Delaware limited liability company ("NGM LLC"), whose address is 1655 Mountain City Highway, Elko, NV 89801 and Barrick Cortez LLC, a Delaware limited liability company ("BC LLC" and, together with NGM LLC, "Grantors"), whose address is 1655 Mountain City Highway, Elko, NV 89801 to Barrick Nevada Holding LLC a Delaware limited liability company ("Grantee"), whose address is 1655 Mountain City Highway, Elko, Nevada 89801. Grantors and Grantee are sometimes referred to individually as a "Party" and collectively as the "Parties."

Recitals

A. Grantors own fee lands, fee minerals, patented mining claims and patented millsites (the "Owned Real Property"), and unpatented mining claims and millsites (the "Owned Claims"). Grantors hold a leasehold interest in fee lands, fee minerals, patented mining claims and millsites, and unpatented mining claims and millsites (the "Leased Property") pursuant to certain leases (the "Leases"). The Owned Real Property, the Owned Claims, and the Leased Property are collectively referred to in this Deed as the "Properties". The Properties are located in Elko, Eureka, Lander, Humboldt and Pershing Counties, Nevada. The Owned Real Property, the Owned Claims, and the Leased Property, and the associated Leases are described in Parts I, II and III, respectively, of Exhibits A (Elko County), B (Eureka County), C (Lander County), D (Humboldt County) and E (Pershing County) to this Deed.

B. Pursuant to that certain Amended and Restated Limited Liability Company Agreement of Nevada Gold Mines LLC dated July 1, 2019 among Barrick Gold Corporation,

Barrick Nevada Holding LLC, Newmont Goldcorp Corporation, Grantee and Grantors (the "Agreement"), Grantors agreed to execute, acknowledge and deliver to Grantee an instrument granting a Net Smelter Returns Royalty on all gold produced from the Properties after 47,301,000 ounces of gold have been produced from the Properties from and after the Effective Date (the "Threshold Amount").

C. Grantors execute and deliver this Deed to Grantee pursuant to the terms of the Agreement.

Conveyance

1. Grant of Royalty. For good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, Grantors grant, sell, assign and convey to Grantee, its successors and assigns, forever, a Net Smelter Returns Royalty equal to 1.5% of Net Smelter Returns (the "Royalty Percentage"), as hereinafter defined and computed, for all gold produced from the Properties after production of the Threshold Amount (the "Royalty").

2. Representations and Warranties.

(a) Full Authority. Grantors represent and warrant that they have all authority necessary for it to execute and deliver this Deed.

(b) No Encumbrances. Grantors represent and warrant that the Properties are free and clear of all liens and encumbrances, except for liens or encumbrances authorized or agreed to by Grantee in writing or that were created or were permitted pursuant to that certain Implementation Agreement dated March 10, 2019 between Barrick Gold Corporation and Newmont Mining Corporation, as amended (the "Implementation Agreement"). Grantors further represent and warrant that the Royalty is free and clear of all liens and encumbrances arising by, through or under Grantors.

(c) Grantee's Acceptance. Grantee acknowledges and agrees that this Deed is accepted by Grantee in satisfaction of Grantors' obligations to deliver this Deed pursuant to the Agreement.

3. Definition of Net Smelter Returns.

(a) For Gold Bullion. "Net Smelter Returns," for gold produced from the Properties and refined by or for Grantors to a form that meets good delivery standards in the London Bullion Market or comparable terminal market ("Gold Bullion"), shall be determined by multiplying (i) the gross number of troy ounces of Gold Bullion produced from the Properties and returned to or credited to Grantors or purchased and paid for by the smelter, refiner, processor, purchaser or other recipient of such bullion during a calendar quarter, by (ii) the arithmetic average of the London

Bullion Market Association P.M. Fixing Price (in United States dollars) reported on its website for Gold Bullion for the calendar quarter (or should such quotation cease, another similar quotation acceptable to Grantee, acting reasonably) calculated by summing the quoted prices reported for each day of the calendar quarter and dividing the sum by the number of days for which such prices were reported, and (iii) by deducting from the product of (i) times (ii), the Allowable Deductions permitted in Section 4(a) below.

(b) For Other Products. For all gold produced from the Properties and sold in a crude or intermediate form other than as Gold Bullion ("Other Products"), Net Smelter Returns shall be equal to (i) the actual sales price for the gold contained in such Other Products received by Grantors from a smelter, refiner, processor, purchaser or other recipient of such products during a calendar quarter, less (ii) the Allowable Deductions permitted in Section 4(b) below.

(c) Insurance Proceeds. In the event Grantors receive insurance proceeds for gold in Gold Bullion, or gold in Other Products lost or damaged, Net Smelter Returns shall equal any such insurance proceeds that are received by Grantors for such loss.

4. Allowable Deductions.

(a) For Gold Bullion. For gold produced and sold as Gold Bullion, "Allowable Deductions" means, to the extent actually incurred:

(i) charges imposed by the smelter or refinery for refining Gold Bullion from doré or concentrates produced in Grantors' mill or other processing plant; however, charges incurred by Grantors for processing raw or crushed ore or other preliminary products in Grantors' mill or other processing plant shall not be subtracted in determining Net Smelter Returns;

(ii) penalty substance, assaying, and sampling charges imposed on or incurred by Grantors for refining Gold Bullion contained in such production;

(iii) charges and costs, if any, for transportation and insurance of doré or concentrates produced in Grantors' mill or other processing plant to places where such doré or concentrates are smelted, refined and/or sold or otherwise disposed of; and

(iv) all taxes paid on production of Gold Bullion, except income tax, including but not limited to, production, severance, sales and privilege taxes and all local, state and federal taxes that are based on the production of Gold Bullion.

(b) For Gold in Other Products. For gold produced and sold in Other Products, "Allowable Deductions" shall mean, to the extent actually incurred:

(i) charges imposed by the smelter, refiner or other processor for smelting, refining or processing gold contained in Other Products, but excluding any and all charges and costs related to Grantors' mill or other processing plant constructed for the purpose of milling or processing Other Products;

(ii) penalty substance, assaying, and sampling charges imposed by the smelter, refiner or other processor for smelting, refining, or processing gold contained in Other Products, but excluding any and all charges and costs of or related to Grantors' mill or other processing plant constructed for the purpose of milling or processing Other Products;

(iii) charges and costs, if any, for transportation and insurance of the gold contained in Other Products and the beneficiated products thereof from Grantors' mill or other processing plant to places where such Other Products or the beneficiated products thereof are smelted, refined and/or sold or otherwise disposed of; and

(iv) all taxes paid on production of the gold contained in Other Products, except income tax, including but not limited to, production, severance, sales and privilege taxes and all local, state and federal taxes that are based on the production of gold contained in Other Products.

(c) Custom Facilities. In the event Grantors carry out smelting, refining or other processing operations to produce Gold Bullion or to recover the gold contained in Other Products in facilities owned or controlled, in whole or in part, by Grantors, which facilities were not constructed for the sole purpose of smelting, refining or processing crude or intermediate products produced from the Properties, then charges, costs and penalties for such smelting, refining or processing shall mean the amount Grantors would have incurred as "Allowable Deductions" under subsections (a)(i) or (b)(i) above if such smelting, refining or other processing operations were carried out at facilities not owned or controlled by Grantors, but in no event will such Allowable Deductions be greater than actual costs incurred by Grantors with respect to such smelting, refining or other processing.

5. Calculating and Paying Royalty; Reporting.

(a) Calculation. The dollar amount of the Net Smelter Returns Royalties due to Grantee for a calendar quarter shall be the product of the sum of the Net Smelter Returns for Gold Bullion plus the Net Smelter Returns for the gold contained in Other Products for such quarter multiplied by the Royalty Percentage.

(b) Payment. Payment of the Net Smelter Returns Royalties for a calendar quarter shall be due by the last day of the month following the end of each calendar quarter in which Gold Bullion or Other Products containing gold are sold or returned or credited to Grantors (the "Payment Date"). If, for any reason, all information necessary to calculate and make a payment on the Payment Date is not available, Grantors shall make a provisional payment on the Payment Date based on the available information and provide a final reconciliation for such payment promptly after all needed information becomes available to Grantors. In the event Grantee has been underpaid in any provisional payment, Grantors shall promptly pay the difference to Grantee in cash or other readily available funds and if Grantee has been overpaid in any provisional payment, Grantee will promptly pay to Grantors the difference in cash or other readily available funds.

(c) Detailed Statement. All payments of Net Smelter Returns Royalty shall be accompanied by a detailed statement explaining the calculation thereof together with any available settlement sheets received by Grantors from the smelter, refiner or other purchaser of Gold Bullion or gold contained in Other Products.

(d) Reporting Prior to Production of the Gold Threshold Amount. Until such time as production of Gold Bullion and gold contained in Other Products from the Properties collectively equals or exceeds the Threshold Amount, Grantors shall report to Grantee the production of Gold Bullion and gold contained in Other Products from the Properties on a quarterly basis within 30 days following the end of each calendar quarter along with any available settlement sheets or other information received by Grantors from a smelter, refiner or other purchaser of Gold Bullion or gold contained in Other Products.

6. Other Provisions Related to Payment.

(a) Hedging Transactions. All profits and losses resulting from Grantors' engaging in any commodity futures trading, option trading, or metals trading, or any combination thereof, and any other hedging transactions including trading transactions designed to avoid losses and obtain possible gains due to metal price fluctuations are specifically excluded from calculation of Net Smelter Returns and shall be solely for Grantors' account.

(b) Commingling. Grantors shall have the right to commingle, either underground, at the surface, in stockpiles or at a mill, autoclave, roaster or other processing facility used by Grantors, ore or concentrates, minerals and other material mined and removed from the Properties with ore, concentrates, minerals and other material mined and removed from other property. Before commingling, the average grade of the commingled materials and other measures as are appropriate shall first be calculated by Grantors from representative samples, and the weight of such materials shall be determined before commingling using Grantors' standard practices. In obtaining representative samples, calculating the average grade of the ore and average recovery percentages, the procedures typically used by Grantors in its other operations in the vicinity of the

Properties may be used. Representative samples of the materials to be commingled shall be retained by Grantors and assays (including moisture and penalty substances) and other appropriate analyses of these samples shall be retained for a reasonable amount of time, but not less than 18 months, after receipt by Grantee of the applicable royalty payment.

(c) No Obligation to Mine or Process. Subject to the Agreement, Grantors shall have sole discretion to determine the extent of its operations on or for the benefit of the Properties and the time or the times for development, mining, stockpiling, processing and selling products produced from the Properties and the suspension or resumption of any operation with respect thereto. Grantors shall have no obligation to Grantee (in its capacity as the holder of this royalty) or otherwise to mine or to conduct any other operation on any of the Properties, such obligations being governed solely by the Agreement.

(d) Lesser Interest. Pursuant to the Implementation Agreement, immediately prior to the execution of this Deed, Grantee and certain affiliates of Grantee contributed the Properties to Grantors (or are holding certain of the Properties in trust for Grantors pursuant to the Implementation Agreement). Grantors and Grantee agree that Grantee and such affiliates did not own the entire undivided interest in and to all of the Properties. Grantors and Grantee further agree that the Royalty shall only be paid and achievement of the Threshold Amount will only be determined on the basis of Grantors' proportionate share of gold production from the Properties as contributed by Grantee or such affiliates as of the Effective Date of this Deed, subject to amendment of this Deed in accordance with Section 6(e) below. For clarity, if Grantee or its affiliates owned and contributed to Grantors an undivided 75% interest in the gold produced from a portion of the Properties, then the Royalty will be paid and the Threshold Amount will be determined based only on 75% of the gold production from such portion of the Properties. The Royalty will not be paid and the Threshold Amount will not be determined on production from any property not contributed to Grantors by Grantee or its affiliates pursuant to the Implementation Agreement or the Agreement.

(e) Subsequently Contributed or Conveyed Property. Section 10.1 of the Agreement addresses the terms and conditions upon which property subsequently contributed by Grantee or its affiliates will become subject to the Royalty, and the terms and conditions upon which portions of the Properties may cease to be subject to the Royalty if they are sold or otherwise conveyed by Grantors. Section 10.1 of the Agreement further addresses how the Threshold Amount will be adjusted in those circumstances. If those provisions become applicable, the Parties agree to amend this Deed accordingly.

7. Books, Records, Inspections and Confidentiality.

(a) Inspection of Books and Records. Grantee shall have the right, upon reasonable notice to Grantors, to inspect and copy all books, records, technical data, information and materials (the "Data") pertaining to calculation of Royalty payments, including those with respect to

commingling; provided that such inspections shall not unreasonably interfere with Grantors' operations. Grantors make no representations or warranties to Grantee concerning any of the Data and Grantee agrees that if it elects to rely on any such Data or any other information made available by Grantors, it does so at its sole risk, except in the event of fraud.

(b) Audit. Grantee shall have the right to audit the books and records pertaining to production from the Properties and to contest payments of Royalty for a period of 24 months following receipt by Grantee of each Royalty payment. Each Royalty payment shall be deemed conclusively correct unless Grantee objects to it in writing within 24 months after receipt of such payment, setting forth in detail the basis for Grantee's objection. If it is finally determined, through agreement by the Parties or following completion of the dispute resolution procedures set out in subsection 7(c) below, that Grantee has been underpaid in any such payment, Grantors will promptly pay to Grantee the underpaid amount. In addition, if it is finally determined, through agreement by the Parties or following completion of the dispute resolution procedures set out in subsection 7(c) below, that Royalty payments for any calendar year are underpaid by more than five percent, Grantors shall reimburse Grantee for its reasonable costs incurred in auditing the books and records of Grantors.

(c) Dispute Resolution.

(i) If Grantee objects to a Royalty payment in a timely manner as set out in subsection 7(b) above, the Parties will meet within 30 days of Grantors' receipt of Grantee's objection and, acting in good faith, shall seek to resolve the dispute. If the Parties fail to resolve the dispute within 30 days of the initial meeting, the dispute will be referred to the respective chief executive officers (or persons holding analogous positions) of the Parties who will, in good faith, attempt to resolve the dispute within 21 days of such referral. If the chief executive officers of the Parties are unable to resolve the matter within such 21 day period, then either Party may submit the dispute to the federal or state courts in Nevada.

(ii) If a Party submits a dispute to the federal or state courts in Nevada, the dispute will be decided by a judge in a bench trial without a jury. EACH PARTY HEREBY IRREVOCABLY WAIVES ITS RESPECTIVE RIGHT TO A JURY TRIAL FOR ANY DISPUTE BASED ON THE PAYMENT OF ROYALTY UNDER THIS DEED. Each Party acknowledges that this waiver is a material inducement to enter into this Deed and will continue to rely on this waiver in future disputes involving the payment of a Royalty hereunder.

(d) Inspection of Facilities. Grantee shall have the right, upon reasonable notice, to inspect the facilities associated with the Properties to the extent necessary to confirm Grantors' proper performance of its obligations in this Deed. Such inspection shall be at the sole risk of such Grantee, and such Grantee shall indemnify Grantors from any liability caused by Grantee's

exercise of inspection rights, unless such liability is caused by the gross negligence or intentional acts of Grantors or their employees or agents.

(e) Confidentiality. Grantee shall be bound by the confidentiality provisions of Article 14 of the Agreement.

8. General Provisions.

(a) Assignment by Grantee. Grantee may at any time convey or transfer its rights, interests and obligations under this Deed to any person or entity, without the approval of Grantors, provided that Grantors shall not be bound by any such conveyance or transfer unless and until it has received a Notice signed by Grantee and its transferee, which includes the details of such person's or entity's address for Notices and by which such transferee agrees to be bound by all of the terms and conditions of this Deed. Any transfer of the right to receive any Royalty payments shall in no event require Grantors to make payments to more than one person or entity. If the right to receive Royalty payments is transferred to more than one person or entity, such transfer shall not be binding upon Grantors until the first day of the month following the date on which Grantors receive written Notice signed by Grantee and its transferee designating a single agent for receipt of future Royalty payments and for exercising all rights of Grantee under this Deed.

(b) No Partnership or Special Relationship. The relationship of Grantors and Grantee with respect to the Net Smelter Returns Royalty shall not be construed to create, expressly or by implication, a joint venture, mining partnership, commercial partnership, or other partnership relationship. Grantors will have no fiduciary or other special relationship with Grantee, other than the duty of good faith and fair dealing, in performing its obligations under this Deed.

(c) Certain Definitions. As used in the Deed, the term "Grantee" shall include all of Grantee's successors-in-interest and the term "Grantors" shall include all of Grantors' successors-in-interest.

(d) Conveyances by Grantors. Grantors may convey, transfer, assign or abandon all or any portion of its interest in the Properties, only in accordance with the terms of the Agreement.

(e) Tailings and Other Waste Material. All tailings, residues, waste rock, spoiled leach materials, and other materials resulting from Grantors' operations and activities with respect to the Properties shall be the sole property of Grantors.

(f) Real Property Interest. Subject to Section 10.1 of the Agreement, Grantors and Grantee intend that the Royalties shall be perpetual and shall constitute a presently vested interest in and a covenant running with the Properties which shall inure to the benefit of and be binding upon the Parties and their respective, successors and assigns so long as Grantors or any successor or assign of Grantors holds any rights or interests in the Properties. The Royalties shall attach to

any amendments, relocations or conversions of any mining claim, license, or lease, concession, permit, patent or other tenure comprising the Properties, or to any renewals or extensions thereof. If Grantors or any affiliate or successor or assignee of Grantors surrenders, allows to lapse or otherwise relinquishes or terminates its interest in any of the Properties, and reacquires a direct or indirect interest in the land or minerals covered by the former Properties, then from and after the date of such reacquisition such reacquired properties shall be included in the Properties and the Royalties shall apply to such interest so acquired. Grantors shall give written Notice to Grantee within 30 days of any acquisition or reacquisition of an interest in the Properties. The Parties do not intend that there be any violation of the rule against perpetuities. Accordingly, any right that is subject to such rule shall be exercised within the maximum time periods permitted under applicable law.

(g) Notices. Any notice, demand or other communication under this Deed ("Notice") required or permitted to be given or made under this Deed shall be in writing and shall be given to a Party at the address below (i) by courier or recognized overnight delivery service, or (ii) by registered or certified mail, return receipt requested. All Notices shall be effective and shall be deemed delivered (A) if by courier or recognized overnight delivery service on the date of delivery, (B) if solely by mail on the day delivered as shown on the actual receipt. A Party may change its address for purposes of Notices from time-to-time by Notice to the other Party.

If to Grantors:

Nevada Gold Mines LLC
1655 Mountain City Highway
Elko, NV 89801
Attn: Land Manager

Barrick Cortez LLC
1655 Mountain City Highway
Elko, NV 89801
Attn: Land Manager

If to Grantee:

Barrick Nevada Holding LLC
1655 Mountain City Highway
Elko, NV 89801
Attn: Land Manager

[***Signature Page Follows***]

Executed by Grantors sand Grantee to be effective as of the time and date first above written.

Grantors:

Nevada Gold Mines LLC, a Delaware limited liability company

By: _____
Name: Patrick Malone
Title: Officer

By: _____
Name: Blake Rhodes
Title: Officer

Barrick Cortez LLC, a Delaware limited liability company

By: _____
Name: Peter Webster
Title: Officer

Grantee:

Barrick Nevada Holding LLC, a Delaware limited liability company

By: _____
Name: Paul Judd
Title: Officer

State of Utah)
) ss.
County of Salt Lake)

This instrument was acknowledged before me on June , 2019, by Patrick Malone as Officer of Nevada Gold Mines LLC.

_____
Notary Public in and for the State of Utah
Residing at: _____
Commission Expires: _____

State of Utah)
) ss.
County of Salt Lake)

This instrument was acknowledged before me on June , 2019, by Blake Rhodes as Officer of Nevada Gold Mines LLC.

Notary Public in and for the State of Utah
Residing at: _____
Commission Expires: _____

State of Utah)
) ss.
County of Salt Lake)

This instrument was acknowledged before me on June , 2019, by Peter Webster as Officer of Barrick Cortez LLC.

Notary Public in and for the State of Utah
Residing at: _____
Commission Expires: _____

State of Utah)
) ss.
County of Salt Lake)

This instrument was acknowledged before me on June , 2019, by Paul Judd as Officer of Barrick Nevada Holding LLC.

Notary Public in and for the State of Utah
Residing at: _____
Commission Expires: _____

EXHIBIT A
To
Net Smelter Returns Royalty Deed

(Elko County, Nevada Properties)

Part I – Owned Real Property

Part II – Owned Claims

Part III – Leased Property (and Leases)

EXHIBIT B
To
Net Smelter Returns Royalty Deed

(Eureka County, Nevada Properties)

Part I – Owned Real Property

Part II – Owned Claims

Part III – Leased Property (and Leases)

EXHIBIT C
To
Net Smelter Returns Royalty Deed

(Lander County, Nevada Properties)

Part I – Owned Real Property

Part II – Owned Claims

Part III – Leased Property (and Leases)

EXHIBIT D
To
Net Smelter Returns Royalty Deed

(Humboldt County, Nevada Properties)

Part I – Owned Real Property

Part II – Owned Claims

Part III – Leased Property (and Leases)

EXHIBIT E
To
Net Smelter Returns Royalty Deed

(Pershing County, Nevada Properties)

Part I – Owned Real Property

Part II – Owned Claims

Part III – Leased Property (and Leases)

SCHEDULE I-B

RETAINED ROYALTY DEED (NEWMONT)

See attached.

APN #: N/A (mineral royalty interest)

Recorded at the request of, and
when recorded, return to:

Newmont USA Limited
6363 S. Fiddler's Green Circle, Suite 800
Greenwood Village, CO 80111
Attention: Land Department

Mail Tax Statement to: N/A (mineral royalty interest)

Space above for County Recorder's Use

Affirmation Statement: The undersigned affirms that this document does not contain any social security numbers or other personal information of any person (Per NRS 239B.030).

NET SMELTER RETURNS ROYALTY DEED

This Net Smelter Returns Royalty Deed (this "Deed"), executed to be effective at 12:02 a.m. Pacific Daylight Time on July 2, 2019 ("Effective Date") is from Nevada Gold Mines LLC, a Delaware limited liability company ("NGM LLC"), whose address is 1655 Mountain City Highway, Elko, NV 89801, and Leeville Holdco LLC, a Delaware limited liability company ("LH LLC" and together with NGM LLC, "Grantors"), whose address is 1655 Mountain City Highway, Elko, NV 89801, to Newmont USA Limited, a Delaware corporation ("Grantee"), whose address is 6363 S. Fiddler's Green Circle, Suite 800, Greenwood Village, CO 80111. Grantors and Grantee are sometimes referred to individually as a "Party" and collectively as the "Parties."

Recitals

A. NGM LLC or LH LLC owns fee lands, fee minerals, patented mining claims and patented millsites (the "Owned Real Property"), and unpatented mining claims and millsites (the "Owned Claims"). NGM LLC or LH LLC holds a leasehold interest in, or Grantee or an affiliate of Grantee holds in trust for them a leasehold or other interest in, fee lands, fee minerals, patented mining claims and millsites, and unpatented mining claims and millsites (the "Leased Property") pursuant to certain leases and other agreements (the "Leases"). The Owned Real Property, the Owned Claims, and the Leased Property are collectively referred to in this Deed as the "Properties". The Properties are located in Elko, Eureka, Lander, Humboldt and Pershing Counties, Nevada. The Owned Claims are described in Exhibit A to this Deed. The Owned Real Property is described in Exhibit B to this Deed. The Leases are described in Exhibit C to this Deed. The Properties do not include the portions of Sections 17-20, 29 and 30, Township 39 North, Range 43 East, MDM that are part of the Fiberline Excluded Property described in Exhibit D to this Deed. The portions of those Sections that are not part of the Fiberline Excluded Property are included in the Properties that are subject to this Deed.

B. Pursuant to that certain Amended and Restated Limited Liability Company Agreement of Nevada Gold Mines LLC dated July 1, 2019 among Barrick Gold Corporation, Barrick Nevada Holding LLC, Newmont Goldcorp Corporation, Grantee and NGM LLC (the "Agreement"), Grantors are to execute, acknowledge and deliver to Grantee an instrument granting (i) a Net Smelter Returns Royalty on all gold produced from the Properties after 36,220,000 ounces of gold have been produced from the Properties from and after the Effective Date (the "Gold Threshold Amount"), and (ii) a separate and independent Net Smelter Returns Royalty on all copper produced from the Properties after 1,520,000,000 pounds of copper have been produced from the Properties from and after the Effective Date (the "Copper Threshold Amount"). For purposes of this Deed, the Gold Threshold Amount and the Copper Threshold Amount are collectively referred to as the "Threshold Amounts" and each is referred to as a "Threshold Amount".

C. Grantors execute and deliver this Deed to Grantee pursuant to the terms of the Agreement.

Conveyance

1. Grant of Royalty. For good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, Grantors grant, sell, assign and convey to Grantee, its successors and assigns, forever, (a) a Net Smelter Returns Royalty equal to 1.5% of Net Smelter Returns (the "Royalty Percentage"), as hereinafter defined and computed, for all gold produced from the Properties after production of the Gold Threshold Amount (the "Gold Royalty"), and (b) a separate and independent Net Smelter Returns Royalty equal to the Royalty Percentage, as hereinafter defined and computed, for all copper produced from the Properties after production of the Copper Threshold Amount (the "Copper Royalty"). For purposes of this Deed, the Gold Royalty and the Copper Royalty are collectively referred to as the "Royalties" and each is referred to as a "Royalty".

2. Representations and Warranties.

(a) Full Authority. Grantors represent and warrant that they have all authority necessary for it to execute and deliver this Deed.

(b) No Encumbrances. Grantors represent and warrant that the Properties are free and clear of all liens and encumbrances, except for liens or encumbrances authorized or agreed to by Grantee in writing or that were created or were permitted pursuant to that certain Implementation Agreement dated March 10, 2019 between Barrick Gold Corporation and Newmont Mining Corporation, as amended (the "Implementation Agreement"). Grantors further represent and warrant that the Royalty is free and clear of all liens and encumbrances arising by, through or under Grantors.

(c) Grantee's Acceptance. Grantee acknowledges and agrees that this Deed is accepted by Grantee in satisfaction of Grantors' obligations to deliver this Deed pursuant to the Agreement.

3. Definition of Net Smelter Returns.

(a) For Gold Bullion. "Net Smelter Returns," for gold produced from the Properties and refined by or for Grantors to a form that meets good delivery standards in the London Bullion Market or comparable terminal market ("Gold Bullion"), shall be determined by multiplying (i) the gross number of troy ounces of Gold Bullion produced from the Properties and returned to or credited to Grantors or purchased and paid for by the smelter, refiner, processor, purchaser or other recipient of such bullion during a calendar quarter, by (ii) the arithmetic average of the London Bullion Market Association P.M. Fixing Price (in United States dollars) reported on its website for Gold Bullion for the calendar quarter (or should such quotation cease, another similar quotation acceptable to Grantee, acting reasonably) calculated by summing the quoted prices reported for each day of the calendar quarter and dividing the sum by the number of days for which such prices were reported, and (iii) by deducting from the product of (i) times (ii), the Allowable Deductions permitted in Section 4(a) below.

(b) For Other Products. For all gold produced from the Properties and sold in a crude or intermediate form other than as Gold Bullion and for all copper produced from the Properties and sold ("Other Products"), Net Smelter Returns shall be equal to (i) the actual sales price for the gold content or copper content, as applicable, contained in such Other Products received by Grantors from a smelter, refiner, processor, purchaser or other recipient of such products during a calendar quarter, less (ii) the Allowable Deductions permitted in Section 4(b) below.

(c) Insurance Proceeds. In the event Grantors receive insurance proceeds for gold in Gold Bullion, or gold or copper in Other Products lost or damaged, Net Smelter Returns shall equal any such insurance proceeds that are received by Grantors for such loss.

4. Allowable Deductions.

(a) For Gold Bullion. For gold produced and sold as Gold Bullion, "Allowable Deductions" means, to the extent actually incurred:

(i) charges imposed by the smelter or refinery for refining Gold Bullion from doré or concentrates produced in Grantors' mill or other processing plant; however, charges incurred by Grantors for processing raw or crushed ore or other preliminary products in Grantors' mill or other processing plant shall not be subtracted in determining Net Smelter Returns;

(ii) penalty substance, assaying, and sampling charges imposed on or incurred by Grantors for refining Gold Bullion contained in such production;

(iii) charges and costs, if any, for transportation and insurance of doré or concentrates produced in Grantors' mill or other processing plant to places where such doré or concentrates are smelted, refined and/or sold or otherwise disposed of; and

(iv) all taxes paid on production of Gold Bullion, except income tax, including but not limited to, production, severance, sales and privilege taxes and all local, state and federal taxes that are based on the production of Gold Bullion.

(b) For Gold or Copper in Other Products. For gold or copper produced and sold in Other Products, "Allowable Deductions" shall mean, to the extent actually incurred:

(i) charges imposed by the smelter, refiner or other processor for smelting, refining or processing gold or copper contained in Other Products, but excluding any and all charges and costs related to Grantors' mill or other processing plant constructed for the purpose of milling or processing Other Products;

(ii) penalty substance, assaying, and sampling charges imposed by the smelter, refiner or other processor for smelting, refining, or processing gold or copper contained in Other Products, but excluding any and all charges and costs of or related to Grantors' mill or other processing plant constructed for the purpose of milling or processing Other Products;

(iii) charges and costs, if any, for transportation and insurance of the gold or copper contained in Other Products and the beneficiated products thereof from Grantors' mill or other processing plant to places where such Other Products or the beneficiated products thereof are smelted, refined and/or sold or otherwise disposed of; and

(iv) all taxes paid on production of the gold or copper contained in Other Products, except income tax, including but not limited to, production, severance, sales and privilege taxes and all local, state and federal taxes that are based on the production of gold or copper contained in Other Products.

(c) Custom Facilities. In the event Grantors carry out smelting, refining or other processing operations to produce Gold Bullion or to recover the gold or copper contained in Other Products in facilities owned or controlled, in whole or in part, by Grantors, which facilities were not constructed for the sole purpose of smelting, refining or processing crude or intermediate products produced from the Properties, then charges, costs and penalties for such smelting, refining or processing shall mean the amount Grantors would have incurred as "Allowable Deductions" under subsections (a)(i) or (b)(i) above if such smelting, refining or other processing operations were carried out at facilities not owned or controlled by Grantors, but in no event will such Allowable Deductions be greater than actual costs incurred by Grantors with respect to such smelting, refining or other processing.

5. Calculating and Paying Royalty; Reporting.

(a) Calculation. The dollar amount of the Net Smelter Returns Royalties due to Grantee for a calendar quarter shall be the product of the sum of the Net Smelter Returns for Gold Bullion plus the Net Smelter Returns for the gold or copper contained in Other Products for such quarter multiplied by the Royalty Percentage.

(b) Payment. Payment of the Net Smelter Returns Royalties for a calendar quarter shall be due by the last day of the month following the end of each calendar quarter in which Gold Bullion or Other Products containing gold or copper are sold or returned or credited to Grantors (the "Payment Date"). If, for any reason, all information necessary to calculate and make a payment on the Payment Date is not available, Grantors shall make a provisional

payment on the Payment Date based on the available information and provide a final reconciliation for such payment promptly after all needed information becomes available to Grantors. In the event Grantee has been underpaid in any provisional payment, Grantors shall promptly pay the difference to Grantee in cash or other readily available funds and if Grantee has been overpaid in any provisional payment, Grantee will promptly pay to Grantors the difference in cash or other readily available funds.

(c) Detailed Statement. All payments of Net Smelter Returns Royalty shall be accompanied by a detailed statement explaining the calculation thereof together with any available settlement sheets received by Grantors from the smelter, refiner or other purchaser of Gold Bullion or gold or copper contained in Other Products.

(d) Reporting Prior to Production of the Gold Threshold Amount. Until such time as production of Gold Bullion and gold contained in Other Products from the Properties collectively equals or exceeds the Gold Threshold Amount, Grantors shall report to Grantee the production of Gold Bullion and gold contained in Other Products from the Properties on a quarterly basis within 30 days following the end of each calendar quarter along with any available settlement sheets or other information received by Grantors from a smelter, refiner or other purchaser of Gold Bullion or gold contained in Other Products.

(e) Reporting Prior to Production of the Copper Threshold Amount. Until such time as production of copper contained in Other Products from the Properties equals or exceeds the Copper Threshold Amount, Grantors shall report to Grantee the production of copper contained in Other Products from the Properties on a quarterly basis within 30 days following the end of each calendar quarter along with any available settlement sheets or other information received by Grantors from a smelter, refiner or other purchaser of copper contained in Other Products.

6. Other Provisions Related to Payment.

(a) Hedging Transactions. All profits and losses resulting from Grantors' engaging in any commodity futures trading, option trading, or metals trading, or any combination thereof, and any other hedging transactions including trading transactions designed to avoid losses and obtain possible gains due to metal price fluctuations are specifically excluded from calculation of Net Smelter Returns and shall be solely for Grantors' account.

(b) Commingling. Grantors shall have the right to commingle, either underground, at the surface, in stockpiles or at a mill, autoclave, roaster or other processing facility used by Grantors, ore or concentrates, minerals and other material mined and removed from the Properties with ore, concentrates, minerals and other material mined and removed from other property. Before commingling, the average grade of the commingled materials and other measures as are appropriate shall first be calculated by Grantors from representative samples, and the weight of such materials shall be determined before commingling using Grantors' standard practices. In obtaining representative samples, calculating the average grade of the ore and average recovery percentages, the procedures typically used by Grantors in its other operations in the vicinity of the Properties may be used. Representative samples of the materials to be commingled shall be retained by Grantors and assays (including moisture and penalty

substances) and other appropriate analyses of these samples shall be retained for a reasonable amount of time, but not less than 18 months, after receipt by Grantee of the applicable royalty payment.

(c) No Obligation to Mine or Process. Subject to the Agreement, Grantors shall have sole discretion to determine the extent of its operations on or for the benefit of the Properties and the time or the times for development, mining, stockpiling, processing and selling products produced from the Properties and the suspension or resumption of any operation with respect thereto. Grantors shall have no obligation to Grantee (in its capacity as the holder of this royalty) or otherwise to mine or to conduct any other operation on any of the Properties, such obligations being governed solely by the Agreement.

(d) Lesser Interest. Pursuant to the Implementation Agreement, immediately prior to the execution of this Deed, Grantee and certain affiliates of Grantee contributed the Properties to Grantors (or are holding certain of the Properties in trust for Grantors pursuant to the Implementation Agreement). Grantors and Grantee agree that Grantee and such affiliates did not own the entire undivided interest in and to all of the Properties. Grantors and Grantee further agree that the Gold Royalty and the Copper Royalty shall only be paid and achievement of the Gold Threshold Amount and the Copper Threshold Amount will only be determined on the basis of Grantors' proportionate share of gold and copper production from the Properties as contributed by Grantee or such affiliates (or held in trust) as of the Effective Date of this Deed, subject to amendment of this Deed in accordance with Section 6(e) below. For clarity, if Grantee or its affiliates owned and contributed to Grantors an undivided 75% interest in the gold and copper produced from a portion of the Properties, then the Gold Royalty and the Copper Royalty will be paid, and the applicable Threshold Amounts will be determined based only on 75% of the gold and copper production from such portion of the Properties. The Royalties will not be paid and the Threshold Amounts will not be determined on production from any property not contributed to Grantors by Grantee or its affiliates pursuant to the Implementation Agreement or the Agreement.

(e) Subsequently Contributed or Conveyed Property.

(i) The Parties acknowledge that some of the Leases ("Trust Leases") and Leased Properties ("Trust Lease Property") are currently held in trust by Grantee or an affiliate of Grantee on behalf of either NGM LLC or LH LLC as a "Non-Assignable Asset" pending third-party consent or approval of the assignment of those Leases to NGM LLC or LH LLC pursuant to Section 5.12 of the Implementation Agreement. When such consent or approval is obtained for each Trust Lease, and Grantee's or Grantee's affiliate's right, title and interest in, to and under such Trust Lease and the corresponding Trust Lease Property transfers to either NGM LLC or LH LLC, each such Trust Lease and the corresponding Trust Lease Property shall continue to be part of the Leases and Leased Property that are subject to this Deed and the Royalties.

(ii) Section 10.1 of the Agreement further addresses the terms and conditions upon which property subsequently contributed by Grantee or its affiliates will become subject to the Royalties, and the terms and conditions upon which portions of the Properties may cease to be subject to the Royalties if they are sold or otherwise conveyed by Grantors. Section 10.1 of

the Agreement further addresses how the Threshold Amounts will be adjusted in those circumstances. If those provisions become applicable, the Parties agree to amend this Deed accordingly.

7. Books, Records, Inspections and Confidentiality.

(a) Inspection of Books and Records. Grantee shall have the right, upon reasonable notice to Grantors, to inspect and copy all books, records, technical data, information and materials (the "Data") pertaining to calculation of Royalty payments, including those with respect to commingling; provided that such inspections shall not unreasonably interfere with Grantors' operations. Grantors make no representations or warranties to Grantee concerning any of the Data and Grantee agrees that if it elects to rely on any such Data or any other information made available by Grantors, it does so at its sole risk, except in the event of fraud.

(b) Audit. Grantee shall have the right to audit the books and records pertaining to production from the Properties and to contest payments of each Royalty for a period of 24 months following receipt by Grantee of each Royalty payment. Each Royalty payment shall be deemed conclusively correct unless Grantee objects to it in writing within 24 months after receipt of such payment, setting forth in detail the basis for Grantee's objection. If it is finally determined, through agreement by the Parties or following completion of the dispute resolution procedures set out in subsection 7(c) below, that Grantee has been underpaid in any such payment, Grantors will promptly pay to Grantee the underpaid amount. In addition, if it is finally determined, through agreement by the Parties or following completion of the dispute resolution procedures set out in subsection 7(c) below, that Royalty payments for any calendar year are underpaid by more than five percent, Grantors shall reimburse Grantee for its reasonable costs incurred in auditing the books and records of Grantors.

(c) Dispute Resolution.

(i) If Grantee objects to a Royalty payment in a timely manner as set out in subsection 7(b) above, the Parties will meet within 30 days of Grantors' receipt of Grantee's objection and, acting in good faith, shall seek to resolve the dispute. If the Parties fail to resolve the dispute within 30 days of the initial meeting, the dispute will be referred to the respective chief executive officers (or persons holding analogous positions) of the Parties who will, in good faith, attempt to resolve the dispute within 21 days of such referral. If the chief executive officers of the Parties are unable to resolve the matter within such 21-day period, then either Party may submit the dispute to the federal or state courts in Nevada.

(ii) If a Party submits a dispute to the federal or state courts in Nevada, the dispute will be decided by a judge in a bench trial without a jury. EACH PARTY HEREBY IRREVOCABLY WAIVES ITS RESPECTIVE RIGHT TO A JURY TRIAL FOR ANY DISPUTE BASED ON THE PAYMENT OF ROYALTY UNDER THIS DEED. Each Party acknowledges that this waiver is a material inducement to enter into this Deed and will continue to rely on this waiver in future disputes involving the payment of a Royalty hereunder.

(d) Inspection of Facilities. Grantee shall have the right, upon reasonable notice, to inspect the facilities associated with the Properties to the extent necessary to confirm Grantors'

proper performance of its obligations in this Deed. Such inspection shall be at the sole risk of such Grantee, and such Grantee shall indemnify Grantors from any liability caused by Grantee's exercise of inspection rights, unless such liability is caused by the gross negligence or intentional acts of Grantors or their employees or agents.

(e) Confidentiality. Grantee shall be bound by the confidentiality provisions of Article 14 of the Agreement.

8. General Provisions.

(a) Assignment by Grantee. Grantee may at any time convey or transfer its rights, interests and obligations under this Deed to any person or entity, without the approval of Grantors, provided that Grantors shall not be bound by any such conveyance or transfer unless and until it has received a Notice signed by Grantee and its transferee, which includes the details of such person's or entity's address for Notices and by which such transferee agrees to be bound by all of the terms and conditions of this Deed. Any transfer of the right to receive any Royalty payments shall in no event require Grantors to make payments to more than one person or entity. If the right to receive Royalty payments is transferred to more than one person or entity, such transfer shall not be binding upon Grantors until the first day of the month following the date on which Grantors receive written Notice signed by Grantee and its transferee designating a single agent for receipt of future Royalty payments and for exercising all rights of Grantee under this Deed.

(b) No Partnership or Special Relationship. The relationship of Grantors and Grantee with respect to the Net Smelter Returns Royalty shall not be construed to create, expressly or by implication, a joint venture, mining partnership, commercial partnership, or other partnership relationship. Grantors will have no fiduciary or other special relationship with Grantee, other than the duty of good faith and fair dealing, in performing its obligations under this Deed.

(c) Certain Definitions. As used in the Deed, the term "Grantee" shall include all of Grantee's successors-in-interest and the term "Grantors" shall include all of Grantors' successors-in-interest.

(d) Conveyances by Grantors. Grantors may convey, transfer, assign or abandon all or any portion of their interest in the Properties, only in accordance with the terms of the Agreement.

(e) Tailings and Other Waste Material. All tailings, residues, waste rock, spoiled leach materials, and other materials resulting from Grantors' operations and activities with respect to the Properties shall be the sole property of Grantors.

(f) Real Property Interest. Subject to Section 10.1 of the Agreement, Grantors and Grantee intend that the Royalties shall be perpetual and shall constitute a presently vested interest in and a covenant running with the Properties which shall inure to the benefit of and be binding upon the Parties and their respective, successors and assigns so long as Grantors or any successor or assign of Grantors holds any rights or interests in the Properties. The Royalties shall

attach to any amendments, relocations or conversions of any mining claim, license, or lease, concession, permit, patent or other tenure comprising the Properties, or to any renewals or extensions thereof. If Grantors or any affiliate or successor or assignee of Grantors surrenders, allows to lapse or otherwise relinquishes or terminates its interest in any of the Properties, and reacquires a direct or indirect interest in the land or minerals covered by the former Properties, then from and after the date of such reacquisition such reacquired properties shall be included in the Properties and the Royalties shall apply to such interest so acquired. Grantors shall give written Notice to Grantee within 30 days of any acquisition or reacquisition of an interest in the Properties. The Parties do not intend that there be any violation of the rule against perpetuities. Accordingly, any right that is subject to such rule shall be exercised within the maximum time periods permitted under applicable law.

(g) Notices. Any notice, demand or other communication under this Deed ("Notice") required or permitted to be given or made under this Deed shall be in writing and shall be given to a Party at the address below (i) by courier or recognized overnight delivery service, or (ii) by registered or certified mail, return receipt requested. All Notices shall be effective and shall be deemed delivered (A) if by courier or recognized overnight delivery service on the date of delivery, (B) if solely by mail on the day delivered as shown on the actual receipt. A Party may change its address for purposes of Notices from time-to-time by Notice to the other Party.

If to Grantors:

Nevada Gold Mines, LLC
1655 Mountain City Highway
Elko, NV 89801
Attn: Land Manager

Leeville Holdco LLC
1655 Mountain City Highway
Elko, NV 89801
Attn: Land Manager

If to Grantee:

Newmont USA Limited
6363 S. Fiddler's Green Circle, Suite 800
Greenwood Village, CO 80111
Attn: Land Department

Executed by Grantors and Grantee to be effective as of the time and date first above written.

[signature pages follow]

GRANTORS:

Nevada Gold Mines LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Its: _____

Leeville Holdco LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Its: _____

GRANTEE:

Newmont USA Limited,
a Delaware corporation

By: _____
Print Name: _____
Its: _____

State of _____)
) ss.
County of _____)

This instrument was acknowledged before me on , 2019, by as of Nevada Gold Mines LLC.

_____
Notary Public in and for the State of _____
Residing at: _____
Commission Expires: _____

State of _____)
) ss.
County of _____)

This instrument was acknowledged before me on , 2019, by as of Leeville Holdco LLC.

_____
Notary Public in and for the State of _____
Residing at: _____
Commission Expires: _____

[SIGNATURE PAGE TO NET SMELTER RETURNS ROYALTY DEED]

State of _____)
) ss.
County of _____)

This instrument was acknowledged before me on , 2019, by as of Newmont USA Limited.

_____
Notary Public in and for the State of _____
Residing at: _____
Commission Expires: _____

[SIGNATURE PAGE TO NET SMELTER RETURNS ROYALTY DEED]

SCHEDULE J

U.S. TAX PROVISIONS

ARTICLE 1
DEFINITIONS

1.1 Certain Definitions Relating to Federal Taxation.

For purposes of this Schedule J, the following terms shall have the meanings ascribed to them in this Section 1.1 (all capitalized terms not defined herein shall have the meaning given them in the Agreement to which these U.S. Tax Provisions are attached):

"**Adjusted Capital Account Deficit**" means with respect to any Member, the negative balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year of Nevada JV, determined after giving effect to the following adjustments: (i) credit to such Capital Account any portion of such negative balance which such Member (A) is treated as obligated to restore to Nevada JV pursuant to the provisions of Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations or (B) is deemed to be obligated to restore to Nevada JV pursuant to the penultimate sentence of Section 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations; and (ii) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations. This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"**Carrying Value**" means, with respect to any asset of Nevada JV, the asset's adjusted basis for U.S. federal income tax purposes, except as follows: (i) with respect to an item of property contributed by a Member, the initial Carrying Value of such contributed property shall be the fair market value of such contributed property (taking Code Section 7701(g) into account) on the date that it was contributed to Nevada JV; (ii) the Carrying Value of all of Nevada JV's assets shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account), as determined by the Board, as of the following times: (A) the acquisition of an additional interest in Nevada JV by any new or existing Member in exchange for more than a *de minimis* capital contribution; (B) the distribution by Nevada JV to a Member of more than a *de minimis* amount of Nevada JV's property as consideration for an interest in Nevada JV; (C) the liquidation of Nevada JV within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); (D) in connection with the grant of an interest in Nevada JV (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of Nevada JV by an existing Member acting in a Member capacity, or by a new Member acting in a Member capacity in anticipation of being a Member; and (E) under generally accepted industry accounting practices within the meaning of Treasury Regulations Section 1.704-l(b)(2)(iv)(f)(5), provided that adjustments described in clause (E) shall be made only if the Board reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members of Nevada JV; (iii) the Carrying Value of any asset of Nevada JV distributed to any Member shall be adjusted to equal the gross fair market value (taking Code Section 7701(g) into account) of such asset on the date of distribution, as determined by the Board; and (iv) the Carrying Values of Nevada JV's assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Section 743(b), but only to the extent

that such adjustments are taken into account in determining Capital Accounts pursuant to (A) Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and (B) clause (6) of the definition of "Profits" and "Losses" or Section 3.2(f), provided, however, that Carrying Values shall not be adjusted pursuant to this clause (iv) to the extent that an adjustment pursuant to clause (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv). If the Carrying Value of an asset of Nevada JV is adjusted pursuant to clauses (i), (ii) or (iv) of this definition, such Carrying Value shall thereafter be adjusted by Depreciation taken into account with respect to such asset.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Company Level Taxes**" has the meaning set forth in Section 4.2(f).

"**Depreciation**" means, for each Fiscal Year of Nevada JV or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year or other period for U.S. federal income tax purposes; provided, however, that if the Carrying Value of an asset differs from its adjusted basis for U.S. federal income tax purposes at the beginning of any such Fiscal Year or other period, Depreciation shall be an amount that bears the same relationship to the Carrying Value of such asset as the depreciation, amortization or other cost recovery deduction computed for U.S. federal income tax purposes with respect to such asset for the applicable period bears to the adjusted tax basis of such asset at the beginning of such period, or if such asset has an adjusted tax basis of zero, Depreciation shall be an amount determined under any reasonable method selected by the Board; provided that, with respect to an asset the Carrying Value of which differs from its adjusted basis for U.S. federal income tax purposes and which difference is being eliminated by use of the "remedial allocation method" as defined in Treasury Regulations Section 1.704-3(d), Depreciation for such period shall be the amount of the book basis recovered for such period under the rules prescribed in Regulations 1.704 -3(d)(2); provided, further, that for .purposes of calculating Depreciation, the amount of depletion with respect to a depletable property shall not exceed the Carrying Value of such property.

"**Fiscal Year**" means a fiscal year of Nevada JV as set out in Section 3.5 of the Agreement, or adjusted in accordance with Section 3.3(c)(xx) (including the period in which Nevada JV is being wound up and liquidated).

"**Imputed Understatement Modifications**" has the meaning set forth in Section 4.2(f). "**Indemnifying Member**" has the meaning set forth in Section 4.2(g).

"**Nonrecourse Deductions**" has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

"**Nonrecourse Liability**" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"**Partially Adjusted Capital Account**" means, with respect to each Member and any Fiscal Year, the Capital Account of such Member in Nevada JV as of the beginning of such Fiscal Year, adjusted as set forth in the definition of "Capital Account" for all

contributions, distributions and special allocations with respect to such Fiscal Year but before giving effect to any allocations of Profits or Losses or items of income, gain, loss and deduction for such Fiscal Year pursuant to Section 3.1; provided that a Member's Partially Adjusted Capital Account as of the end of a Fiscal Year shall take into account any allocations of Profits or Losses or items of income, gain, loss and deduction for such Fiscal Year pursuant to Section 3.1.

"**Partner Minimum Gain**" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulations Section 1.704-2(i)(3).

"**Partnership Minimum Gain**" has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(2) and (d).

"**Partner Nonrecourse Debt**" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(4).

"**Partner Nonrecourse Deductions**" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(2), and the amount of Partner Nonrecourse Deductions with respect to a Partner Nonrecourse Debt for a taxable year of Nevada JV shall be determined in accordance with the rules of Treasury Regulations Section 1.704-2(i)(2).

"**Partnership Representative**" has the meaning set forth in Section 4.2(f).

"**Profits**" and "**Losses**" means, for purposes of computing the amount of Profits or Losses to be reflected in the Members' Capital Accounts, for each Fiscal Year of Nevada JV or other period for which allocations to Members are made, an amount equal to Nevada JV's taxable income or loss for such period determined in accordance with U.S. federal income tax principles, including Code Section 703(a), with the following adjustments (without duplication): (1) any income of Nevada JV that is exempt from U.S. federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this provision shall be added to such taxable income or loss; (2) any expenditure of Nevada JV described in Section 705(a)(2)(B) of the Code or treated as Code Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Treasury Regulations, and not otherwise taken into account in computing Profits or Losses pursuant to this provision, shall be subtracted from such taxable income or loss; (3) in the event that the Carrying Value of any asset of Nevada JV is adjusted pursuant to this Agreement, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses, and shall be allocated in accordance with the provisions of Article 3; (4) gain or loss resulting from any disposition of Nevada JV's property with respect to which gain or loss is recognized for U.S. federal income tax purposes shall be computed by reference to the Carrying Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Carrying Value; (5) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year of Nevada JV or other period, computed as provided in this Agreement; and (6) to the extent an adjustment to the adjusted tax basis of any asset of Nevada JV pursuant to Section 734(b) or Section 743(b) of the Code is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining

Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in Nevada JV, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses. If Nevada JV's taxable income or loss for such Fiscal Year or other period, as adjusted in the manner provided above, is a positive amount, such amount shall be Nevada JV's Profits for such Fiscal Year or other period; and if a negative amount, such amount shall be Nevada JV's Losses for such Fiscal Year or other period.

"**Regulatory Allocations**" has the meaning set forth in Section 3.3.

"**Target Capital Account**" means, with respect to each Member, and any Fiscal Year, an amount (which may be either a positive or a deficit balance) equal to the hypothetical distribution such Member should receive pursuant to the next sentence, and minus such Member's share of Partnership Minimum Gain, determined pursuant to Treasury Regulations Section 1.704-2(b)(2), 1.704-2(d) and 1.704-2(g), and minus such Member's share of Partner Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(i)(3) and 1.704-2(i)(5), all computed immediately prior to the hypothetical sale described in the next sentence. The hypothetical distribution to a Member is equal to the amount that would be received by such Member if all of Nevada JV's assets were sold for cash equal to their Carrying Values (which shall not be adjusted on account of such hypothetical distribution), all of Nevada JV's liabilities were satisfied to the extent required by their terms (limited, with respect to each Nonrecourse Liability or Partner Nonrecourse Debt, to the Carrying Value of the assets securing each such liability), and the net proceeds were distributed in full to the Members on a liquidation of Nevada JV pursuant to Section 8.1(c) of the Agreement, all as of the last day of such Fiscal Year. The value placed on the goodwill, if any, of Nevada JV for this purpose is limited to its Carrying Value.

"**Treasury Regulations**" means all final and temporary United States federal income tax regulations, as amended from time to time, issued under the Code by the United States Treasury Department.

ARTICLE 2
CAPITAL ACCOUNTS

2.1 Capital Accounts.

Nevada JV shall establish and maintain throughout the life of Nevada JV for each Member a separate Capital Account in accordance with Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. Such Capital Account shall be increased by (i) the amount of all Capital Contributions made or deemed made by such Member to Nevada JV pursuant to the Agreement, (ii) all Profits allocated to such Member (or items of income and gain specially allocated to such Member) pursuant to Section 3.1 and (iii) the amount of any liabilities of Nevada JV assumed by such Member or which are secured by any property distributed to such Member. Such Capital Account shall be decreased by (x) the amount of cash or Carrying Value of all actual and deemed distributions of cash or property made to such Member pursuant to the Agreement, (y) all Losses allocated to such Member (or items of loss and deduction specially allocated to such Member) pursuant to Section 3.1, and (z) the amount of any liabilities of such Member assumed by Nevada JV or which are secured by any property contributed by

such Member to Nevada JV. Any other partnership item which is required or authorized under Section 704(b) of the Code to be reflected in Capital Accounts shall be so reflected. If there is a revaluation of any of Nevada JV's property such that the Carrying Value of such property differs from its adjusted tax basis, the Members' Capital Accounts shall be appropriately adjusted for income, gain, loss and deduction as required by Treasury Regulations Section 1.704-1(b)(2)(iv)(g). In the event Membership Interests are Transferred in accordance with the terms of the Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred Membership Interests. The foregoing provisions and the other provisions of this Schedule J relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. The Board also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on Nevada JV's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause the Agreement not to comply with Treasury Regulations Section 1.704-1(b).

2.2 Revaluation on Dilution of Proportionate Interests.

The Members agree that any dilution in Newmont Member's Proportionate Interest pursuant to Section 12.1(a) of the Agreement shall trigger a revaluation of Nevada JV's property in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)(f), (g) and (q), and any other event described in Treasury Regulations Section 1.704-1(b)(2)(iv)(f)(5) shall trigger a revaluation of Nevada JV's property in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)(f) and (g).

ARTICLE 3
ALLOCATIONS

3.1 Allocations of Profits and Losses.

Except as otherwise provided in this Article 3, Profits and Losses of Nevada JV for any Fiscal Year shall be allocated, as of the end of such Fiscal Year, in accordance with this Section 3.1:

(a) after giving effect to Section 3.1(b) and the special allocations in Section 3.2, Profits and Losses of Nevada JV for any Fiscal Year of Nevada JV shall be allocated to and among the Members so as to reduce, proportionately, the difference between their respective Target Capital Accounts and Partially Adjusted Capital Accounts as of the end of such Fiscal Year. No portion of Profit or Losses for any Fiscal Year shall be allocated to a Member, in the case of Profits whose Partially Adjusted Capital Account is greater than or equal to its Target Capital Account or, in the case of Losses, whose Target Capital Account is greater than or equal to its Partially Adjusted Capital Account for such Fiscal Year;

(b) if Nevada JV (i) has Profits for any Fiscal Year (determined prior to giving effect to this Section 3.1(b)) and, prior to making any allocation under Section 3.1(a), the balance of any Member's Partially Adjusted Capital Account is greater than the balance of its Target Capital Account, then the Member with such excess

balance shall be specially allocated items of partnership expense or loss (to the extent available) for such Fiscal Year equal to the difference between its Partially Adjusted Capital Account and its Target Capital Account; (ii) has Losses for any Fiscal Year (determined prior to giving effect to this Section 3.1(b)) and, prior to making any allocation under Section 3.1(a), the balance of any Member's Partially Adjusted Capital Account is less than the balance of its Target Capital Account, then the Member with such deficient balance shall be specially allocated items of partnership income or gain for such Fiscal Year (to the extent available) equal to the difference between its Partially Adjusted Capital Account and its Target Capital Account; and (iii) has neither Profits nor Losses for any Fiscal Year (determined prior to giving effect to this Section 3.1(b)) and, prior to making any allocation under Section 3.1(a), the balance of any Member's Partially Adjusted Capital Account differs from the balance of its Target Capital Account, then the Member with an excess or deficient balance, as the case may be, shall be specially allocated items of partnership expense or loss or income or gain, as the case may be, for such Fiscal Year (to the extent available) equal to the difference between its Partially Adjusted Capital Account and its Target Capital Account. In the event that Nevada JV has insufficient items of expense or loss or income or gain, as the case may be, for such Fiscal Year, to satisfy the previous sentence with respect to all such Members, the available items of expense or loss or income or gain, as the case may be, shall be divided among the Members in proportion to such differences. The availability of items of income, gain, expense or loss to be specially allocated pursuant to this Section 3.1(b) shall be determined after giving full effect to all of the provisions of Section 3.2; and

(c) losses allocated pursuant to Section 3.1(a) and Section 3.1(b) to any Member shall not exceed the maximum amount of Losses that can be so allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event that some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of the allocation of Losses pursuant to Section 3.1(a) and Section 3.1(b), the limitation set forth in this Section 3.1(c) shall be applied on a Member by Member basis so as to allocate the maximum permissible losses to each Member under Treasury Regulations Section 1.704-1(b)(2)(ii)(d). The first sentence of this Section 3.1(c) notwithstanding, if no Member has a positive Adjusted Capital Account Balance, then allocations of Losses that create an Adjusted Capital Account Deficit shall be permitted and such allocations of Losses shall be made to the Members in amounts determined by the Board, subject to any requirements of the Code and Treasury Regulations.

3.2 Special Allocations.

(a) In the event a Member unexpectedly receives any adjustment, allocation or distribution described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that causes or increases an Adjusted Capital Account Deficit, items of partnership income and gain shall be specially allocated to such Member so as to eliminate such negative balance as quickly as possible, provided that an allocation pursuant to this Section 3.2(a) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made as if this Section 3.2(a) were not in this Schedule J. This subparagraph is intended to constitute a "qualified income offset"

under Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

(b) If a Member has a deficit Capital Account at the end of any taxable year that exceeds the sum of (i) the amount that Member is obligated to restore, and (ii) the amount the Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), then each such Member shall be specially allocated items of income and gain of the Nevada JV in the amount of the excess as quickly as possible, provided that an allocation pursuant to this Section 3.2(b) shall be made if and only to the extent that the Member would have a deficit in such Member's Capital Account after all other allocations provided for in this Article 3 have been tentatively made without considering this Section 3.2(b).

(c) Nonrecourse Deductions for any Fiscal Year of Nevada JV shall be allocated rateably among the Members based upon the manner in which such Members are entitled to share in distributions under Section 8.1(b)(ii) of the Agreement.

(d) Except as otherwise provided in Section 1.704-2(f) of the Treasury Regulations, if there is a net decrease in Partnership Minimum Gain for any Fiscal Year of Nevada JV, each Member shall be specially allocated items of partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). The items to be so allocated shall be determined in accordance with Sections 1.704-2(f) and (j)(2) of the Treasury Regulations. This Section 3.2(d) is intended to comply with the minimum gain chargeback requirement in said section of the Treasury Regulations and shall be interpreted consistently therewith. Allocations pursuant to this subparagraph shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(e) Except as otherwise provided in Section 1.704-2(i)(4) of the Treasury Regulations, if there is a net decrease in Partner Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year of Nevada JV, each Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations, shall be specially allocated items of partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to that Member's share of the net decrease in the Partner Minimum Gain attributable to such Partner Nonrecourse Debt to the extent and in the manner required by Section 1.704-2(i) of the Treasury Regulations. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and (j)(2) of the Treasury Regulations. This Section 3.2(e) is intended to comply with the minimum gain chargeback requirement with respect to Partner Nonrecourse Debt contained in said section of the Treasury Regulations and shall be interpreted consistently therewith. Allocations pursuant to this subparagraph shall be made in proportion to the respective amounts to be allocated to each Member pursuant hereto.

(f) Partner Nonrecourse Deductions for any Fiscal Year of Nevada JV or other applicable period with respect to a Partner Nonrecourse Debt shall be specially allocated to the Members that bear the economic risk of loss for such Partner Nonrecourse Debt (as determined under Sections 1.704-2(b)(4) and 1.704-2(i)(1) of the Treasury Regulations.)

(g) To the extent an adjustment to the adjusted tax basis of any asset of Nevada JV, pursuant to Code Section 734(b) or Section 743(b) is required, pursuant to Treasury

Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in Nevada JV, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in Nevada JV in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

3.3 Curative Allocations.

The allocations set forth in Section 3.2 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of partnership income, gain, loss, or deduction pursuant to this Section 3.3. Therefore, notwithstanding any other provision of this Article 3 (other than the Regulatory Allocations), the Board shall make such offsetting special allocations of partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all partnership items were allocated pursuant to Section 3.1.

3.4 Tax Allocations.

(a) Except as otherwise provided by applicable tax law or in this Section 3.4, items of partnership taxable income, gain, loss and deduction shall be allocated for U.S. federal, state and local income tax purposes, among the Members in the same manner as such items are allocated for book purposes under this Article 3.

(b) In accordance with Code Section 704(c) and the Treasury Regulations thereunder, items of partnership income, gain, loss and deduction with respect to any property contributed by a Member shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to Nevada JV for U.S. federal income tax purposes and its initial Carrying Value using any method permitted under Section 704(c) of the Code and the Treasury Regulations thereunder, as determined by the Board; provided that the same method under Section 704(c) shall be used for all the properties contributed by the Members to Nevada JV unless the Members unanimously agree that a different method will apply to one or more contributed properties.

(c) If the Carrying Value of any asset of Nevada JV is adjusted pursuant to the clause (ii) of the definition of Carrying Value, subsequent allocations of items of income, gain, loss and deduction with respect to such property shall take account of any variation between the adjusted basis of such asset for U.S. federal income tax purposes and its Carrying Value in the same manner as under Section 704(c) of the Code and the Treasury Regulations thereunder, as determined by the Board in accordance with the principles of Section 3.4(b).

(d) Pursuant to the Implementation Agreement, the Members made Capital Contribution to the Nevada JV of depletable properties with respect to which the contributing Member has an adjusted tax basis that may consist in part of depletable expenditures and in part of expenditures capitalized under Code Sections 616(b), 291(b) and 59(e). Depletion

deductions with respect to contributed property shall be determined without regard to any portion of the property's basis that is attributable to pre-contribution expenditures by a Member that were capitalized by the Member under Code sections 616(b), 59(e) and 291(b).

(e) In accordance with Regulations Section 1.704-1(b)(4)(iii), excess percentage depletion deductions with respect to depletable property shall be allocated to the Members in accordance with the allocation of gross income from the property from which such deductions are derived. The term "excess percentage depletion" shall mean the excess, if any, of deductions for percentage depletion as determined for tax purposes over the Carrying Value of the depletable property.

(f) Allocations pursuant to this Section 3.4 are solely for purposes of U.S. federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, distributions or other partnership items pursuant to any provision of the Agreement.

ARTICLE 4
MISCELLANEOUS

4.1 Withholding.

(a) The Board may withhold from any payments with respect to any Member amounts required to discharge any obligation of Nevada JV or to withhold amounts or make payments to any governmental authority with respect to any federal, provincial, state, local or foreign tax liability of such Member arising as a result of such Member's interest in Nevada JV. Any amount withheld and paid to the appropriate Governmental Authority with respect to a Member pursuant to this Section 4.1 shall be treated as distributed to such Member in accordance with Section 8.1(b) of the Agreement.

(b) The Board will notify a Member promptly if it determines that Nevada JV is required to withhold any amount purportedly representing a tax liability of such Member and will (i) consider in good faith any positions that such Member raises as to why withholding is not required or alternative arrangements proposed by such Member that may avoid the need for such withholding and (ii) provide such Members with the opportunity to contest the requirement to withhold with the appropriate taxing authority.

(c) The Board will use commercially reasonable efforts to make or cause Nevada JV to make any filings, applications or elections to obtain any available exemption from, any reduction in, or any available refund of any withholding or other taxes imposed by any taxing authority with respect to amounts distributable or items of income allocable to the Members under the Agreement. Each of the Members agrees that it will co-operate with the Board in making any such filings, applications, or elections, to the extent the Board reasonably determines that such co-operation is necessary or desirable.

(d) Upon request of a Member, Nevada JV will provide, to the extent that it is legally able to do so, any certification or other document that would reduce or eliminate withholding under Sections 897(g) and 1446(f) of the Code in connection with a Transfer of that Member's Membership Interest.

4.2 Other Miscellaneous U.S. Tax Matters.

(a) Nevada JV shall make the following elections for all partnership income tax returns:

(i) to deduct currently all development expenses to the extent possible under Section 616(a) of the Code or, if the Members unanimously agree, to defer such expenses under Sections 616(b) and 59(e) of the Code;

(ii) to treat advance royalties as deductions from gross income for the year paid or accrued to the extent permitted by Law; and

(iii) to make an election to adjust the basis of Nevada JV property with respect to a Member under Section 754 of the Code at the request of the Member.

(b) Each Member shall elect under section 617(a) of the Code to deduct currently all exploration expenses. Each Member reserves the right to capitalize its share of development and exploration expenses of the Nevada JV in accordance with section 59(e) of the Code, provided that a Member's election to capitalize all or any portion of these expenses shall not affect the Member's Capital Account.

(c) Subject to Section 4.2(g), the Board, in its reasonable discretion, may cause Nevada JV to make or decline to make, or to revoke or seek to revoke, any other election which Nevada JV may make under the tax laws. The Members agree to provide information reasonably requested by the Board in order to ensure compliance with the requirements of these rules.

(d) For purposes of determining Profits, Losses, or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Board using any permissible method under Code Section 706 and the Treasury Regulations thereunder. In the event of a Transfer of any interest in Nevada JV, regardless of whether the transferee becomes a Member, all items of income, gain, loss and deduction for the Fiscal Year of Nevada JV in which the Transfer occurs shall be allocated in accordance with the preceding sentence, except to the extent required by Section 706(d) of the Code.

(e) In no event will any Member be required to make up any deficit balance in such Member's Capital Account upon the liquidation of such Member's interest in Nevada JV or otherwise.

(f) The Majority Member, or such person as designated by the Board, shall serve as the "partnership representative" within the meaning of Section 6223(a) of the Code (any person so designated as the partnership representative, the " **Partnership Representative**"). The Partnership Representative shall always be supervised by, and act under the direction of, the Board. The Partnership Representative shall, subject to the preceding sentence and the provisions of this Agreement, have the authority to act on behalf of Nevada JV under Subchapter C of Section 63 of the Code (relating to partnership audit proceedings) and in any tax proceedings brought by other taxing authorities, and Nevada JV and all Members shall be bound by the actions taken by the Partnership Representative in such capacity. Nevada JV shall not enter into a settlement of a tax controversy, or forego an appeal of a final partnership

administrative adjustment or other audit adjustment, or cause any lower -tier entity classified as a partnership for U.S. federal income tax purposes (a lower-tier tax partnership) to enter into such a settlement or forego such an appeal, if such action or failure to act disproportionately, materially and adversely affects the Newmont Member or its Affiliates, without the prior written consent of the Newmont Member. In the event of an audit by the IRS, unless otherwise agreed by the Majority Member and the Minority Member, the Partnership Representative shall make, on a timely basis, the election provided by Section 6226(a) of the Code to treat a "partnership adjustment" as an adjustment to be taken into account by each Member in accordance with Section 6226(b) of the Code and, to the extent that the Nevada JV controls the audit of any lower-tier tax partnership, shall cause such lower-tier tax partnership to make such election with respect to any audit or tax controversy in which it is involved. If the election under Section 6226(a) of the Code is made, Nevada JV shall furnish to each Member for the year under audit a statement reflecting the Member's share of the adjusted items as determined in the notice of final partnership adjustment, and each such Member shall take such adjustment into account as required under Section 6226(b) of the Code and shall be liable for any related interest, penalty, addition to tax, or additional amounts. Any Member that fails to report its share of such adjustments on its U.S. federal income tax return for its taxable year including the date of any such statement as described immediately above shall indemnify and hold harmless the Company and the other Members against any liabilities, taxes, interest and penalties imposed on the Company as a result of such Member's inaction. With respect to any imputed underpayment to which Section 6225 of the Code applies, (i) the Partnership Representative shall, acting under the supervision of the Board, make any modifications available under Section 6225(c) of the Code ("**Imputed Underpayment Modifications**") that would reduce any imputed underpayment, Nevada JV's allocable share, if any, of an imputed underpayment from any lower-tier tax partnership, and interest, penalty, addition to tax, or additional amount that could be assessed and collected from Nevada JV under Chapter 63 of the Code (collectively, "**Company Level Taxes**"), (ii) the Members shall file amended U.S. federal income tax return (as described in Section 6225(c)(2) of the Code) that take into account all adjustments to the reviewed year of Nevada JV properly allocable to such Members or are necessary to reflect a reallocation of the distributive share of any item from one Member to another in accordance with Code Section 6225(c)(2)(C), and Nevada JV and the Partnership Representative will use commercially reasonable efforts to asset the Members in preparing such amended returns, and (iii) the Members shall pay any tax due with such returns. The Newmont Member shall be entitled to participate in any tax audit or other tax controversy involving the Nevada JV to the extent permitted under applicable law, including attending conferences with representatives of the applicable taxing authority. The Partnership Representative shall use commercially reasonable efforts to promptly notify the Members of the commencement of a partnership audit or other partnership-level proceeding with respect to the Nevada JV or any lower-tier tax partnership and shall use commercially reasonable efforts to keep the Members fully apprised of the status of any tax audit or other tax controversy involving Nevada JV. The Partnership Representative shall use commercially reasonable efforts to provide each Member with (i) a copy of any and all documents that it receives from the government in connection with a tax controversy no later than 5 days after receipt of the same, (ii) a draft copy of any correspondence or filing to be submitted by the Partnership Representative relating to any tax controversy reasonably in advance of such submission, and the Partnership Representative shall consider in good faith any comments provided by a Member with respect to such proposed submission, and not unreasonably refuse to incorporate any comments provided by a Member with respect to such proposed submission, (iii) the terms of any proposed settlement of a tax audit or other tax controversy as early as reasonably possible, and (iv) notify the Members of any meeting or conferences with a taxing authority reasonably in advance of such meetings or conferences.

(g) Company Level Taxes shall be treated as attributable to the Members and former Members. The Board shall allocate the burden of any such Company Level Taxes to those Members and former Members to whom such amounts are reasonably attributable, taking into account the effect of the Imputed Underpayment Modifications that are properly attributable to each Member or former Member (with respect to each Member or former Member, its, her or his "Allocated Share"). With respect to the Allocated Shares of the Members and former Members for each applicable taxable year, the Board shall cause each Member or former Member to economically bear its or his Allocated Share by either (i) requiring each Member or former Member to pay to the Company an amount equal to its or his Allocated Share or (ii) deducting from the amounts next distributable to such Member pursuant to this Agreement an amount equal to its or his Allocated Share; *provided*, that, if the amount of such Member's Allocated Share exceeds the amount of such aggregate reductions at the time of the dissolution and winding up of the Company pursuant to Article 16I, such Member shall pay to the Company an amount equal to such excess prior to the final distribution pursuant to Section 8.1(c). Except as otherwise required by law, the Members and the former Members intend for U.S. federal income tax purposes that (i) the payment of the Company Level Taxes by the Company be treated as a loan to each Member and former Member in an amount equal to such Member's or former Member's Allocated Share; (ii) the payment of each Member's or former Member's Allocated Share to the Company be treated as a repayment of such loan; and (iii) if, rather than making a payment to the Company, a Member's distributions are reduced to pay such Member's Allocated Share, then such Member shall be treated as receiving a distribution and repaying such loan with such distribution at the time distributions otherwise payable to such Member are offset pursuant to this Section 4.2(g). To the fullest extent permitted by law, each Member and former Member (the "**Indemnifying Member**") hereby agrees to indemnify and hold harmless the Company and the other Members and former Members from and against the nonpayment of the Indemnifying Member's Allocated Share.

(h) Each Members intends that, for so long as Nevada JV has more than one Member, Nevada JV be classified for U.S. federal tax purposes as a partnership that is not a "publicly traded partnership" treated as a corporation under Code Section 7704(a), and the Board shall at all times use commercially reasonable efforts to maintain Nevada JV's classification as such. Nevada JV shall not elect to be classified as other than a partnership (or disregarded entity) for U.S. federal tax purposes or for purposes of any provisions of any U.S. state or local tax law.

(i) The Members are aware of the income tax consequences of the allocations made by this Schedule J and hereby agree to be bound by the provisions of this Schedule J in reporting their shares of partnership income and loss for income tax purposes.

(j) All Section and Article references used in this Schedule J shall refer to Sections and Articles within this Schedule J unless specified otherwise.

(k) Notwithstanding anything in the Agreement to the contrary, in the event of any conflict between the provisions of this Schedule J and the other provisions of the Agreement, the provisions of this Schedule J shall control.

(l) The Members and Nevada JV shall cooperate in providing information concerning the Nevada JV that is reasonably requested by a Member in connection with the preparation of the Member's separate income tax returns.

(m) In the event of a change in applicable tax law (including a change resulting from the issuance of proposed, temporary or final Treasury Regulations or any other IRS guidance), any Member may propose to the other Member that the Agreement or this Schedule J be amended, or that Nevada JV be otherwise restructured, with a view to reducing the taxes of any Member pursuant to such changed law. The Members agree (i) to consider any such proposal in good faith and (ii) to use commercially reasonable efforts to implement such proposal (as modified by an agreement of the Members, if applicable) if the Members determine that such proposal is in the best interest of all of the Members.

SCHEDULE K

LEGACY SURETY ARRANGEMENTS

Barrick's Legacy Surety Arrangements

Surety Instrument No.	Surety Amount	Obligee/Beneficiary
08923144 (SB)	$224,246,354	US. Bureau of Land Management
070011814 (SB)	$136,584,274	US. Bureau of Land Management
S505031N (LOC)	$ 28,376,689	US. Bureau of Land Management
4135272 (LOC)	$ 24,286,000	US. Bureau of Land Management
7414296 (LOC)	$ 5,500,000	US. Bureau of Land Management
09106279 (SB)	$ 1,595,075	US. Bureau of Land Management
96629 (LOC)	$ 101,350	US. Bureau of Land Management
070015568 (SB)	$ 444,787	US. Bureau of Land Management
070015567 (SB)	$ 1,515,848	US. Bureau of Land Management
6015402 (SB)	$ 21,139,753	US. Bureau of Land Management
070015566 (SB)	$ 4,698,042	US. Bureau of Land Management
82336311 (SB)	$ 28,977,562	US. Bureau of Land Management
82442613(SB)	$ 12,688	US. Bureau of Land Management
82442609(SB)	$ 670,375	US. Bureau of Land Management
04135275 (LOC)	$ 130,000	US. Bureau of Land Management
9106252 (SB)	$ 30,000	US. Bureau of Land Management
04133847 (LOC)	$ 8,000,000	US. Bureau of Land Management

82336312 (SB)	$ 25,626,576	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
9177669 (SB)	$ 95,721	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
5907817 (SB)	$ 120,480	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
SBGT764375	$ 39,655,466	National Fish and Wildlife Foundation
5.23E+09	$ 17,425,162	National Fish and Wildlife Foundation
CMUS 09-00015	$ 10,000,000	Shell energy North America (U.S.), L.P.
S516280N	$ 3,500,000	Shell energy North America (U.S.), L.P.

Newmont's Legacy Surety Arrangement

Surety Instrument No.	Surety Amount	Obligee/Beneficiary
151109 (SB)	$ 25,000,000	US. Bureau of Land Management
8219-95-16 (SB)	$ 82,850,147	US. Bureau of Land Management
965009901 (SB)	$ 30,780,000	US. Bureau of Land Management
965009858 (SB)	$ 110,961,493	US. Bureau of Land Management
105487745 (SB)	$ 54,892,058	US. Bureau of Land Management
08921252 (SB)	$ 126,906,643	US. Bureau of Land Management
09026813 (SB)	$ 76,000,000	US. Bureau of Land Management
08921253 (SB)	$ 106,644,338	US. Bureau of Land Management
LOC 203081	$ 12,000.00	US. Bureau of Land Management

SUR0008059 (SB)	$18,000,000	US. Bureau of Land Management
151110 (SB)	$25,000,000	US. Bureau of Land Management
09148601 (SB)	$11,409,770	US. Bureau of Land Management
Corporate Guarantee re Lone Tree Mine; BLM Serial No. NVN-65325	$ 4,255,158	US. Bureau of Land Management
A32041A (LOC)	$12,289,521	US. Bureau of Land Management
A32042A (LOC)	$37,310,550	US. Bureau of Land Management
965009899 (SB)	$46,620,534	US. Bureau of Land Management
929447075 (SB)	$10,000,000	US. Bureau of Land Management
2155376 (SB)	$45,311,145	US. Bureau of Land Management
09026816 (SB)	$19,565,342	US. Bureau of Land Management
Corporate Guarantee re Twin Creek Mine; BLM Serial No. NVN-65094	$23,920,451	US. Bureau of Land Management
2155377 (SB)	$ 7,511,743	US. Bureau of Land Management
929447074 (SB)	$ 5,693,176	US. Bureau of Land Management
SU1112862 (SB)	$28,441,648	US. Bureau of Land Management
Corporate Guarantee re Bluestar-Genesis; BLM Serial No. NVN-70712	$ 7,506,100	US. Bureau of Land Management
SU1112862 (SB)	$ 221,335	US. Bureau of Land Management
2155377 (SB)	$ 2,098,328	US. Bureau of Land Management
929447074 (SB)	$ 9,830,792	US. Bureau of Land Management
8219-95-17 (SB)	$ 7,083,295	US. Bureau of Land

		Management
SU1112862 (SB)	$ 2,185,606	US. Bureau of Land Management
2155377 (SB)	$ 1,630,792	US. Bureau of Land Management
9148602 (SB)	$ 1,473,535	US. Bureau of Land Management
8219-95-23 (SB)	$ 18,907,699	US. Bureau of Land Management
965009900 (SB)	$ 18,387,912	US. Bureau of Land Management
SUR0008058 (SB)	$ 75,000,000	US. Bureau of Land Management
929447073 (SB)	$ 20,000,000	US. Bureau of Land Management
09026822 (SB)	$ 15,782,540	US. Bureau of Land Management
105195245 (SB)	$ 41,704,003	US. Bureau of Land Management
105195247 (SB)	$ 15,250,000	US. Bureau of Land Management
Corporate Guarantee re Gold Quarry; BLM Serial No. NVN-70550	$ 46,973,200	US. Bureau of Land Management
P-622833 (LOC)	$ 500,000	US. Bureau of Land Management
SUR2056274	$ 9,375,711	U.S. Bureau of Land Management
SUR0008085 (SB)	$ 6,755,255	US. Bureau of Land Management
965001765 (SB)	$ 18,923,363	US. Bureau of Land Management
04105790 (LOC)	$1,325,452.00	US. Bureau of Land Management
8219-95-17 (sb)	$ 13,886,753	US. Bureau of Land Management
09026815(SB)	$ 15,792,999	US. Bureau of Land Management
SU1112862 (SB)	$ 428,176	US. Bureau of Land Management

929447074 (SB)	$ 2,582,689	US. Bureau of Land Management
2155377 (SB)	$28,463,322	US. Bureau of Land Management
Corporate Guarantee re Rain Mine; BLM Serial No. 70445	$ 6,617,800	US. Bureau of Land Management
P-250167 (LOC)	$ 84,773 (LR2000)	US. Bureau of Land Management
TPTS-203062 (LOC)	$ 830,040	US. Bureau of Land Management
P-250167 (LOC)	$ 107,645	US. Bureau of Land Management
P-250167 (SB)	$ 284,394	US. Bureau of Land Management
SUR0008060	$ 8,000,000	US. Bureau of Land Management
016071047 (SB)	$25,840,947	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
Corporate Guarantee re North Area Leach; BMRR Permit No. 0176	$24,214,151	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
SLCPPDX03880 (LOC)	$ 1,435,948	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
SLCPPDX05686 (LOC)	$ 425,000	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
Corporate Guarantee re Pearl Exploration; BMRR Permit No. 0324	$ 1,217,301	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
SBLC210555	$ 71,000	Nevada Division of Environmental Protection, Bureau of Sustainable

		Materials Management
P-250738 (LOC)	$1,000,000	US. Bureau of Land Management
S-370228 (LOC)	$1,000,000	US. Bureau of Land Management
TFTS-208372 (LOC)	$1,000,000	US. Bureau of Land Management
SUR0051347 (SB)	$1,000,000	US. Bureau of Land Management
S-898055 (LOC)	$1,000,000	US. Bureau of Land Management
333107 (LOC)	$2,000,000	Nevada Department of Conservation and Natural Resources
Corporate Guarantee re Carlin-Pete Mine Mill 1, BLM Serial No. NVN-70574	$6,532,140	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
Corporate Guarantee Argenta Exploration, BLM Serial No. N-67453	$ 92,676	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
Corporate Guarantee re Chevas Exploration,BLM Serial No. N-71005	$ 125,430	Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation
106942047	$ 541,810	Nevada Department of Conservation and Natural Resources
106559126	$ 25,000	U.S. Bureau of Land Management

EXHIBIT G

DECLARATION OF PAUL D. JUDD

I, Paul D. Judd, hereby swear under the penalties of perjury that the following assertions are true and correct:

1. I am Tax Director of Barrick Nevada Holding LLC ("Barrick Holding") and have knowledge of the facts of this declaration and will competently testify to same if called upon to do so.

2. Barrick Holding is a Delaware limited liability company and various U.S. subsidiaries of Barrick Gold Corporation own certain percentages of Barrick Holding.

3. Barrick Holding owns a 61.5% membership interest in Nevada Gold Mines LLC ("Nevada Gold Mines"). Newmont USA Limited owns the remaining 38.5% membership interest in Nevada Gold Mines.

4. Although Nevada Gold Mines' owns properties and conducts business and operations in Nevada, Barrick Holding does not own any property in Nevada, nor does it conduct any business in Nevada. For example, Barrick Holding does not itself engage in mining or processing activities, operate mining or processing facilities within Nevada (or the United States), and it does not have any employees, offices, equipment or pay any taxes in Nevada. Instead, Barrick Holding is a holding company whose sole business function is to own membership interest in Nevada Gold Mines.

5. Barrick Holding and Nevada Gold Mines are separate and distinct companies, which are separately managed, and separately financed. Nevada Gold Mines has its own separate board of directors, advisory committees, and management. Barrick Holding and Nevada Gold Mines maintain separate corporate records and observes the requirements for maintaining their separate corporate existence under the laws where each is incorporated. Barrick Holding and Nevada Gold Mines maintain separate accounts and accounting and adhere to all recognized accounting standards. All intra-corporate financial transactions are separately recorded, maintained in the records of each, and documented according to generally accepted accounting standards.

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6. Barrick Holding does not supervise or manage the day-to-day affairs of Nevada Gold Mines, including their mining and processing operations, personnel, or legal affairs, and I am not aware of any action Barrick Holding has taken to assume the management of Nevada Gold Mines' day-to-day operations.

7. To the best of my knowledge, Nevada Gold Mines is sufficiently capitalized for its purpose.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 6th day of August 2020.

Paul D. Judd / Tax Director

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

BULLION MONARCH MINING, INC., Plaintiff, *vs.* BARRICK GOLDSTRIKE MINES, INC.; BARRICK GOLD EXPLORATION INC.; BARRICK GOLD CORPORATION; NEVADA GOLD MINES, LLC; BARRICK NEVADA HOLDING LLC; and DOES 1 through 20, Defendants.	Case No. A-18-785913-B Dep't No. 11 **COMBINED OPPOSITION TO BARRICK GOLD CORPORATION'S AND BARRICK NEVADA HOLDING LLC'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT** Hearing Date: August 31, 2020 Hearing Time: 9:00 a.m.

Defendant Barrick Gold Corporation purposely availed itself of Nevada's legal system when it entered into a joint-venture agreement to convey and acquire mineral properties in Nevada, and some of Bullion's claims arise from the very act of entering that agreement. At least with respect to this agreement, Barrick Gold is the principal and alter ego of its subsidiary, Barrick Goldstrike,

who as a result of Barrick Gold's maneuvering has divested all of its mineral properties in Nevada. Barrick Gold is subject to jurisdiction here.

For similar reasons, Barrick Nevada Holding LLC, whose very creation and purpose—to facilitate a corporate restructuring that eliminates Barrick Goldstrike's assets in the area of interest—is a centerpiece of this litigation, not a reason to avoid personal jurisdiction.

The statute of limitations is no refuge for Barrick Gold, either. Despite some similarities, this is not the same complaint as the one filed in 2009 relating solely to property then owned by Barrick Goldstrike. As Bullion has been learning, Barrick Gold began setting up other companies to mine in the area of interest where Bullion has a royalty, culminating in the 2019 joint-venture agreement in which Barrick Goldstrike's properties were swallowed up by a new entity in which a different Barrick entity holds a 61.5% share. Barrick Gold's nondisclosure of its other Nevada holdings also constitutes fraudulent concealement or an estoppel that justifies equitable tolling of the statute of limitations.[1]

FACTUAL BACKGROUND

The 1979 Agreement and Bullion's Royalty

In 1979, Bullion gave several valuable mineral rights to a venture operated by Universal Gas (Montana), Inc. (2d Am. Compl., ¶ 15 & Ex. 1, 1979 Agreement, ¶ 2(A).) Universal got the right to develop Bullion's claims, as well as any others it acquired in a surrounding eight-mile-by-eight-mile area of in-

[1] Barrick Gold's and Barrick Nevada Holding's motions overlap to a degree that made this combined opposition seem economical. Bullion also incorporates here its concurrently filed opposition to Barrick Goldstrike, Barrick Exploration, and Nevada Gold Mines' motions to dismiss (and joinder), as well as the opposition to Barrick Gold's first motion to dismiss, filed November 12, 2019.

terest. (2d Am. Compl., ¶ 15 & Ex. 1, 1979 Agreement, ¶ 11.) That area of interest covers much of what is known as the Carlin Trend, one of the richest gold and silver deposits in the world. (2d Am. Compl., ¶¶ 13, 17.) *Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc.* (*Bullion II*), 131 Nev. 99, 101, 345 P.3d 1040, 1041 (2015).

For the venture to be profitable, Bullion agreed to stay out of the area of interest for 99 years, through 2078. (2d Am. Compl., ¶¶ 14, 18 & Ex. 1, 1979 Agreement, ¶ 11.) In exchange, Bullion was to receive a royalty on production both from its original claims and from those acquired during that 99-year period in the area of interest. (2d Am. Compl., ¶¶ 15–16 & Ex. 1, 1979 Agreement, ¶¶ 4, 11.)

Barrick's Predecessor Assumes the Royalty

Eventually, Barrick Goldstrike's predecessor agreed to "assume and become liable for . . . *all obligations*" under the 1979 Agreement (1990 Option Agreement § 7.3(B)(3)(a)), including the obligation to pay Bullion royalties. (2d Am. Compl., ¶ 23–24.) Barrick Goldstrike's predecessor, however, entered into a joint venture with Newmont Gold Co., which gave Newmont the majority stake and the obligation to pay Bullion's royalties—or so Bullion thought. (1991 Venture Agreement § 2.1(f)(i).)

Bullion Learns that Goldstrike Has Been Breaching the 1979 Agreement

When Bullion discovered that it was not receiving royalty payments on acquisitions in the area of interest, Bullion sued Newmont USA Limited, who had assured Bullion that it was responsible for Bullion's royalty payments. (*See* 227 Doc. 1, Exhibit 1.) But on June 2, 2009, during federal litigation against Newmont, Newmont disclosed a hitherto-secret agreement with Goldstrike making *Barrick Goldstrike* responsible for royalty payments under the 1979 Agreement. (*See* 227 Doc. 39 (dated May 22, 2009); Brust Aff. Ex. 10- First

Supp. Resp. to Req. for Prod. [Set 2], dated June 2, 2009; *see also* Brust Aff. Ex. 4 - Shane Biornstad e-mail from Apr. 28, 2009, Exhibit 4.)

Bullion accordingly amended its complaint to add Barrick Goldstrike and Barrick Gold. (Ex. A to Barrick Gold Mot.) In a motion to dismiss, Barrick Gold represented that it owns no property in Nevada, that Barrick Goldstrike "controls the company's activities in Nevada," and that Barrick Goldstrike "has substantial assets in Nevada, including the Goldstrike Mine." (Ex. C to Barrick Gold Mot., ¶¶ 9, 20, 25.) Without waiving any argument, Bullion voluntarily dismissed Barrick Gold without prejudice. (Ex. D. to Barrick Gold Mot.)

Although neither Barrick Gold nor Barrick Goldstrike disclosed this in the federal litigation, Barrick Gold had directed subsidiaries other than Barrick Goldstrike to acquire valuable mineral interests in the area of interest. (2d Am. Compl., ¶ 30.) Barrick Exploration has not disputed that it was one of the subsidiaries with properties in the area of interest. And now, Barrick Gold has orchestrated the creation of yet more entities, this time to absorb all of Barrick's properties (including from Barrick Goldstrike), leaving Barrick Goldstrike as just one of unspecified "*various* U.S. subsidiaries of Barrick Gold Corporation own[ing] *certain* percentages of Barrick Holding" (Barrick Nevada Holding App. 465, Decl. of Paul D. Judd, ¶ 2 (emphasis added).)

Barrick Gold's motion, like those of its subsidiaries and its joint-venture affiliate, centers on irrelevant fact questions about how easily Bullion should have been able to reverse-engineer from public filings a map of all of the mining claims in an eight-mile-by-eight-mile area of interest and trace them back to Barrick or another company. These tut-tuts distract from the legal issues: Bullion has stated valid claims against Barrick Gold, and this Court has jurisdiction over those claims.

ARGUMENT

I.

THE ORDER GRANTING THE AMENDMENT RECOGNIZES THAT BULLION'S CLAIMS ARE VIABLE

Unlike an original complaint, an amended complaint filed with the leave of the Court necessarily entails a determination that the allegations in the new complaint are not futile. NRCP 15(a); *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013) ("[L]eave to amend should not be granted if the proposed amendment would be futile." (citing *Allum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993))).

Bullion incorporates the arguments that it made in its prior opposition to dismissal and its affirmative motions to amend that this Court accepted in granting leave under Rule 15(a).

II.

THIS COURT HAS PERSONAL JURISDICTION OVER BARRICK GOLD AND BARRICK NEVADA HOLDING LLC

A. Barrick Gold Has Its Own Minimum Contacts

1. Specific Jurisdiction

Specific jurisdiction exists "where the cause of action arises from the defendant's contacts with the forum." *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 699, 857 P.2d 740, 748 (1993). A foreign defendant submits to the forum's judicial power "through contact with and activity directed at a sovereign . . . in a suit arising out of or related to the defendant's contacts with the forum." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011).

2. Bullion Targeted Nevada with the Creation of a Nevada Joint Venture and the Transfer of Nevada Property that Is the Subject of this Suit

Here, both Bullion's complaint and the available evidence make clear that

Barrick Gold has acted in or toward Nevada. The complaint alleges that Barrick Nevada Holding LLC or another Barrick entity, *including defendants*"—which would include Barrick Gold—"is the majority owner and operator of Nevada Gold." (2d Am. Compl. ¶ 32 (emphasis added).) Barrick's splashy announcement suggests that Barrick Gold itself is directly involved in the Nevada joint venture in the area of interest that is the subject of this suit: "Barrick Gold Corporation (NYSE:GOLD) (TSX:ABX) and Newmont Goldcorp Corporation (NYSE:NEM) (TSX:NGT) have successfully concluded the transaction establishing Nevada Gold Mines LLC." (Ex. 2, Press Release, *Nevada Gold Mines Launched: Best Assets, Best People Will Deliver Best Value*, NEVADA GOLD MINES, July 1, 2019, *available at* https://s24.q4cdn.com/382246808/files/doc_downloads/operations_projects/north_america/documents/Nevada-Gold-Mines-Launched-1-July-2019.pdf (last accessed Aug. 19, 2020).)

The joint-venture implementation agreement between Barrick Gold and Newmont Goldcorp confirms this:

> . . . Barrick shall cause the Barrick Parties to sell, assign and transfer to the JV Company, and the Parties shall cause the JV Company to purchase from the Barrick Parties, free and clear of all Encumbrances other than Permitted Encumbrances, all of the Barrick Parties' right, title and interest in, to or under any assets, properties or rights located in the State of Nevada and relating primarily to the Barrick Properties, in each case, in which the Barrick Parties have any right, title or interest . . . .

(Barrick Nevada Holding App. 99, Implementation Agreement § 3.1(a); *see also id.* at 101, § 3.3(a) (Newmont's contribution of all Nevada properties).) The agreement goes on to specify Barrick Gold's obligation to ensure the transfer to the joint venture of various rights, including ranches and power assets, specifically located in Nevada. (Barrick Nevada Holding App. 99–100, Implementation Agreement § 3.1(a)(i)–(xiv).) Barrick Gold and Newmont also entered into an operating agreement in which Barrick Gold "irrevocably attorns and submits to

the exclusive jurisdiction of the courts of the State of Nevada respecting all matters relating to this Agreement and the rights and obligations of the Parties hereunder." (Barrick Nevada Holding App. 217, Operating Agreement, § 13.1; Barrick Nevada Holding App. 354, Amended Operating Agreement, § 14.1.)

3. Barrick's Transactions, Reorganizations, and Conveyances Are Key to the Dispute, Not Mere Background

This is unlike a dispute, such as the plumbing defects in *Viega GmbH v. Eighth Judicial Dist. Court*, where the corporate structure and creation of subsidiaries predated and was tangential to the issues in the litigation. 130 Nev. 368, 372–73, 328 P.3d 1152, 1155 (2014). The German parent was not involved in the actual construction-defect dispute, and the formation of subsidiary companies was not part of the suit.

Here, in contrast, Barrick Gold's creation of a new entity to absorb Barrick Goldstrike's and other Barrick subsidaries' mineral-producing properties is central to Bullion's claims. Bullion's complaint "arises" precisely from these Nevada-directed transactions.

4. Barrick Created these Contacts before the Filing of the Operative Complaint

Conscious that it has had a heavy hand in Nevada since the formation of Nevada Gold Mines, Barrick Gold tries to shift the conversation to December 2018, before Bullion filed its *original* complaint. Barrick Gold relies on Dana Stringer's declaration, which is conspicuously precise: "*Prior to December 2018*, Barrick Gold had never directly participated in a joint venture or partnership owning properties in Nevada." (Barrick Gold App. 151, Ex. K, ¶ 14 (emphasis added).) "*As of December 2018*, Barrick Gold had no presence in Nevada . . . ." (Barrick Gold App. 151, Ex. K, ¶ 21 (emphasis added).)

The assumption is that personal jurisdiction is somehow like federal (statutory) subject-matter jurisdiction, with the analysis frozen in time at the moment the complaint is filed. That is far from a universal view. *See generally*

Todd David Peterson, *The Timing of Minimum Contacts*, 79 GEO. WASH. L. REV. 101, 133 (2010) (surveying cases); *compare Steel v. United States*, 813 F.2d 1545, 1549 (9th Cir. 1987) (contacts counted as of the time of events giving rise to the suit), *with Logan Productions, Inc. v. Optibase, Inc.*, 103 F.3d 49, 53 (7th Cir. 1996) (counting contacts long after the transaction or injury), *and Mellon Bank (E.) PSFS, Nat'l Ass'n v. Farino,* 960 F.2d 1217, 1224 (3d Cir. 1992) ("we must take into account the defendants' contacts with the Commonwealth before, during, and *after* the dates the loans were made and the guaranties were executed").

Regardless, here the operative complaint was filed this year, and includes supplemental allegations regarding the 2019 joint venture agreement, in which Barrick Gold played a leading role, as well as aspects of Barrick's operations—such as its use of subsidiaries other than Goldstrike to collect and mine properties in the area of interest—that were previously concealed from Bullion. No matter how detailed Barrick Gold's declaration from a decade ago (Barrick Gold Mot. 4:6–7), it is manifestly untrue that "[*n*]*othing has changed* that would warrant Barrick Gold being subject to jurisdiction in Nevada." (Barrick Gold Mot 7:1–2 (emphasis added).) Bullion's prior, voluntary dismissal is irrelevant. And Bullion is entitled to rely on the contacts connected with the operative complaint to establish Barrick Gold's jurisdiction, not simply the original complaint that has been superseded without an answer from Barrick Gold.

B. Alternatively, Minimum Contacts Are Imputed to Barrick Gold under Agency and Alter Ego Theories

Even if Barrick Gold lacks its own minimum contacts in Nevada, its use of Nevada subsidiaries as its agent and its broader abuse of the corporate form, which has blocked Bullion from receiving its bargained-for royalty, make it appropriate to impute those subsidiaries' contacts to Barrick Gold. And because those contacts include the central point of the parties' lawsuit, they support the

exercise of specific jurisdiction over Barrick Gold.

1. If Specific Jurisdiction Exists for the Subsidiary, It Exists for the Principal or Alter Ego Parent

Initially, Barrick Gold misreads *Daimler AG v. Bauman*, 571 U.S. 117, a general-jurisdiction case. *Daimler* held that general jurisdiction is not appropriate in *every* state where a defendant's contacts are "in some sense 'continuous and systematic," but in the few states where the defendant's affiliation is *so* continuous and systematic as to render it "at home." *Id.* at 138–39 (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). According to Barrick, "[e]ven if a court determines that one entity is the alter ego of the other, then the foreign entity's activities in the forum jurisdiction must still meet the general jurisdiction requirements of being essentially 'at home.'" (Barrick Gold Mot. 15:7–9 (citing *Daimler*, 571 at 136).) But the plaintiff in *Daimler* never suggested an alter-ego theory, at all. *Daimler*, 571 U.S. 117, 133–34. More important, the plaintiff never attempted to show specific jurisdiction. *Id.* So the plaintiff had to meet the high bar of general jurisdiction. *Id.* at 136. And in the dicta that Barrick Gold cites, the Supreme Court ventured that even if the subsidiary's contacts were attributed to the parent under an agency theory—that is, respecting the corporate separation—that would just make the jurisdiction one of *many* where it had lots of contacts, but was not "at home." *Id.* at 136–37.

For specific jurisdiction, the analysis is just the opposite. *See Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. 368, 384, 328 P.3d 1152, 1162 (2014) (Pickering, J., concurring) (noting the majority's recognition that an agency theory of general jurisdiction is now "defunct"). If the subsidiary would be subject to specific jurisdiction based on minimum contacts related to or arising out of the action, those specific-jurisdiction contacts also suffice as to the parent to whom they are imputed. *Viega GmbH v. Eighth Judicial Dist. Court*,

130 Nev. 368, 377, 328 P.3d 1152, 1158 (2014) (majority opinion) (citing *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 694, 857 P.2d 740, 745 (1993)).

2. Agency Theory

Barrick Gold argues that it cannot be a principal of any Nevada defendant because it is looking for some kind of extraordinary interference in the Nevada subsidiaries' internal affairs. In fact, Barrick Gold is the principal of both Barrick Goldstrike and Barrick Exploration.

"An agency relationship exists where a parent company has 'the right to substantially control its subsidiary's activities.'" *Genx Processors Mauritius Ltd. v. Jackson*, 2:14-CV-01938-APG-PAL, 2018 WL 5777485, at *6 (D. Nev. Nov. 2, 2018) (quoting *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1024–25 (9th Cir. 2017)). And as Bullion alleged, Barrick Exploration as Barrick Goldstrike's sole shareholder had—and exercised—that right. (Am. Compl. ¶ 76; ER 1553, Ex. 3.)

What's more, Barrick Gold in the process of forming Nevada Gold Mines treated its Nevada subsidiaries as agents who were *not* left or trusted to manage their own affairs, even as to the drafting of deeds transferring property. Indeed, Barrick Gold promised Newmont that it had just such control in covenanting to "to cause each of its Affiliates to duly and punctually perform and observe all of its respective obligations, commitments, undertakings, warranties, indemnities and covenants which may be necessary or advisable to consummate the transactions contemplated by this Agreement." (Barrick Nevada Holding App. 116, Implementation Agreement § 5.16; *accord* Barrick Nevada Holding App. 117, Implementation Agreement § 6.3 (Barrick's representation that performance of the agreement and all transaction documents, including conveyances from Barrick Gold Exploration and Barrick Goldstrike, are "duly authorized by all necessary corporate action on the part of each of the Barrick Parties").)

Barrick even went so far as to create the conveyancing instruments that

it would demand Barrick Goldstrike and any other subsidiary in Nevada to execute. (Barrick Nevada Holding App. 141, Sched. 1.1(DD)(ii) to Implementation Agreement (Mining Deed); *accord id.* at 137 (ranch deed), 145 (water rights deed), 149 (fee property deed); (Ex. 1 to Nevada Gold Mines Mot., BGMI0000708–16 (executed mining deed).) At least as to these transactions, which form part of the basis for Bullion's suit, Barrick Gold is in an agency relationship.

3. Alter Ego Theory[2]

Barrick Gold and Barrick Nevada Holding lean heavily on the facts in *Viega GmbH v. Eighth Judicial District Court*, 130 Nev. 368, 328 P.3d 1152 (2014) and one of the California cases that *Viega* cites, *Sonora Diamond Corp. v. Superior Court*, 99 Cal. Rptr. 2d 824 (Cal. Ct. App. 2000).[3] Neither case, however, had much to say about the sort of alter-ego liability alleged in Bullion's amended complaint. *Viega* did not involve an alter-ego allegation at all. And the *Sonora* court disposed of that claim rather cursorily because "at least one of the two essential elements of the alter ego doctrine [under California law] was not established; there was no evidence of any wrongdoing by either Diamond or Sonora Mining or any evidence of injustice flowing from the recognition of Sonora Mining's separate corporate identity." 99 Cal. Rptr. 2d at 836–37.

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[2] In *Provincial Government of Marinduque v. Placer Dome, Inc.*, the Supreme Court noted that factual disputes occluded the question of whether Barrick was the alter ego of its Nevada subsidiaries, but the Supreme Court affirmed Barrick's dismissal on forum non conveniens grounds. 131 Nev. 296, 303–04, 350 P.3d 392, 397–98 (2015).

[3] Barrick Gold is wrong on the agency analysis, too. "An agency relationship exists where a parent company has 'the right to substantially control its subsidiary's activities.'" *Genx Processors Mauritius Ltd. v. Jackson*, 2:14-CV-01938-APG-PAL, 2018 WL 5777485, at *6 (D. Nev. Nov. 2, 2018) (quoting *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1024–25 (9th Cir. 2017)). And as Bullion alleged, Barrick Exploration as Barrick Goldstrike's sole shareholder had—and exercised—that right. (Am. Compl.¶ 76; ER 1553, Ex. 4.)

While the agency relationship maintains the fiction of corporate separateness, "[i]f an alter-ego relationship exists, then the subsidiary's corporate separateness is disregarded" for all purposes. *NML Capital, Ltd. v. Republic of Argentina,* 2:14-CV-1573-RFB-VCF, 2015 WL 1186548, at *11–14 (D. Nev. Mar. 16, 2015) (discussing *Viega*, 328 P.3d at 1157, 1162). Unity of interest for alter ego can be demonstrated by "joint ownership," an agreement to submit to the parent company's control, and "indistinguishable business ventures"—all signs that the subsidiary is "a mere instrumentality" of the parent. *Id.*

The element of fraud or injustice can take many forms. The personal-jurisdiction cases usually focus on the unfairness of a company taking advantage of a state's protections while escaping the state's jurisdiction. *See, e.g.*, *id.*; *Genx Processors Mauritius Ltd. v. Jackson*, 2:14-CV-01938-APG-PAL, 2018 WL 5777485, at *6 (D. Nev. Nov. 2, 2018). In *Paneno v. Centres for Academic Programmes Abroad Ltd.*, the court held that an exchange-student organization had engaged in "trickery" by "setting up two related corporate entities—one to recruit and enter into contracts with students [in California] and one to provide all necessary accommodations for them [in Europe]" to insulate *both* from a claim of negligence in California. 118 Cal. App. 4th 1447, 1456–57, 13 Cal. Rptr. 3d 759, 765–66 (2004).

4. Barrick Abused the Corporate Form

Barrick Gold's actions are worse. Barrick Gold not only seeks to reap the benefits of having an enormous and profitable venture in Nevada without being subject to jurisdiction there, but Barrick repeatedly manipulated its corporate design in ways that served to endanger Bullion's royalty.

a. BARRICK CANNOT DO INDIRECTLY WHAT IT CANNOT DO DIRECTLY

Bullion's agreement to withdraw from competing in the area of interest in

exchange for a royalty on production did not guarantee success, but it did ensure that a company who seeks to use Bullion's mining properties to expand into the area of interest will have to pay for that privilege. (2d Am. Compl., Ex. 1, 1979 Agreement, ¶ 11.) It was a risk worth taking only because of the strong incentive for an owner of Bullion's properties to link them to the surrounding area of interest. Bullion did not anticipate that a single corporate enterprise would "set[] up . . . related corporate entities"—one (Goldstrike) to bear the burden of Bullion's royalty and the others (including Exploration) to reap the benefits of Bullion's properties and noncompetition by scooping up land in the area of interest—to leave Bullion empty-handed. Barrick Goldstrike could not have done so itself without subjecting itself to the royalty. So Barrick Gold cannot escape liability simply because it has or can create another arm to acquire property in the area of interest.

Yet this is exactly what Barrick Gold and its Nevada subsidiaries have attempted for years.

b. SHARED MANAGEMENT

While Goldstrike is nominally a subsidiary of Barrick Gold Exploration, Inc. and ultimately Barrick Gold Corporation, Barrick treated Goldstrike as its agent and alter ego. Goldstrike and Exploration share the same slate of officers, directors, and management personnel. (2d Am. Compl. ¶ 76.) These officers, directors, and management personnel were all employees of Barrick Gold North America Inc. (BGNA) and had to manage "over a hundred entities," including Exploration and Goldstrike, for Barrick Gold. (*Id.*) Witnesses designated under Rule 30(b)(6) to represent Goldstrike in the federal lawsuit in fact knew little about Goldstrike, its corporate structure, or its organization within "over a hundred entities" of the Barrick Gold family. (*Id.*) Similarly, Rich Haddock, who had previously identified himself as Barrick Gold's general counsel,

revealed his position with Goldstrike only when the question of Goldstrike's citizenship became an issue in federal court. (*Id.*)

c. SHARED ASSETS

Barrick, Exploration, and Goldstrike shared not just the goal of enriching Barrick's shareholders, but they shared assets, including offices, equipment, millsites, employees, vendors, consultants, counsel, trade secrets, know-how, geographic location, intellectual property, research results, and exploration results, and other intellectual and tangible property, all as if they were the same company. (2d Am. Compl. ¶ 77.)

This sharing appears to be even more extensive with the advent of Nevada Gold Mines, including shared facilities (as dictated by the combined Barrick Gold Corp. venture) and equipment. (Ex. 2, Press Release, *Nevada Gold Mines Launched: Best Assets, Best People Will Deliver Best Value*, NEVADA GOLD MINES, July 1, 2019, *available at* https://s24.q4cdn.com/382246808/files/doc_downloads/operations_projects/north_america/documents/Nevada-Gold-Mines-Launched-1-July-2019.pdf (last accessed Aug. 19, 2020).))

d. LACK OF CORPORATE FORMALITIES

In addition, Goldstrike failed to observe corporate formalities—including during the period Bullion filed its suit in federal court—by not holding the annual meeting or other board meetings called for under Goldstrike's governing documents and by not registering to do business in Utah, where Goldstrike asserts that it maintained its corporate headquarters. (Am. Compl. ¶ 76.)

e. NEW INJUSTICE AND UNDERCAPITALIZATION

The latest incarnation of this ruse, the formation of Barrick Nevada Holding LLC, confirms the injustice. Unlike *Viega*, where there was some benign logic to setting up an American subsidiary, here Barrick Gold already has a subsidiary operating in Nevada: Barrick Goldstrike. If Barrick Goldstrike were

truly a separate company, acting at arm's length, it would acquire the surrounding area-of-interest properties just as it had back in 1999. Now, however, while Barrick Goldstrike may still contractually on the hook for Bullion's royalty (and is for past production), Barrick Gold has placed all of the mineral-producing assets—including Barrick Goldstrike's—into the venture. Barrick Goldstrike's balance sheet now just contains one liability, Bullion's royalty, without corresponding mineral assets, even though Barrick knows that Bullion is seeking a substantial judgment for past royalties against Barrick Goldstrike. In contrast, Nevada Gold Mines (and Barrick Nevada Holding LLC's 61.5% stake) has a balance sheet of substantial mineral assets, but has not squarely committed to assume Barrick Goldstrike's royalty obligation to Bullion.[4]

5. This Court Should Alternatively Granted Rule 56(d) Relief

Bullion's allegations are sufficient both on their face and as corroborated by the known documents and other evidence that Bullion has acquired or seen in the previous federal litigation (hinting at the corporate web) and this one (eliminating Barrick Goldstrike's mineral assets).

Nevertheless, if this Court disagrees, Bullion seeks a fair opportunity to substantiate these claims. Barrick's past actions and present transactions point toward serious abuses of the corporate form that harm Bullion as a royalty holder, but Bullion's experts confirm that further discovery is necessary. (*See* Michael Deeba Decl, Ex. 4.)

[4] Somewhat helpful is Nevada Gold Mines' admission that "[i]f an established obligation existed on the date the property was transferred to NGM, such as a royalty, then NGM assumed that obligation." (Nevada Gold Mines Mot. 8:21–22.) But unlike previous agreements, this one did not specifically refer to the 1979 Agreement in an attached schedule, and does not specifically address Bullion's royalty under that agreement. It remains unclear whether Nevada Gold Mines is assuming Goldstrike's obligation to pay Bullion's royalty under the 1979 Agreement.

C. Barrick Confuses the Nerve Center Test with Alter Ego

Barrick Gold tries to switch out the analysis of an alter-ego claim under Nevada law for the analysis of diversity jurisdiction in *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). (Barrick Gold Mot. 18–20.) But the tests are quite different.

For one thing, the test for diversity jurisdiction looks at the time Bullion filed its federal complaint in 2009, while Bullion's new alter-ego complaint in Nevada takes into account intervening developments. So Barrick's assurance that "Barrick Gold has historically had a far less centralized management structure, allowing its subsidiaries to manage its mining interest in a diffused regional structure" (Barrick Gold Opp. 19:13–15) invokes what Barrick Goldstrike itself has characterized as an outdated structure: Beginning in January 2014, Barrick eliminated the "regional structure," meaning that some of the corporate functions performed at the regional level are now performed directly by Barrick Gold. (ECF 297, at 3 n.2, Ex. 5.) If Barrick Gold used to communicate its policies "through regional management" (Barrick Gold Opp. 4:16–17), it now exercises that control directly.

Besides, the federal district court did not dismiss Barrick Goldstrike based on the strength of its corporate formalities. (*See* ECF 302, Judge Du Order at 7, Ex. 6 (noting but disregarding Barrick Goldstrike's failure to register to do business in Utah).) Control by a separately incorporated company is irrelevant for diversity jurisdiction, *Johnson v. SmithKline Beecham Corp.*, 724 F.3d 337, 352 (3d Cir. 2013), but it is a hallmark of alter ego, *LFC Mktg. Group, Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 846–47 (2000). Even as of 2009, Barrick Goldstrike does not dispute its failure to hold board meetings or the annual meeting. (*See* Opp. to MSJ on Savings Statute, at 6 (Haddock 13-14, Ex. 7; Response to RFP 1, Ex. 8.) And it does not dispute the unity of ownership and interest between Barrick Gold and Barrick Goldstrike—right down to pursuing

lands in the same area of interest.

Because the nerve center test looks at the locus of policymaking within a company, respecting corporate separation, it does not matter that Bullion has elected to proceed in this forum for reasons having little to do with the merit of Bullion's Ninth Circuit appeal. Bullion disputed that Barrick Goldstrike's "nerve center" was in Salt Lake, even though several individuals who acted as corporate officers for a slate of companies (including Barrick Goldstrike) lived there. For purposes of Bullion's Ninth Circuit appeal, Bullion assumed that Barrick Gold North America, Inc. (BGNA) (not a party here) was not Barrick's alter ego; the two were separate corporations, with separate nerve centers. "[E]xcept in rare circumstances where the corporate veil is properly disregarded," a nerve center "is the operational center of the corporation in question, *giving proper regard to the corporate identity*—not necessarily the ultimate 'nerve center,' in the sense of the place where the real power resides." *Topp v. CompAir Inc.*, 814 F.2d 830, 835 (1st Cir. 1987). If BGNA *were* Barrick's alter ego, then it would not be so important for BGNA employees to change into their "Barrick officer" outfit before issuing directions—nerve-center activity for BGNA would count as nerve-center activity for Barrick. It is only because Barrick contended that the two entities were separate that it mattered which entity issued the direction.

But even though the federal court did not reach the issue, the inklings of misuse of the corporate form first appeared in Barrick's treatment of Barrick Goldstrike and a slew of regional entities. That Barrick was revealed to have also used these other entities to purchase properties in Bullion's area of interest only confirms the abuse of Barrick's corporate web.

D. <u>Exercising Jurisdiction Is Reasonable</u>

"[W]here a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a *compelling* case

that the presence of some other considerations would render jurisdiction unreasonable." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

Here, Barrick Gold cannot argue that a Nevada forum is unreasonable, especially in a case squarely focused on Barrick Gold's interference in property arrangements in Nevada and Barrick Gold's creation of a Nevada joint venture. Indeed, Barrick Gold's selection of a Nevada forum for the joint venture operating agreement shows that Barrick Gold expected to be haled into Nevada courts. (Barrick Nevada Holding App. 217, Operating Agreement, § 13.1; Barrick Nevada Holding App. 354, Amended Operating Agreement, § 14.1.)

E. Barrick Nevada Holding LLC Is Subject to Jurisdiction

The aptly named Barrick *Nevada* Holding LLC is likewise subject to suit in Nevada, at least for these claims.

1. Barrick Nevada Holding Has Minimum Contacts

As with Barrick Gold, Barrick Nevada Holding exists because of a contested series of transactions, all directed at or centered in Nevada: the formation of a Nevada joint venture that divested Barrick Goldstrike's ownership of properties in the area of interest and assigned its ownership stake to Barrick Nevada Holding. (2d Am. Compl. ¶¶ 32, 83.) Even if Barrick Nevada Holding is not itself a Nevada company, it was created specifically to absorb a Nevada company's ownership interest in Nevada properties, now held by a different Nevada company. Barrick Nevada Holding's coordination with Nevada entities over the transfer of Nevada mineral claims and other real property is precisely the kind of minimum contact that warrants the exercise of personal jurisdiction.

2. Barrick Nevada Holding Is an Agent and Alter Ego

And of course, Bullion alleges that Barrick Nevada Holding was more than just a participant in a coordinated transfer of property and ownership interest. Rather, Barrick Nevada Holding is part of the common enterprise that

Barrick Gold and its other subsidiaries are using to block Bullion's royalty. It is, in the joint-venture scheme, an agent of both Barrick Goldstrike (with Nevada contacts) and Barrick Gold (with Nevada contacts and itself an alter ego of Barrick Goldstrike), as discussed above. It is therefore equally appropriate to exercise jurisdiction over Barrick Nevada Holding as an agent or alter ego of these other Barrick entities.

III.

BULLION HAS TIMELY CLAIMS

Barrick Gold recycles the statute-of-limitations arguments advanced by Barrick Goldstrike both before this Court and the Nevada Supreme Court in a writ petition. (Barrick Gold Mot. 20–21.) They were wrong then, and they are wrong now. Even if Bullion's voluntary dismissal without prejudice in 2009 did not toll the running of the statute of limitations with respect to the claims in that suit, it did not keep Bullion from filing a new complaint based on different, more recent conduct. As Bullion's declaratory relief claims are necessarily prospective and were never adjudicated, they are likewise timely.

A. Bullion Can Recover for the Ongoing Breaches within the Statute of Limitations

1. Repeated, Continuing Breaches of a Periodic Royalty Toll New Limitations Periods

"[W]here contract obligations are payable by installments, the limitations statute begins to run only with respect to each installment when due." *Clayton v. Gardner*, 107 Nev. 468, 470, 813 P.2d 997, 999 (1991). So under Nevada's six-year statute of limitation for most contract claims, NRS 11.190(1), "only those installments that were due more than six years" before the complaint "are barred by the limitations statute." *Id.* at 471, 813 P.2d at 999.

It is "well-established . . . in the context of gas, oil, and mineral contracts"

that such interests "should be construed as divisible contracts, with each underpayment [or nonpayment] giving rise to a separate cause of action." *Lutz v. Chesapeake Appalachia, L.L.C.*, 717 F.3d 459, 466 (6th Cir. 2013). As in *McKellar v. McKellar*, 110 Nev. 200, 871 P.2d 296 (1994), waiting years or even decades to sue does not waive the plaintiff's right to recover the last six years of nonpayments.

2. Barrick Is Continually Breaching its Monthly Royalty Obligation

Here, Bullion's royalty is "due on the first day of each month" or "no later than FORTY-FIVE (45) days after the date payment for production sales is received." (2d Am. Compl., ¶ 44 & Ex. 1, ¶ 4(E).) Barrick Gold becomes newly liable under the agreement, is newly and unjustly enriched, and inflicts new harm on Bullion each month that it withholds the royalty. (2d Am. Compl. ¶¶ 55–60.)

B. Bullion's Claims for Prospective Relief, Including Declaratory Relief, Remain Timely

Bullion's declaratory relief claims are also timely because that kind of relief is prospective, which is not barred even when retrospective damages are. *City of Fernley v. State, Dep't of Taxation*, 132 Nev. 32, 42–44, 366 P.3d 699, 706–07 (2016); *see also McCormick v. Bisbee*, 401 P.3d 1146 n.3 (Nev. 2017) (unpublished disposition) (applying *Fernley* outside of *Fernley*'s separation-of-powers context). That is because a declaratory-relief claim does not have its own statute of limitations that cuts off an otherwise timely claim for damages; rather, "the right to declaratory relief continues until the right to coercive relief, as between the parties, has itself been extinguished." *Commercial Union Ins. Co. v. Porter Hayden Co.*, 698 A.2d 1167, 1192–93 (Md. Ct. Spec. App. 1997) (discussing cases). An early right to declaratory relief does not trigger the statute of limitations on damages claims. *Id.* (citing *W. Cas. & Sur. Co. v. Evans*, 636 P.2d 111, 114 (Ariz. 1981)); *see also Maguire v. Hibernia Sav. & Loan Soc.*, 146 P.2d 673, 681 (Cal. 1944); *Jaffe v. Carroll*, 110 Cal. Rptr. 435, 439 (Cal. Ct.

App. 1973).

Here, because Bullion's claims for Barrick Gold's continuing, periodic breaches are not otherwise barred, Bullion still has viable claims for declaratory and other prospective relief. Bullion's prior request for prospective relief in a complaint that was dismissed without prejudice on jurisdictional grounds does not cut off Bullion's right to seek that relief or Bullion's timely claims for damages now.

C. Bullion's Claims Are Based on New and Previously Unknown Conduct

As discussed above, this case is not the same as the federal lawsuit. Despite a common nexus of the defendants' liability to Bullion under the 1979 Agreement or unjust enrichment, Bullion's second amended complaint is based on facts that were unknown or did not exist during much of the federal litigation. For example, Barrick Gold and Barrick Goldstrike did not notify Bullion of the existence of production by other Barrick entities in the area of interest, a concealment that tolls the statute. *See Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 256, 277 P.3d 458, 464 (2012). Likewise, a declaration of Barrick Gold's or Nevada Gold Mines's future liability depends on the impact of the parties' joint venture agreement, which did not exist during any part of the federal suit.

D. Bullion's Federal Lawsuit Against Barrick Gold Did Not "Accelerate" the Statute of Limitations for All Possible Future Breaches

Even if Barrick Gold were correct that the claims that Bullion asserted against Barrick Gold in the 2009 suit "accrued on the date they were previously filed in the federal action – June 22, 2009" (Barrick Gold Mot. 21:2–3), there is no authority (and Barrick Gold cites none) to suggest that Bullion's *new* claims all accrued on that date. As discussed above, they could not have.

In Barrick Goldstrike's earlier brief and writ petition, it suggested that

Schwartz v. Wasserburger, 117 Nev. 703, 30 P.3d 1114 (2001) stands for the proposition that filing suit on an installment contract accelerates the statute of limitations, such that a later dismissal will bar refiling on not-yet-accrued breaches. According to Barrick Goldstrike, once Bullion filed suit in federal court, that act constituted an election to sue for all possible future breaches of as-yet-undue royalties, accelerating the statute of limitations seven decades, from 2078 to 2009.

Barrick Gold wisely avoids citing *Schwartz*, as it has no application here. First, the plaintiff in *Schwartz*, because of the defendants' anticipatory repudiation, was able to accelerate a right to future, fixed installments to the date of filing. 117 Nev. at 706–07, 30 P.3d at 1116. But Bullion could not accelerate its right to future royalty payments because it depends on an unknowable fact: how much gold and other minerals Barrick will produce each month for the next six decades.[5] Second, Bullion did not terminate the contract, as required for acceleration; Bullion continues to perform its noncompetition covenant. *See Romano v. Rockwell Int'l, Inc.*, 926 P.2d 1114, 1120 (Cal. 1996) (emphasis added). Outside the fixed-installment situation of *Schwartz*, a dismissal without prejudice has no statute-of-limitations consequences. Indeed, to hold a volunatray

[5] *See OK Sales, Inc. v. Canadian Tool & Die, Ltd.*, 08-CV-24-TCK-TLW, 2009 WL 961791, at *8–10 (N.D. Okla. Mar. 31, 2009) (sales commission); *Operators' Oil Co. v. Barbre*, 65 F.2d 857, 860–61 (10th Cir. 1933) (oil royalty). While the plaintiff "is entitled to recover his royalties to date," the defendant's "obligation to pay future royalties remains conditional and dependent upon" future production (or sales), "if any." *Kozak v. Medtronic, Inc.*, CIV.A. H-03-4400, 2006 WL 5207231, at *2 (S.D. Tex. Sept. 28, 2006). In that situation, the most a plaintiff can do is to request declaratory relief or an accounting; the doctrine of anticipatory repudiation cannot apply to accelerate the plaintiff's right to actual damages. *Kozak v. Medtronic, Inc.*, CIV.A. H-03-4400, 2006 WL 5207231, at *2 (S.D. Tex. Sept. 28, 2006); *see also Operators' Oil Co.*, 65 F.2d at 860–61; *accord OK Sales, Inc. v. Canadian Tool & Die, Ltd.*, 08-CV-24-TCK-TLW, 2009 WL 961791, at *10 n.12 (N.D. Okla. Mar. 31, 2009).

dismissal "has a decisive legal effect on starting the statute of limitations period, but zero effect on its tolling"—"locking plaintiff into" an accelerated statute of limitations despite the later dismissal without prejudice—would be "[g]rasping at straws" and "logically incoherent and patently unfair." *See Ramona Inv. Grp. II v. United States* (*Ramona II*), 12-652C, 2014 WL 7129717, at *2–4 (Fed. Cl. Dec. 15, 2014) (quoting *Ramona Inv. Grp. v. United States* (*Ramona I*), 115 Fed. Cl. 704, 707–08 (2014)).

E. Regardless of Barrick Gold's Contractual Liability, It Has Been Continuously and Unjustly Enriched

Equally continuous has been Barrick Gold's unjust enrichment at Bullion's expense. Though Barrick Gold tries to dismiss Bullion as a gadfly, it is undisputed that Bullion owned valuable mining claims and that, without Bullion's total and essentially permanent (99-year) exit from the area of interest, purchasing land and establishing profitable mining operations would have been far more difficult. Barrick Gold itself praises the efficiencies in linking arms with Newmont, noting that "[b]y removing the fences that had previously separated geologically connected assets, mines and projects that clearly belonged together could be combined into larger and more efficient operations, with substantial savings as an immediate benefit." News Release, *Nevada Gold Mines Exceeded All Expectations in First Year, Says Barrick*, BARRICK, July 1, 2020, *available at* https://www.barrick.com/news/news-details/2020/nevada-gold-mines-exceeded-all-expectations-in-first-year-says-barrick/default.aspx (last visited Aug. 19, 2020). "[T]he combination of geographically adjacent operations" (Nevada Gold Mines Mot. 4:14–16) is a tremendous value. Bullion, were it permitted to stake claims in the area of interest, might have presented just such a "fence" between "geologically connected assets." Bullion's promised noncompetition has been continuous, just as has Barrick Gold's unjust enrichment.

F. Barrick Gold's Alter Ego Liability Was Not Clear Before Now

The element of fraud or injustice did not become clear until Barrick Goldstrike announced, on July 11, that it was transferring "all of its interests" in the area of interest "to Nevada Gold Mines, LLC," the joint venture that Barrick had formed with Newmont. (Goldstrike's Supp. Ans. to Interrogs, dated July 11, 2019, *quoted in* Barrick Goldstrike Opp. to Bullion's Motion to Amend, at 8:1–4.)

Abuse of the corporate form is not an accusation that Bullion makes lightly. While Bullion began to become aware of some corporate in late 2017 and early 2018, what Barrick represented to be its unusual corporate structure seemed aimed more at destroying diversity in federal court. To be sure, that was a jurisdictional manipulation, *see Hertz Corp. v. Friend*, 559 U.S. 77, 97 (2010), but Bullion did not see in that the "fraud or injustice" on Bullion's substantive claims to justify a claim of alter ego. When Bullion filed this complaint in 2018, it had learned that "Barrick" owned previously undisclosed properties in the area of interest, but again Bullion could not be certain which Barrick entity owned these properties. If it turned out that Barrick Goldstrike owned all of them, then Bullion could have amended its complaint accordingly.

Instead, in 2019, Barrick upended the chessboard and sent the pieces scattering: It entered a joint venture with Newmont to acquire a massive stake in area-of-interest properties that are subject to Bullion's royalty. Barrick Goldstrike, who already had operations in the area of interest—but who, inconveniently, had contractually assumed the obligation to pay Bullion's royalty on any production in the area of interest (1990 Option Agreement § 7.3(B)(3)(a), BMM 3697, & Ex. F, BMM 3719, Ex. 9)—was passed over. Instead, as the oppositions disclose, Barrick created a new entity, Barrick Nevada Holding LLC, to absorb Barrick's 61.5% stake in the Nevada Gold Mines venture, and handed all of Barrick Goldstrike's and Barrick Exploration's area-of-interest acquisitions to

the joint venture, Nevada Gold Mines. (Barrick Gold App. Ex. L.)

IV.

CONSTRUCTIVE TRUST IS A VALID REMEDY

Although constructive trust is a remedy, not a cause of action, Bullion properly asserts that remedy in an abundance of caution.

A. The *Res* of the Trust Is the Mineral Production

Barrick first tries a magic trick. Barrick is correct that a "liability does not constitute property that may be subject to a constructive trust." *Danning v. Lum's, Inc.*, 86 Nev. 868, 871, 478 P.2d 166, 168 (1970). But it turns things topsy-turvy by arguing that as soon as the plaintiff states that it is *owed* the assets in the constructive trust, those assets turn into liabilities, which—poof!—eliminate the right to a constructive trust. (Barrick Gold Opp. 18:8–12 (citing *Danning v. Lum's, Inc.*, 86 Nev. 868, 871, 478 P.2d 166, 168 (1970)).)

No matter how many spells Barrick incants, the constructive-trust remedy will not disappear. The *res* of the trust here is not Barrick's liability to Bullion. The *res* is the mineral assets themselves. As indicated by the term "retention of royalties" (2d Am. Compl. ¶ 69), Bullion is not referring to a bare liability; rather, Barrick is retaining the mineral assets equal in value to the royalty to which Bullion is entitled. For example, if Barrick mines gold worth $100, $1 of that gold is "Bullion's royalty," but that $1 is still Barrick's asset—a retention of that royalty—subject to a constructive trust.

B. The Remedy Is Appropriate for Alter Ego

Constructive trust is an appropriate remedy to reach the assets that have been spirited away from (or to) an alter ego. *See, e.g.*, *McWilliams Ballard, Inc. v. Level 2 Dev.*, 697 F. Supp. 2d 101, 111 (D.D.C. 2010) (explaining the availability of constructive trust as a remedy for corporate veil-piercing). This is con-

sistent with the close association between alter ego and notions of fraud or unjust enrichment. *See Waldman v. Maini*, 124 Nev. 1121, 1131, 195 P.3d 850, 857 (2008) (noting that the remedy furthers "the effectuation of justice" but does not always require fraud or misconduct).

C. Bullion Reposed its Trust in Barrick, Who Is in a Superior Position

Even if the alter-ego claim did not in itself warrant a constructive trust, Barrick's special relationship with Bullion does. *See Waldman v. Maini*, 124 Nev. 1121, 1131, 195 P.3d 850, 857 (2008). Barrick dismisses its connection to Bullion as a "mere contractual relationship" (Barrick Gold Opp. 18:13–14), but that is not so.

1. Contracting Parties Can Be in a Special Relationship of Confidence

The quintessential relationship of confidence is that of the fiduciary:

> The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, since the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party.

Hoopes v. Hammargren, 102 Nev. 425, 431, 725 P.2d 238, 242 (1986) (quoting *Barbara A. v. John G.*, 193 Cal. Rptr. 422, 432 (Cal. Ct. App. 1983)).

But as a parallel line of Nevada cases points out, even relationship that are not fully fiduciary can still create an expectation of trust and confidence. *See Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 337–38 (1995); *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 635, 855 P.2d 549, 554 (1993); *Villalon v. Bowen*, 70 Nev. 456, 467–68, 273 P.2d 409, 414–15 (1954). In *Mackintosh v. Jack Matthews & Co.*, the bank acted as both the seller and lender, which suggested "a special relationship" between the bank and the buyer giving rise to a duty of disclosure.

2. Bullion, Because of its Reliance on Barrick's Accounting, Is in a Relationship of Confidence

Here, although Barrick shares some aspects of a true fiduciary given its "superior authoritative position" to "exert unique influence" over Bullion, *Hoopes v. Hammargren*, 102 Nev. 425, 431, 432, 725 P.2d 238, 242, 243 (1986), this Court need not go that far. Like the seller-lender relationship in *Mackintosh*, the special relationship here arises from Barrick's acting both as the mine operator producing minerals subject to Bullion's royalty and as the accountant reporting how much Bullion is owed. It is not just that Barrick is in a better position to know; Bullion cannot independently verify any of the production figures from Barrick. Barrick is slicing its cake in secret, and Bullion has to take Barrick's word for it, a circumstance that leaves Bullion vulnerable to exploitation. At least in the context of calculating Bullion's royalty, Barrick is indeed in a special relationship of confidence with Bullion.

CONCLUSION

This Court has jurisdiction over Barrick Gold and Barrick Nevada Holding. And Bullion's claims are both valid and timely. This Court should deny the motions to dismiss.

Dated this 20th day of August, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Abraham G. Smith*

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and E.D.C.R. 8.05, I certify that I caused the foregoing Combined Opposition to be filed via the Court's E-File & Serve System upon the following persons:

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Dated this 20th day of August, 2020.

/s/ Jessie M. Helm
an employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT 1

EXHIBIT 1

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(775) 329-3151
Attorneys for Plaintiff
Bullion Monarch Mining, Inc.

Electronically Filed: 04/28/08

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BULLION MONARCH MINING, INC., a Utah corporation,

Plaintiff,

vs.

NEWMONT USA LIMITED, a Delaware corporation, d/b/a NEWMONT MINING CORPORATION, and DOES I-X, inclusive,

Defendant(s).
_____/

CASE NO.

COMPLAINT
[Jury Trial Demanded]

Plaintiff as its complaint alleges:

1. Bullion Monarch Mining ("Bullion"), is a Utah corporation doing business in the State of Nevada at all times relevant hereto.

2. Newmont USA Limited, a Delaware Corporation, dba Newmont Mining Corporation (herein after "Newmont") is a Delaware Corporation doing business in the State of Nevada at all times relevant hereto.

3. The true names or capacities, whether individual, corporate,

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A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
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associate, or otherwise, of Defendants designated as DOES I through X are unknown to Plaintiff and therefore Plaintiff sues these Defendants by fictitious names. Plaintiff will amend this Complaint to show the true names and capacities of these Defendants when they have been ascertained.

FACTS

4. On or about May 10, 1979, Bullion's predecessor in interest, Bullion Monarch Company, and Newmont's predecessors in interest, Universal Explorations, Ltd. and Universal Gas, Inc., entered into a royalty agreement ("Agreement") whereby Bullion was to receive a royalty based on production from any mining operations within the Subject Property as described in Exhibit A-1 to the Agreement and the "Area of Interest" described in Exhibit A-2 to the Agreement. A true and correct copy of the Agreement is attached hereto and incorporated herein as Exhibit 1. The term of the Agreement is 99 years.

5. The Area of Interest provision applies to all mining interests acquired by the other parties to the Agreement, or their successors in interest, within the Area of Interest whether by "leasing or purchase of private lands and minerals, or unpatented mining claims." All of such acquired mining interests become subject to the terms and conditions of the Agreement. The Area of Interest is located in Eureka and Elko Counties in the State of Nevada.

6. Further, in the event a mining interest from within the Area of Interest was or is used to acquire mining interests outside the Area of Interest, Bullion's royalty interest would also follow to the new property. Upon information and belief, this has occurred.

7. Paragraph 18 of the Agreement provides that the terms of the Agreement are binding upon the successors of the parties to the Agreement.

8. Newmont has recognized that it is obligated to pay royalties pursuant to the Agreement and is currently paying Bullion a royalty on those mining claims designated in Exhibit A-1 to the Agreement. However, when Bullion requested a detailed accounting of the royalties being paid by Newmont in or about August of 2007, Newmont refused to provide detailed accounting for the royalty it is currently paying pursuant to the Agreement, initially claimed it was not governed by the Agreement, and demanded that Bullion employees only contact Newmont through counsel regarding any royalties Newmont may owe. These claims and demands by Newmont violated the Agreement which allows for Bullion to inquire about the royalty owed and requires Newmont to provide detailed accountings of its mining activities so that Bullion may verify the accuracy of the royalty being paid by Newmont.

9. Bullion also inquired about whether Newmont was involved in any mining activities in the Area of Interest in or about August of 2007. Until that time, Newmont had failed to reveal that it was involved in any mining activities in the Area of Interest and had concealed such activities from its "reports" of its mining activities to Bullion. Again, Newmont refused to provide any accounting for mineral production from within the Area of Interest and claimed it was not subject to the Agreement (despite having paid certain minimal royalties pursuant to the Agreement for years). Several weeks later, in September of 2007, Newmont changed its position, provided an entirely different excuse for refusing to pay a

royalty upon its mining activities in the Area of Interest, tacitly admitted that it was subject to the Agreement, but still refused to provide any information regarding its activities in the Area of Interest and refused to pay any royalties based upon Newmont's operations in the Area of Interest. Newmont's failure and refusal to provide accountings of its activities in the Area of Interest has prevented Bullion to from ascertaining its rights and determining the exact timing and amount of royalties Newmont owes Bullion arising from Newmont's activities in the Area of Interest.

10. Bullion and Newmont are citizens of different states. The amount in controversy in this matter exceeds $75,000.00. Further, a substantial part, if not all, of the relevant events in this matter occurred in the State of Nevada and all of the property that gives rise to this action is located in the State of Nevada. Accordingly, jurisdiction and venue of this matter are properly in this Court.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

11. Plaintiff incorporates the allegations contained in paragraphs 1-10 as if set forth verbatim.

12. An actual legal controversy exists between Plaintiff and Defendant as to whether Newmont owes Bullion a royalty and/or compensation for mining activities and production of minerals from property in the Area of Interest.

13. Bullion and Newmont have adverse legal positions with respect to their existing legal controversy and Bullion has a legally protectible interest as to whether it is entitled to a royalty and/or compensation for mining activities and production

from within the Area of Interest.

14. The existing legal controversy between Plaintiff and Defendant is ripe for judicial determination.

15. As a result of the parties' dispute as to whether Bullion is entitled to royalties, Bullion seeks a declaratory judgment from this Court declaring that Bullion is entitled to the royalties from Newmont for production from within the Area of Interest.

SECOND CLAIM FOR RELIEF
(Breach of Contract)

16. Bullion incorporates the allegations contained in paragraphs 1-15 as if set forth verbatim.

17. Newmont is obligated to pay Bullion royalties on mining activities pursuant to the parties' Agreement as described above.

18. Newmont has materially breached the terms of the Agreement.

19. As a direct and proximate result of Newmont's breach, Bullion has suffered general and special damages in excess of $75,000.00.

20. Bullion has also been forced to retain counsel to pursue this action, and has incurred attorney's fees as a result of Newmont's breach.

THIRD CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing)

21. Bullion incorporates the allegations contained in paragraphs 1 through 20 as if set forth verbatim.

22. Nevada law implies into each contract or agreement a covenant of good faith and fair dealing.

23. The Agreement which Bullion has with Newmont includes an implied, if not express, covenant of good faith and fair dealing.

24. The acts and omissions of Newmont, as described above, has deprived Bullion of benefits which Bullion had bargained for with Newmont's predecessors in interest.

25. As a sole, direct and proximate result fo the foregoing, Bullion has been damaged in a sum in excess of $75,000.00, to be more precisely proven at trial.

FOURTH CLAIM FOR RELIEF
(Unjust Enrichment)

26. Bullion incorporates the allegations contained in Paragraphs 1 through 25 as if set forth verbatim.

27. Bullion allowed Newmont and Newmont's predecessors in interest to explore and mine in areas where Bullion had established claims and refrained from further exploration and mining activities in the Area of Interest as described above.

28. Newmont and Newmont's predecessors in interest accepted Bullion's property rights and agreement to refrain from further exploration/mining activities and enjoyed their use.

29. In exchange for relinquishment of such property rights and exploration and mining rights pursuant to the Agreement, Bullion expected to be paid and is entitled to be paid its royalty for production from the Area of Interest.

30. Bullion has not been paid for the amount it has enriched Newmont.

31. Newmont has been unjustly enriched by Bullion.

32. Bullion is entitled to compensation for the amount Newmont has been unjustly enriched.

33. Bullion has also been forced to retain counsel to pursue this action and has incurred attorney fees as a result of Newmont's actions.

FIFTH CLAIM FOR RELIEF
(Accounting)

34. Bullion incorporates the allegations contained in paragraphs 1 through 33 as if set forth verbatim fully herein.

35. Bullion seeks an accounting of all royalties owed to Bullion for mining activities of Newmont in the Area of Interest as described above.

36. Bullion has made a demand upon Newmont to provide accounting records for Defendant's mining activities in the Area of Influence and Defendant has refused same.

37. Bullion seeks an order from this Court directing Defendant to provide an accounting of same.

38. Bullion has been required to engage legal counsel to prosecute this action and is entitled to its costs incurred and reasonable attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Bullion prays for judgment against Newmont, as follows:

1. For declaratory relief declaring Newmont's obligation to pay royalties based upon production from within the Area of Interest as provided by the Agreement;

2. For special and general damages in an amount in excess of seventy-

five thousand dollars ($75,000.00) according to proof at trial;

3. For prejudgment interest;

4. An order directing Newmont to provide an accounting;

5. For reasonable attorney fees and costs of suit incurred herein;

6. A jury trial on all issues so triable; and

7. For such other and further relief as the Court determines to be appropriate under the circumstances.

DATED this 25th day of April, 2008.

ROBISON, BELAUSTEGUI, SHARP & LOW

By _____
Clayton P. Brust, Esq.

Attorneys for Plaintiff
Bullion Monarch Mining, Inc.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Bullion Monarch Mining, Inc.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Clayton P. Brust, Esq., Robison, Belaustegui, Sharp & Low
71 Washington St., Reno, NV 89503; 775.329.3151

DEFENDANTS
Newmont USA Limited dba Newmont Mining Corporation

County of Residence of First Listed Defendant Denver County, Denver
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
Matthew B. Hippler, Esq.
5441 Kietzke Lane, Flr. 2, Reno, NV 89511; 775.327.3000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☒ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 28 USC 1332(a)
Brief description of cause: Claim for unpaid mining royalty

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $ excess of $75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 04/25/2008 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 1/90) Summons in a Civil Action

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BULLION MONARCH MINING, INC., a Utah Corp.

SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER:

NEWMONT USA LIMITED, a Delaware corp.,

TO: (Name and Address of Defendant)

NEWMONT USA LIMITED
c/o CSC Services of Nevada, Inc.
502 East John Street
Carson City, NV 89706

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon Plaintiff's attorney (name and address)

Clayton P. Brust, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

DATE

BY DEPUTY CLERK

AO 440 (Rev. 1/90) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me [1]	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served:

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

☐ Returned unexecuted:

☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

_____
Signature of Server

_____
Address of Server

[1] As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

EXHIBIT 2

EXHIBIT 2

PRESS RELEASE

NEVADA GOLD MINES LAUNCHED: BEST ASSETS, BEST PEOPLE WILL DELIVER BEST VALUE

Elko, Nevada, July 1, 2019 — Barrick Gold Corporation (NYSE:GOLD) (TSX:ABX) and Newmont Goldcorp Corporation (NYSE:NEM) (TSX:NGT) have successfully concluded the transaction establishing Nevada Gold Mines LLC. The new company, owned 61.5% and operated by Barrick, and owned 38.5% by Newmont Goldcorp, was officially launched today.

The new joint venture will rank as the largest global gold producing complex by a wide margin, with three of the world's top 10 Tier One[1] gold assets (Goldstrike/Carlin, Cortez and Turquoise Ridge/Twin Creeks) and potentially another one in the making (Goldrush).

Its assets in North-eastern Nevada comprise 10 underground and 12 open pit mines, two autoclave facilities, two roasting facilities, four oxide mills, a flotation plant and five heap leach facilities. In 2018 these operations produced a total of 4.1 million ounces of gold, approximately double that of the industry's next largest gold mine (Muruntau in Uzbekistan). The company has a strong reserve and resource base with Proven and Probable Reserves of 48.3 million ounces; Measured and Indicated Resources of 27.4 million ounces; and a further 7.5 million ounces of Inferred Resources with still more potential.[2,3,4]

Nevada Gold Mines is targeting production of between 1.8 and 1.9 million ounces at a preliminary estimated cost of sales[5] of $940 to $970 per ounce and AISC[6] of $920 to $950 per ounce for the second half of 2019.

Barrick President and Chief Executive Officer Mark Bristow, who is chairman of the new company, says the establishment of Nevada Gold Mines was designed to combine arguably the industry's best assets and people in order to deliver the best value to stakeholders.

"Its creation was driven by a compelling logic which had long been evident to all but had been elusive for two decades until we finally achieved a breakthrough this year," Bristow said.

"Over the past months we have selected and set Nevada Gold Mines' leadership in place. The company now has one team that shares one vision, and who are more than ready to race out of the starting blocks. We have also identified the very significant synergy opportunities which are immediately available and those which have been targeted for the future."

Gary Goldberg, Newmont Goldcorp's Chief Executive Officer said, "This innovative joint venture represents a unique opportunity to generate additional long-term value for our shareholders, employees, and the communities of northern Nevada. By combining our assets and talent in Nevada, the joint venture will extend safe, profitable and responsible production much further than what each company could have done on its own. We look forward to actively participating in and supporting the JV to deliver a positive step-change in results."

Identified synergies are expected to deliver up to $500 million per year over the first five years from 2020, stepping down over time after that. These will come mainly from integrated mine planning, optimized mining and processing, cost reductions and the combination of the adjacent Turquoise Ridge and Twin Creeks,

which will be operated as a single mine. Second half guidance builds in those synergies that the company believes it should be able to realize within the next six months, representing approximately half of the targeted annual cash flow improvements. With the closing of the JV now complete, the company will look to incorporate further synergies to benefit 2020 and beyond.

The future benefits include longer profitable mine lives, longer-term employment opportunities, longer-term benefit-sharing with local communities and longer-term advantages for Nevada's economy.

Bristow noted that the Nevada Gold Mines management team included executives from both joint venture partners. The Executive Managing Director is Greg Walker, formerly head of operations and technical excellence for Barrick's North American region. Barrick has three board seats and Newmont Goldcorp two, with the board supported by technical, finance and exploration advisory committees on which both companies have equal representation.

Enquiries:

Barrick Investor and Media Relations
Kathy du Plessis
+44 20 7557 7738
Email: barrick@dpapr.com

Website: www.barrick.com

Cautionary Statement on Forward-Looking Information

This press release contains statements which are, or may be deemed to be, "forward-looking statements" (or "forward-looking information"), under applicable securities laws including for the purposes of the US Private Securities Litigation Reform Act of 1995. Forward-looking statements are prospective in nature and are not based on historical facts, but rather on current expectations and projections of the management of Barrick about future events, and are therefore subject to risks and uncertainties which could cause actual results to differ materially from the future results expressed or implied by the forward-looking statements. The forward-looking statements contained in this press release include statements relating to: the expected impact of the creation of the new joint venture, including potential synergies; the potential for Goldrush to become a Tier One gold asset; and other statements other than historical facts.

Although Barrick believes that the expectations reflected in such forward-looking statements are reasonable, Barrick can give no assurance that such expectations will prove to be correct. By their nature, forward-looking statements involve risk and uncertainty because they relate to events and depend on circumstances that will occur in the future. There are a number of factors that could cause actual results and developments to differ materially from those expressed or implied by such forward-looking statements. These factors include: risks relating to Nevada Gold Mines, Barrick and Newmont Goldcorp's respective credit ratings; local and global political and economic conditions; Barrick's economic model; liquidity risks; fluctuations in the spot and forward price of gold, copper, or certain other commodities (such as silver, diesel fuel, natural gas, and electricity); financial services risk; the risks associated with each of Nevada Gold Mines', Barrick's and Newmont Goldcorp's brand, reputation and trust; environmental risks; safety and technology risks; the ability to realize the anticipated benefits of the joint venture (including estimated synergies and financial benefits) or implementing the business plan for the joint venture; legal or regulatory developments and changes; risks associated with working with partners in jointly controlled assets; employee relations including loss of key employees; the outcome of any litigation, arbitration or other dispute proceeding; the impact of any acquisitions or similar transactions; competition and market risks; the impact of foreign exchange rates; pricing pressures; the possibility that future exploration results will not be consistent with expectations; risks that exploration data may be incomplete and considerable additional work may be required to complete further evaluation, including but not limited to drilling, engineering and socioeconomic studies and investment; risk of loss due to acts of war, terrorism, sabotage and civil disturbances; contests over title to properties, particularly title to undeveloped properties, or over access to water, power and other required infrastructure; and business continuity and crisis management. Other unknown or unpredictable factors could cause actual results to differ materially from those in the forward-looking statements. Such forward-looking statements should therefore be construed in the light of such factors.

Neither Barrick, Newmont Goldcorp nor any of their respective directors, officers, employees or advisers, provides any representation, assurance or guarantee that the occurrence of the events expressed or implied in any forward-looking statements in this press release will actually occur. You are cautioned not to place undue reliance on these forward-looking statements. Other than in accordance with their legal or regulatory obligations, neither Barrick nor Newmont Goldcorp is not under any obligation, and both Barrick and Newmont Goldcorp expressly disclaim any intention or obligation, to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Investors should not assume that any lack of update to a previously issued "forward-looking statement" constitutes a reaffirmation of that statement.

Newmont Goldcorp is not affirming or adopting any statements or reports attributed to Barrick in this press release or made by Barrick outside of this press release. For a detailed discussion of risks and other factors related to Newmont Goldcorp, see Newmont Goldcorp's 2018 Annual Report on Form 10-K, filed with the Securities and Exchange Commission (the "SEC") as well as Newmont Goldcorp's other SEC filings, available on the SEC website or www.newmontgoldcorp.com.

Third Party Data

Certain comparisons of Barrick, Newmont Goldcorp and their industry peers are based on data obtained from Wood Mackenzie. Wood Mackenzie is an independent third party research and consultancy firm that provides data for, among others, the metals and mining industry. Wood Mackenzie does not have any affiliation to Barrick or Newmont Goldcorp.

Other than in respect of their own mines, neither Barrick nor Newmont Goldcorp has the ability to verify the data or information obtained from Wood Mackenzie and the non-GAAP financial performance measures used by Wood Mackenzie may not correspond to the non-GAAP financial performance measures calculated by Barrick, Newmont Goldcorp or their respective industry peers. For more information on these non-GAAP financial performance measures see Endnote 1.

Neither Barrick nor Newmont Goldcorp has sought or obtained consent from any third party to be quoted in this press release.

Technical Information

The scientific and technical information contained in this press release in respect of Barrick has been reviewed and approved for release by Steven Yopps, MMSA, Director - Metallurgy, North America and Rodney Quick, MSc, Pr. Sci.Nat, Mineral Resource Management and Evaluation Executive, each a "Qualified Person" as defined in National Instrument 43-101 – *Standards of Disclosure for Mineral Projects*.

Endnotes

1. A Tier One gold asset is a mine with a stated mine life in excess of 10 years with annual production of at least five hundred thousand ounces of gold and total cash cost per ounce within the bottom half of Wood Mackenzie's cost curve tools (excluding state-owned and privately owned mines). Total cash cost per ounce is based on data from Wood Mackenzie as of August 31, 2018, except in respect of Barrick's mines where Barrick relied on its internal data which is more current and reliable. The Wood Mackenzie calculation of total cash cost per ounce may not be identical to the manner in which Barrick calculates comparable measures. Total cash cost per ounce is a non-GAAP financial performance measure with no standardized meaning under IFRS and therefore may not be comparable to similar measures presented by other issuers. Total cash cost per ounce should not be considered by investors as an alternative to cost of sales or to other IFRS measures. Barrick believes that total cash cost per ounce is a useful indicator for investors and management of a mining company's performance as it provides an indication of a company's profitability and efficiency, the trends in cash costs as the company's operations mature, and a benchmark of performance to allow for comparison against other companies.

2. The pro forma reserves and resources figures of Nevada Gold Mines were derived by adding the respective reserves and resources in respect of Nevada operations reported by Barrick in its Q4 2018 Report and Newmont in its press release dated February 21, 2019 reporting its 2018 Reserves and Resources and its annual report on Form 10-K for the fiscal year ended December 31, 2018 in respect of the relevant Nevada properties set out in endnotes 3 and 4. The pro forma reserves and resources are provided for illustrative purposes only. Barrick and Newmont calculate such figures based on different standards and assumptions, and accordingly such figures may not be directly comparable and the pro forma reserves and resources may be subject to adjustments due to such differing standards and assumptions. In particular, Barrick mineral reserves and resources have been prepared according to Canadian Institute of Mining, Metallurgy and Petroleum 2014 Definition Standards for Mineral Resources and Mineral Reserves as incorporated by National Instrument 43-101 – Standards of Disclosure for Mineral Projects, which differ from the requirements of U.S. securities laws. Newmont's reported reserves are prepared in compliance with Industry Guide 7 published by the SEC, however, the SEC does not recognize the terms "resources" and "measured and indicted resources". Newmont has determined that its reported "resources" would be substantively the same as those prepared using Guidelines established by the Society of Mining, Metallurgy and Exploration (SME) and that its reported measured and indicated resources (combined) are equivalent to "Mineralized Material" disclosed in its annual report on Form 10-K.

3. Reserves and resources of Barrick in Nevada are stated on an attributable basis as of December 31, 2018 and include Goldstrike, Cortez, Goldrush, South Arturo (60%) and Turquoise Ridge (75%). Proven reserves of 84.4 million tonnes grading 4.36g/t, representing 11.8 million ounces of gold. Probable reserves of 155.6 million tonnes grading 2.93g/t, representing 14.7 million ounces of gold. Measured resources of 13.5 million tonnes grading 4.22g/t, representing 1.8 million ounces of gold. Indicated resources of 101.6 million tonnes grading 4.34g/t, representing 14.2 million ounces of

gold. Inferred resources of 28.7 million tonnes grading 5.2g/t, representing 4.8 million ounces of gold. Complete mineral reserve and resource data for all Barrick mines and projects referenced in this press release, including tonnes, grades, and ounces, as well as the assumptions on which the mineral reserves for Barrick are reported, are set out in Barrick's Q4 2018 Report issued on February 13, 2019.

4. Reserves and resources of Newmont in Nevada are stated on an attributable basis as of December 31, 2018 and include Carlin, Phoenix, Lone Tree, Twin Creeks (including Newmont's 25% equity in Turquoise Ridge) and Long Canyon. Proven reserves of 46.6 million tonnes grading 3.84g/t, representing 5.8 million ounces of gold. Probable reserves of 378.1 million tonnes grading 1.32g/t, representing 16.0 million ounces of gold. Measured resources of 19.7 million tonnes grading 2.2 g/t, representing 1.4 million ounces of gold. Indicated resources of 244.4 million tonnes grading 1.27g/t, representing 10.0 million ounces of gold. Inferred resources of 45.5 million tonnes grading 1.81g/t, representing 2.7 million ounces of gold. Complete mineral reserve and resource data for all Newmont mines and projects referenced in this press release, including tonnes, grades, and ounces, as well as the assumptions on which the mineral reserves for Newmont are reported, are set out in Newmont's press release dated February 21, 2019 reporting its 2018 Reserves and Resources and its annual report on Form 10-K for the fiscal year ended December 31, 2018.

5. Cost of Sales estimates stated prior to any fair value adjustments relating to the creation of the joint venture and will be updated in due course once these adjustments have been finalized

6. "Total cash costs" per ounce and "All-in sustaining costs" per ounce are non-GAAP financial performance measures. "Total cash costs" per ounce starts with cost of sales applicable to gold production, but excludes the impact of depreciation, the non-controlling interest of cost of sales, and includes by-product credits. "All-in sustaining costs" per ounce begin with "Total cash costs" per ounce and add further costs which reflect the additional costs of operating a mine, primarily sustaining capital expenditures, sustaining leases, general & administrative costs, minesite exploration and evaluation costs, and reclamation cost accretion and amortization. Barrick believes that the use of "total cash costs" per ounce and "all-in sustaining costs" per ounce will assist investors, analysts and other stakeholders in understanding the costs associated with producing gold, understanding the economics of gold mining, assessing our operating performance and also our ability to generate free cash flow from current operations and to generate free cash flow on an overall Company basis. "Total cash costs" per ounce and "All-in sustaining costs" per ounce are intended to provide additional information only and do not have any standardized meaning under IFRS. Although a standardized definition of all-in sustaining costs was published in 2013 by the World Gold Council (a market development organization for the gold industry comprised of and funded by 27 gold mining companies from around the world, including Barrick), it is not a regulatory organization, and other companies may calculate this measure differently. Starting in the first quarter of 2019, Barrick has renamed "cash costs" to "total cash costs" when referring to its gold production. The calculation of total cash costs is identical to Barrick's previous calculation of cash costs with only a change in the naming convention of this non-GAAP measure. These measures should not be considered in isolation or as a substitute for measures prepared in accordance with IFRS. Further details on these non-GAAP measures are provided in the MD&A accompanying Barrick's financial statements filed from time to time on SEDAR at www.sedar.com and on EDGAR at www.sec.gov.

EXHIBIT 3

EXHIBIT 3

BARRICK GOLDSTRIKE MINES INC.

RESOLUTIONS OF THE BOARD OF DIRECTORS

The undersigned, being all the directors of BARRICK GOLDSTRIKE MINES INC., a Colorado corporation (the "Corporation"), hereby unanimously consent in writing to the adoption of the following resolution:

Appointment Of Officer

RESOLVED THAT Faith Teo is hereby appointed Assistant Secretary of the Corporation effective as of April 1, 2009, to hold office at the pleasure of the board.

Confirmation Of Officers

RESOLVED THAT, after giving effect to the above-noted change in officers, the officers of the Corporation effective as of April 1, 2009 are:

Name	*Title*
Gregory A. Lang	President
Blake L. Measom	Chief Financial Officer
Richard D. Ball	Vice President and Controller
James W. Mavor	Vice President and Treasurer
Patrick J. Garver	Vice President
Michael J. Brown	Vice President
Michael T. Feehan	Vice President
Sybil E. Veenman	Secretary
Paul Judd	Tax Director
Faith Teo	Assistant Secretary

DATED the 31st day of March, 2009.

Gregory A. Lang

Blake L. Measom

Jamie C. Sokalsky

Peter J. Kinver

Stephen J. Hull

BARRICK GOLDSTRIKE MINES INC.

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Michael T. Feehan	Vice President
Sybil E. Veenman	Secretary
Paul Judd	Tax Director
Faith Teo	Assistant Secretary

DATED the 31st day of March, 2009.

Gregory A. Lang

Blake L. Measom

Jamie C. Sokalsky

Peter J. Kinver

Stephen J. Hull

BARRICK GOLDSTRIKE MINES INC.

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Michael J. Brown	Vice President
Michael T. Feehan	Vice President
Sybil E. Veenman	Secretary
Paul Judd	Tax Director
Faith Teo	Assistant Secretary

DATED the 31st day of March, 2009.

Gregory A. Lang

Blake L. Measom

Jamie C. Sokalsky

Peter J. Kinver

Stephen J. Hull

BARRICK GOLDSTRIKE MINES INC.

ANNUAL RESOLUTION OF THE SOLE SHAREHOLDER

The undersigned, being the sole shareholder of BARRICK GOLDSTRIKE MINES INC. (the "Corporation"), a Colorado corporation, hereby consents in writing to the adoption of the following resolution:

Election Of Directors

RESOLVED that the following persons are hereby elected as the directors of the Corporation until the next annual meeting of the shareholders of the Corporation or until they otherwise cease to hold office as directors of the Corporation:

Peter J. Kinver
Jamie C. Sokalsky
Gregory A. Lang
Blake L. Measom
Rich D. Haddock

Ratification

RESOLVED that all actions taken by the directors of the Corporation on behalf of and in the name of the Corporation, as shown by its records in the Minute Book of the Corporation, and each and all of the acts of the officers of the Corporation in carrying out and promoting the purpose, objects and interestsof the Corporation since the last shareholders' meeting are hereby approved, ratified and made the acts and lawful deeds of the Corporation.

DATED the 25th day of May , 2009.

BARRICK GOLD EXPLORATION INC.

By: _____
Faith Teo
Assistant Secretary

EXHIBIT 4

EXHIBIT 4

DECL

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JHenriod@LRRC.com
ASmith@LRRC.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

BULLION MONARCH MINING, INC., Plaintiff, *vs.* BARRICK GOLDSTRIKE MINES, INC.; BARRICK GOLD EXPLORATION INC.; ABX FINANCECO INC.; BARRICK GOLD CORPORATION; and DOES 1 through 20, Defendants.	Case No. A-18-785913-B Dep't No. 11 **DECLARATION OF MICHAEL E. DEEBA**

I, Michael E, Deeba, hereby declare under penalty of perjury that the following is true and correct:

1. I am a partner in the Global Forensics & Litigation Services practice of Baker Tilly US, LLP ("Baker Tilly"), a national public accounting and con-

sulting firm that specializes in, among other things, auditing, tax, and consulting services including, forensic accounting and investigatory services, valuation, and providing litigation support to various constituents in connection with complex disputes. I submit this declaration (the "Declaration") on behalf of Baker Tilly in support of Bullion's oppositions to the defendants' motions to dismiss filed in the above-captioned matter. Except as otherwise noted,[1] I have personal knowledge of the matters set forth herein. I make this declaration based upon my own personal knowledge, and I am competent to testify.

2. Plaintiff's counsel has informed me that this dispute concerns allegations that Defendants owe Plaintiff royalty payments pursuant to a May 10, 1979 royalty agreement ("1979 Agreement"). Counsel has asked Baker Tilly to assume that Defendant Barrick Goldstrike Mines, Inc. ("Goldstrike") is legally bound by the terms of the 1979 Agreement and that the 1979 Agreement requires payment of royalties form mining properties acquired in the area of interest set forth in the 1979 Agreement. Counsel has also requested Baker Tilly to conduct forensic accounting and examination of the relationships of the other Defendants to help establish that the other Defendants are also liable for royalties from production from the area of interest.

3. I have been retained by Robison, Sharp, Sullivan & Burst Law, P.C. ("RSS&B") on behalf of its client, Bullion Monarch Mining, Inc. ("Bullion"), as an expert in this matter.

4. I have over 30 years of experience in the areas of fiduciary duties and corporate governance issues, related party transactions, forensic accounting and investigatory services, fraudulent transfers, fraud investigations, commercial

[1] Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at Baker Tilly and are based on information provided to me by them.

damages modeling, restructuring, bankruptcy, insolvency, and valuation disputes. I have also served in court-appointed capacities such as a court-appointed expert witness, federal and state court receiver, Chapter 7 and Chapter 11 bankruptcy trustee, and bankruptcy examiner, and for various corporate entities in these types of disputes. I have provided financial advisory services and testimony for various constituents in federal and state courts, and have served as an arbitrator. I am a Certified Public Accountant ("CPA"), a Certified Insolvency & Restructuring Advisor ("CIRA"), a Certified Turnaround Professional ("CTP"), and Certified in Financial Forensics ("CFF").

5. Baker Tilly and I have also have substantial experience providing financial and accounting services in connection with analyzing and opining on multi-faceted corporate financial and operational structures, conducting asset tracing, assessing avoidance actions, and investigating claims regarding alter ego, disregard of corporate separateness, de-facto mergers and various substantive consolidation issues.

6. In July 2020, RSS&B, on behalf of Bullion, retained Baker Tilly to provide advisory and testimonial services in connection with the above captioned matter. Baker Tilly's primary scope of retention is to evaluate, analyze, and summarize the relevant financial factors necessary to assess the alter-ego claims asserted by the Plaintiffs ("Bullion Alter-Ego Claim") for the purpose of assisting the trier of fact. This assignment includes interpreting detailed records to conduct a forensic analysis and investigation into the interrelationships and changes in the corporate structure of the Defendants and assess the transfers of certain assets and/or mineral rights alleged to have had an impact on obligations set forth in the 1979 Agreement.

7. Since Baker Tilly's retention, it has begun to analyze the primary issues and facts outlined pursuant to the pleadings filed in this matter and has

also begun to analyze and study prior discovery and publically available information. However, as of the date of this Declaration, Baker Tilly has not completed its review and may require additional documents and information in connection to matters within its scope of retention.

8. Counsel has informed me that several of the Defendants have moved to dismiss the claims asserted by Bullion and that discovery has not been completed. Baker Tilly needs a reasonable amount of time for analysis of prior discovery and time and access to financial and non-financial information that is relevant to formulate and render opinions in this matter.

9. Baker Tilly also needs time and the opportunity to examine discovery materials in connection with the 2019 Joint Venture Agreement between Barrick Gold Corporation and Newmont Mining Corporation, including formation of other entities during this process.

10. Based on my experience, conducting an examination of alter-ego is a fact-intensive inquiry requiring information that may not be readily available in the public domain, but which is required to conduct a robust analysis in the consideration of the proper factors to aid the trier of fact. This includes, but is not limited to, additional financial and non-financial information and supporting documents regarding: (a) corporate formalities; (b) internal documents relating to mergers/divestitures, joint ventures, sharing arrangements, asset and liability transfers; (c) related-party transactions and intercompany relations and debts; and (d) indicia of inadequate capital and inability to operate as a stand-alone entity.

11. Supporting documents are needed to determine the Defendants complex relationships, corporate structures, financial dependence with and for other related entities, corporate identity, lack of financial and corporate separateness and corporate changes that would require investigation and analysis

to determine if such interrelationships exist between Goldstrike and the other Defendants in this case.

12. Additional supporting documents are needed to examine and analyze any domination and control by any parent, subsidiary or other related entities.

13. Additional discovery and analysis is necessary with regard to the facts, key factors and methods of the flow of funds, and accounting of ownership interest between Goldstrike and the other Defendants related as it relates to the Area of Interest.

14. In particular, a review of the public filings reveals that since the 1979 Agreement, there have been no less than 10 mergers, acquisitions, divestitures, asset exchanges or general corporate reorganizations involving the Goldstrike entities and mining properties and/or Area of Interest outlined in the 1979 Agreement that would be the subject of further review and discovery needed for an review or investigation. The evaluation of various seemingly complex agreements outlining joint ventures, shared responsibility, asset exchanges, mergers, and acquisitions would most likely require other non-public financial information to determine connections, control and financial interrelationships between the Defendants.

15. In addition, without additional discovery, if the Court should determine that Goldstrike or any related party is an obligor to the 1979 Agreement, the highly complex structure of the Defendants' corporate enterprise may hinder the determination of whether Goldstrike has the financial wherewithal to satisfy a judgment, or whether it relies on its parent entity or other affiliates to maintain adequate capital.

16. For Baker Tilly to prepare and issue a report to assist the trier of fact in understanding the financial fact pattern, relationships between the parties, and other circumstances relating to this dispute, additional time for analysis and discovery may be necessary.

Executed this 20th day of August, 2020.

MICHAEL E. DEEBA

EXHIBIT 5

EXHIBIT 5

PARSONS BEHLE & LATIMER

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Telephone: (775) 323-1601
Facsimile: (775) 348-7250

Francis M. Wikstrom (Utah Bar No. 3462; admitted *pro hac vice*)
Michael P. Petrogeorge (Utah Bar No. 8870; admitted *pro hac vice*)
Brandon J. Mark (Utah Bar No. 10439; admitted *pro hac vice*)
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201 South Main Street, Suite 1800
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Facsimile: (801) 536-6111
Email: ecf@parsonsbehle.com

Attorneys for Barrick Goldstrike Mines Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

vs.

BARRICK GOLDSTRIKE MINES INC.,

Defendant.

Case No. 03:09-cv-612- MMD-WGC
(Sub File of 3:08-cv-227- MMD-WGC)

BARRICK GOLDSTRIKE MINES INC.'S REPLY IN SUPPORT OF RENEWED MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION

INTRODUCTION

Defendant Barrick Goldstrike Mines Inc. ("Goldstrike") filed its Renewed Motion to Dismiss for Lack of Subject Matter Jurisdiction [Doc. 281] (the "Renewed Motion") setting forth specific facts establishing that Goldstrike's "nerve center" was in Salt Lake in 2009, that Goldstrike was thus a citizen of Utah when plaintiff Bullion Monarch Mining, Inc. ("Bullion") filed suit, and that this Court therefore lacks diversity jurisdiction. Bullion does not refute Goldstrike's facts and comes forward with no competent evidence to support its claim that Goldstrike was a citizen of Nevada for jurisdictional purposes.

Bullion argues that Goldstrike's "nerve center" was in Nevada because its day-to-day operations were centered there. This argument seeks to revive tests that were expressly rejected in *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). The unrefuted evidence establishes Salt Lake as the "nerve center" under *Hertz*'s properly applied test. Next, Bullion urges this Court to ignore executive level decision making in Salt Lake because the officers and executives were technically employed by Barrick Gold of North America ("BGNA"), rather than Goldstrike. BGNA's executives also served as Goldstrike's officers, however, and BGNA's purpose was to control, direct and coordinate the activities of Goldstrike. Bullion cites no law preventing this type of corporate management structure, and courts recognize that the officers of one company may work for and be the officers of another company. *See Central West Virginia Co. v. Mountain St. Carbon, LLC*, 636 F.3d 101, 107 (4th Cir. 2011). Finally, Bullion claims that if Goldstrike's "nerve center" was not Nevada it was Toronto, the headquarters of its ultimate parent, Barrick Gold Corporation ("BGC").[1] Toronto had little involvement in the management of Goldstrike, and delegated the control, direction and coordination of Goldstrike's activities to its executive officers in Salt Lake. Bullion cites no authority preventing such delegation.

Bullion has the burden of persuasion in establishing jurisdiction. *See Hertz,* 559 U.S. at 96. This burden must be met with specific facts, supported by competent evidence, "under the same

[1] Bullion also argues that Goldstrike's headquarters could not have been in Utah because it failed to register there, and that justice requires the Renewed Motion to be denied. These arguments fail. *See infra* Argument, Sections IV & V.

evidentiary standard that governs in the summary judgment context." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). Negative inferences do not suffice. *Burge v. Sunrise Med. (US) LLC*, No. 13–cv–02215–PAB–MEH, 2013 WL 6467994, at *3 (D. Colo. Dec. 9, 2013). Bullion fails to meet its burden, and this Court should therefore dismiss this case.

ARGUMENT

I. Nevada was not the location of Goldstrike's "nerve center" under *Hertz.*

Bullion argues that Goldstrike was a citizen of Nevada because it had a General Manager and a large number of employees who conducted daily activities including mining, processing, contracting, procurement, compliance, etc. in the state.[2] (Opp. at 5-10). This argument seeks to revive the "locus of operation" or the "center of corporate activities" test, both of which were rejected in *Hertz.* 559 U.S. at 92-93; *Harris v. Rand,* 682 F.3d 846, 851 (9th Cir. 2012).[3] It is undisputed that none of Goldstrike's senior corporate officers were located in Nevada. The high-level corporate officers exercising ongoing, executive level decision making, including President Greg Lang ("Lang"), Vice President Mike Feehan ("Feehan"), and CFO Blake Measom ("Measom") were located in Salt Lake. A majority of Goldstrike's Board of Directors also resided in Salt Lake. These facts are dispositive in establishing Salt Lake as Goldstrike's "nerve center".

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[2] Bullion cites two newspaper articles from 2015 and 2016 and to a Nevada Secretary of State filing from 2018, suggesting that Goldstrike's "nerve center" is now located in Nevada, arguing that Goldstrike has "made express what had previously been implicit." (Opp. at 16). The cited documents are irrelevant because they do not identify the officers and directors of Goldstrike in 2009, or discuss how Goldstrike was directed, controlled or coordinated at that time. Bullion fails to recognize that the organizational structure described in the articles is substantially different than that which existed in 2009. Prior to January 2014, Barrick operated under a regional structure with Goldstrike's corporate headquarters in Salt Lake. (*See* Second Supp. Decl. of Rich Haddock in Support of the Renewed Motion at ¶ 5.) In December 2013, Barrick announced that the regional structure was being eliminated. (*Id.*) Certain Goldstrike corporate functions previously performed by the Salt Lake office were shifted from Utah to the Goldstrike mine site, while others were shifted from Salt Lake to Toronto, (*Id.*) There is no evidence to support the suggestion that Goldstrike's "nerve center" was in Nevada prior to 2014. Indeed, the evidence establishes that Goldstrike's "nerve center" was in Salt Lake in 2009, and remained in Salt Lake until January 2014.

[3] *See also Stellar Health Sys., Inc. v. Advanced Home Health, Inc.*, 2:10–CV–2009 JCM (PAL), 2011 WL 868407, at *2 (D. Nev. Mar. 10, 2011) ("[A] corporation is not deemed a citizen of each and every state in which it conducts business or is otherwise susceptible to personal jurisdiction.")

A. This Court cannot ignore the location and identity of Goldstrike's actual officers.

Bullion attempts to overcome the dispositive facts by arguing that John Mansanti ("Mansanti") and Tony Astorga ("Astorga") were "de facto" officers of Goldstrike in 2009. (Opp. at 3-7.). Bullion cites no authority allowing this Court to overlook the actual officers of the company.[4] The law cited by Bullion relates to principals of agency, holding that a corporation is bound by the acts of its agents *vis-à-vis* third parties. (Opp. at 4.) These principles have no application here. *Cf. Finley v. Farmers Ins. Co. Inc.*, Nos. CIV-11-0513-HE, *et al.*, 2011 WL 3439371, at *2 (W.D. Okla. 2011) ("In *Hertz* the Supreme Court expressly rejected the argument Plaintiffs advanced here—that the jurisdictional determination is based on the public's view of the company's principal place of business."). A corporation does not have its "nerve center" in Nevada where there are no "high-level officers directing the corporation from Nevada." *Corral v. Homeeq Serv. Corp.*, No. 2:10–cv–00465–GMN–RJJ, 2010 WL 3927660, at *4 (D. Nev. Oct. 6, 2010).

B. Mansanti and Astorga were not "de facto" officers of Goldstrike.

Even if the law allowed this Court to ignore the location of Goldstrike's actual officers, the evidence does not support Bullion's claims that Mansanti and Astorga were "de facto" officers.

i. Mansanti was the General Manager at the mine site, not an officer of Goldstrike.

In 2009, Mansanti was the General Manager at the Goldstrike mine site. (Deposition of John Mansanti ("Mansanti Dep") at 6:2-4, 1 Reply Appx.[5] 002.) He oversaw the daily operations of the

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[4] Contrary to Bullion's claim, *Soto v. New Braunfels Reg. Rehab. Hosp., Inc.* did not find that the designated officers did not actually act as officers, or find lower level employees to be the "de facto" officers of the company. (Opp. at 4.) It found that the hospital officers located at the hospital, rather than the officers located in the headquarters of its parent company were the officers actively controlling, directing, and coordinating the activities of the hospital. *Soto*, 2016 WL 8856916 at *7. As in *Soto*, the Goldstrike officers located in Salt Lake, rather than the officers located in the headquarters of its parent, BGC, were the officers actively controlling, directing, and coordinating the activities of Goldstrike. Likewise, *Collins v. Virela Tech Servs., Inc.*, No. C 12–613 CW, 2012 WL 4466551, at *6-8 (N.D. Cal. Sept. 26, 2012), does not allow a court to overlook the designated officers of a company. Rather, it requires the court to weigh the acts of all the geographically dispersed officers to determine where the center of control, direction and coordination actually is. Here, while Goldstrike had officers located in both Salt Lake and Toronto, the center of control, direction and coordination was Salt Lake.

[5] "Reply Appx." refers to the appendix of exhibits Goldstrike submits with this reply. Goldstrike refers to the appendix of exhibits Bullion submitted with its opposition as "Bullion Opp. Appx."

mine under the direction of Feehan in Salt Lake. (Mansanti Dep. at 14:21-15:1, 1 Reply Appx. 004-005; *see also* Supp. Decl. of Rich Haddock in Support of Renewed Motion [Doc. 281-1] ("Haddock Decl.") at ¶ 15; BAR-J0002161, 1 Reply Appx. 22.) Mansanti had "weekly telephone calls" or meetings with Feehan in which he would "report progress relative to the prior week" and update him on issues such as "safety performance, environmental performance, production". (Mansanti Dep. at 15:24-18:3, 1 Reply Appx. 005-008.) Mansanti's direct reports were "approved by Goldstrike's management in Salt Lake City." (Haddock Decl. at ¶ 15.) The budget drafted by Mansanti and his team was presented to Salt Lake for approval and it "was a guarantee" they would have to "go back and rework the budget based on [Salt Lake's] questions or input." (Mansanti Dep. at 22:9-25:22, 1 Reply Appx. 009-012.) Salt Lake had direct involvement in, among other things, setting unit cost targets and developing life-of-mine plans. (*Id*. at 60:2-24, 1 Reply Appx. 019; Haddock Decl. at ¶¶ 11(a) & (e).). Mansanti and his team had to report budget variances to Salt Lake monthly. (Mansanti Dep. at 27:9-25,1 Reply Appx. 013.)

Salaries at the mine site were "coordinated through Salt Lake, especially senior hires." (Mansanti Dep. at 29:8-16, 1 Reply Appx. 014.) So too were annual wage adjustments, bonuses, and employee benefits such as health insurance and pensions. (*Id.* at 29:8-16 & 30:20-23, 1 Reply Appx. 014-015.) Mansanti could approve contracts, but only up to his authority level that was "set in Salt Lake." (*Id.* at 62:4-8, 1 Reply Appx. 020; *see also* Merriam Dep. at 55:18-56:2, 1 Reply Appx. 027-028.) Mansanti was the "highest ranking" employee in terms of on-site operations, but Salt Lake "was responsible for [ ] overseeing Goldstrike" and Lang, its President, was the highest ranking executive. (Mansanti Dep. at 62:9-15, 1 Reply Appx. 020.) When asked "the total percentage of [his] job that was impacted by Salt Lake", Mansanti responded "all of it." (*Id.* 70:11-14, 1 Reply Appx. 021.).

ii. Astorga was a contracts supervisor, not an officer of Goldstrike.

Astorga was a "contract supervisor" and part of an administrative supply-chain team that "reported underneath the direction" of Gordon Merriam ("Merriam"), "the supply chain manager [ ] in Salt Lake City." (Astorga Dep. at 13:22-14:3 & 16:8-17, 1 Reply Appx. 032-033, 035.)

Astorga's job was to support contracting policies, facilitate the contract process, and support mine site project managers. (*Id.* at 25:4-10, 1 Reply Appx. 036.) He had no authority to "sign or approve contracts on behalf of [Goldstrike]" and used forms originating in Salt Lake that he could not deviate from. (*Id.* at 118:3-119:9, 1 Reply Appx. 039-040.). Any variations to the contracting process were made in consultation with Salt Lake. (*Id.* at 123:16-124:3, 1 Reply Appx. 042-043.) Astorga and all other administrative personnel at the Shared Business Center[6] reported to Salt Lake; all "executive direction" came from that office. (*Id.* at 14:25-15:23 & 29:17-18, 1 Reply Appx. 033-034, 037.) Astorga communicated with management in Salt Lake "several times throughout the day". (*Id.* at 33:2-24, 1 Reply Appx. 038.).[7]

B. The officers and executives in Salt Lake were not mere figureheads.

The testimony of Mansanti and Astorga, cited above, refutes Bullion's claim that the officers and executives in Salt Lake were mere figureheads. So too does the sworn declaration of Rich Haddock ("Haddock") and the deposition testimony of every witness deposed during jurisdictional discovery. (Haddock Decl. at ¶¶ 5, 8, 10, 11, 13-16; Deposition of Blake Measom ("Measom Dep.") at 16:5-12, 17:13-23 & 45:8-46:3,[8] 1 Reply Appx. 070-071, 077-078; Bolland

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[6] The Shared Business Center provided administrative services to Goldstrike and the other Barrick entities in the North America region in the areas of finance/accounting, contracting, human resources, and IT. (Astorga Dep. at 14:25-15:23, 1 Reply Appx. 033-034.) Each of these administrative functions were directed, controlled and coordinated by the executives in Salt Lake. (*Id.*)

[7] Bullion suggests there is no evidence of Astorga's email communications with Salt Lake regarding contract matters. (Opp. at 7-8.) In fact, there is. (*See, .e.g.,* BAR-J0025016; BAR-J0025019; BAR-J0025263; BAR-J0038014; BAR-J0025861; BAR-J0028066; BAR-J0028761; BAR-J0021837; BAR-J0005771; BAR-J0034079, 1 Reply Appx. 44-65.)

[8] As Goldstrike's CFO, Measom communicated with the employees at Goldstrike in Nevada "at a minimum of monthly" but "probably three to four times per month, actually, and weekly in a lot of cases". He "visited the site occasionally" to "make sure [he] understood what was going on in the operations, to visit the people there . . . to talk to the people who were actually doing the work there and – and make sure that in [his] role when [he] was asked to make or help support decisions relative to the operations at Goldstrike, that [he] had information to do that". Salt Lake was "directly" involved in setting the budget for Goldstrike, "setting the targets" and working through "iterations of that until we got the – the budget that we felt was our best foot forward in terms of what we want to accomplish".

Dep. at 15:18-17:8, 58:12-21 & 59:17-21,[9] 1 Reply Appx. 087-091; Merriam Dep. at 36:13-20, 54:9-21 & 58:22-59:14,[10] 1 Reply Appx. 024, 026, 029-030.) Every witness identified Salt Lake as the corporate headquarters of Goldstrike in 2009. (Measom Dep. at 44:8-11, 1 Reply Appx. 076; Merriam Dep. at 51: 12-15, 1 Reply Appx. 025; Haddock Dep. at 24:20-25:2, 1 Reply Appx. 082-083; Bolland Dep. at 59:7-10, 1 Appx. 091; Astorga Dep. at 15:6-12, 1 Reply Appx. 034; Haddock Decl. at ¶ 6.)[11] It does not matter that there are minimal emails evidencing communications between those in Salt Lake and those in Nevada. (Opp. at 12). Goldstrike explained that such emails could not be produced because they had been automatically deleted under Goldstrike's email destruction policy, applied before the jurisdictional issues arose.[12] Each witness testified to consistent communication between Salt Lake and Nevada, not only by email but in-person and via telephone.[13]

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[9] As Director of Technical Services, Bolland had "oversight and responsibility over the Barrick Goldstrike Mines entity; he visited the mine site "at least once a quarter" to "bring a subject matter expert in to support the operation and look at various initiatives to improve the operation". He was in frequent communication with Mansanti and the technical leads in the mining and processing areas, communicating either "by phone or email at least four times a month". Goldstrike employees in Nevada interacted with the executives in Salt Lake "almost daily".

[10] As Manager of Contracts and Procurement, Merriam had all of the "oversight and authority" with respect to "contracting and procurement functions relating to [Goldstrike]". He had "responsibility for developing or making adjustments to" the contracting processes for Goldstrike, and would have been directly involved in approving any "changes to be made to those processes". He spent about 25 percent of his time at the mine sites in the region, including Goldstrike. Regarding supply chain functions, "the buck stopped [with him] in Salt Lake".

[11] Bullion suggests that Goldstrike seeks to "manipulate the jurisdictional analysis" (Opp. at 10), but there is no evidence for this claim. Three of its 30(b)(6) witnesses—Measom, Bolland, and Merriam no longer work for any Barrick entity but corroborate the testimony of the other witnesses that Salt Lake was Goldstrike's corporate headquarters.

[12] *See* Resp. to Jurisdictional Document Request No. 4, 2 Bullion Opp. Appx. 333. Because the emails were deleted before the jurisdictional issues arose and there is no evidence that Goldstrike acted to intentionally destroy evidence, no adverse inference should be imposed. *See Leon v. IDX Sys. Corp.*, 464 F.3d 951, 959 (9th Cir. 2006) ("The loss or destruction of evidence qualifies as willful spoliation if the party has some notice that the documents were potentially relevant to the litigation before they were lost." (internal quotations and citations omitted)().

[13] Other documents also demonstrate Salt Lake's control, direction and coordination of Goldstrike's activities. For a representative example, *see* 2 Reply Appx. 94-304 (BAR-J0002151; BAR-J0002167; BAR-J0003153; BAR-J0014605; BAR-J0014637; BAR-J0014673; BAR-J0014815; BAR-J0014818; BAR-J0014623; BAR-J0017392; BAR-J0040690; BAR-J0002243).

D. The activities Bullion seeks to rely on were operational and administrative and do not evidence control, direction, or coordination of Goldstrike's activities from Nevada.

Bullion contends that "[t]he vast majority of requests for proposal came from Nevada." (Op. at 8.) But the process for how those requests were submitted, processed, approved and handled was established and overseen by Merriam, in Salt Lake. (Merriam Dep. at 36:13-20 & 54:9-21, 1 Reply Appx. 024, 026.) The key is that approval occurred in Salt Lake.

Bullion claims that "[s]trategic decisions about how to run the mine were made at the mine site, not in a regional office in Salt Lake." (Opp. at 8.) But the mine had operational discretion only within the parameters of the budget approved by Salt Lake. (Mansanti Dep. at 12:5-14 & 56:20-57:16, 1 Reply Appx. 003, 017; *see also* Haddock Decl. at ¶¶ 8, 13.) "Management in Salt Lake City set production and processing projections and targets for Goldstrike's mine," "technical decisions regarding Goldstrike's mine plans and production, processing, geology, and maintenance were reviewed and revised by management in Salt Lake City," and Feehan "coordinated mine operation issues from that office." (Haddock Decl. at ¶ 11(a), (d), and (e).)

Bullion argues that "[e]quipment inventories, maintenance, and security functions were directed and coordinated from Nevada." (Opp. at 8.) However, Bill Ferdinand in Salt Lake was the Director of Environmental, Health and Safety in 2009 with ultimate responsibility and authority over safety. (*See* Mansanti Dep. at 38:3-10, 1 Reply Appx. 016; *see also* Answer to Jurisdictional Interrogatory No. 2, 1 Bullion Opp. Appx. 000023-28.)[14] Management in Salt Lake also "performed evaluations of equipment inventories and made decisions regarding the allocation of equipment" and "established and communicated security policies and objectives." (Haddock Decl. at ¶¶ 11(j) & (m).)

Bullion claims Nevada state tax and environmental authorities "dealt with Elko, not Salt Lake." (Opp. at 8.) This claim rests on routine filings and communications made by administrative

[14] As noted, Mansanti was required to report to Feehan on operational issues, including safety, on a weekly basis. (Mansanti Dep. at 17:16-18:3, 1 Reply Appx. 007-008.)

and operational personnel.[15] Tax policy was directed by Paul Judd, Goldstrike's Tax Director in Salt Lake, and "Goldstrike's management in Salt Lake City decided environmental policies, including environmental targets and goals for Goldstrike's environmental management system." (*See* Haddock Decl. at ¶¶ 11(c) & (l)). Goldstrike's listing the physical address of the mine, rather than its Salt Lake headquarters on certain correspondence and filings, is of no consequence. *See Hertz*, 559 U.S. at 97 ("[W]e reject . .. that the mere filing of a form like the [SEC's] Form 10K listing a corporation's 'principal executive offices' would, without more, be sufficient proof to establish a corporation's 'nerve center.'"). In sum, the evidence establishes that the officers and executives in Salt Lake controlled, directed, and coordinated Goldstrike's activities.

II. It is irrelevant that the officers and corporate executives controlling, directing and coordinating the activities of Goldstrike from Salt Lake were employed by BGNA.

Bullion argues that BGNA's "nerve center" cannot serve as Goldstrike's "nerve center." (Opp. at 10-11). Bullion relies on *Johnson v. SmithKline Beecham Corp.*, 724 F.3d 337 (3rd Cir. 2013), which is neither controlling nor persuasive. *Johnson* addressed whether the acts of a subsidiary LLC could be relied upon in determining the corporate "nerve center" of its member. 724 F.3d at 347. The Third Circuit held that the acts of the LLC could not be relied upon because the citizenship of an LLC must be determined based on the citizenship of each of its members, and it would turn the analysis on its head to determine the citizenship of the member by the acts of the LLC. *Id.* at 349-351. Here, there is no LLC; Goldstrike and BGNA are both corporations.

BGNA's purpose was to provide executive level management to Goldstrike and other Barrick entities in the North America region. (Haddock Decl. at ¶ 5.)[16] It had no independent

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[15] *See* 1 Bullion Opp. Appx. 73-85 (correspondence with U.S. Dept. of Interior regarding Betze pit expansion project); 2 Bullion Opp. Appx. 267-269 (Net Proceeds of Mineral Tax Statement of Gross Yield and Claimed Net Proceeds return); 2 Bullion Opp. Appx. 270-71 (letter to Nevada Division of Environmental Protection regarding Stack Test Protocols at mine site).

[16] *See also* Measom Dep. at 10:22-11:14 & 11:24-12:11, 1 Reply Appx. 067-069 ("BGNA was a management company . . . given direction to manage the North America business unit which comprised all of the mine sites, closure properties and other legal entities that were within that North America region" and with "the responsibility for management of all of those properties under that umbrella"; Salt Lake was in charge of "virtually everything.").

operations, ran no mines, generated no revenue, and its costs were allocated to Goldstrike and the other entities it oversaw. (Measom Dep. at 11:18-21, 43:6-44:3 & 46:13-24, 1 Reply Appx. 068, 075-076, 078.) The officers and executives at BGNA had the authority to act as officers and executives of Goldstrike in controlling, directing and coordinating its business. (Bolland Dep. at 61:8-18, 1 Reply Appx. 093.) Bullion cites no authority requiring the acts of a corporate management entity to be disregarded, and "nothing prevents [one company] from maintaining the same principal place of business as [its affiliate] if that location is truly the subsidiary's nerve center." *Pegasus Indus., Inc. v. Martinrea Heavy Stampings, Inc.*, 3:16-cv-00024-GFVT, 2016 WL 3043143, at * 3 (E.D. Ken. May 27, 2016). The fact that Goldstrike's officers "were not dedicated to Goldstrike" and had a "series of overlapping executive roles" is also no consequence.[17] (Opp. at 9.) The law does not preclude the officers, directors and executives of one entity from serving as the officers, directors and executives of an affiliated entity.[18]

Finally, Bullion urges this Court to disregard the make-up of Goldstrike's Board because it did not meet in 2009. Goldstrike's bylaws, however, specifically authorized the Board to act by

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[17] Bullion claims that "Goldstrike's 30(b)(6) designees fumbled the question about Goldstrike's relationship to [BGC], and where BGNA fit within Barrick's corporate structure." (Opp. at 14.) This assertion is unfounded and immaterial. Bullion's 30(b)(6) notice did not seek a designee on the ownership of Goldstrike or BGNA, or their place in Barrick's overall corporate structure. (*See* Bullion's Notice of Video Taped Deposition of Barrick Goldstrike Mines, Inc., 2 Reply Appx. 305-308.) Like many large organizations, Barrick's organizational chart is quite complex. Goldstrike's 30(b)(6) witnesses, three of whom have not been employed with Barrick for years, cannot be reasonably expected to recall such details. Haddock, the only 30(b)(6) designee still employed by a Barrick company, in fact testified that Goldstrike was owned by Barrick Gold Exploration, Inc. as part of the ABX Financeco family of companies, and that BGNA was owned by another Barrick entity and became part of the organization through the Mercur Mine acquisition. (Haddock Dep. at 11:13-12:24, 1 Reply Appx. 080-081.) Haddock specifically testified that he would need to refer to the organizational chart (which had already been produced to Bullion) to provide further detail. (*Id.*) Bullion chose not to provide that chart or offer it as an exhibit to the deposition.

[18] *See Central West Virginia Co.*, 636 F.3d at 107 ("[T]he fact that [the officers of one company] may also be engaged in affiliated companies' businesses is also of no import. Moreover, we refuse any invitation to examine, for example, how much time [the company's] officers devote to directing [the company] versus affiliate companies' businesses. Doing so would subvert the Supreme Court's guiding principle in *Hertz*—establishing a simple jurisdictional rule to avoid resource-intensive litigation.").

resolution. (2 Bullion Opp. Appx. 000297-306) There is likewise no merit to Bullion's claim that the resolutions were of no consequence. (Opp. at 2, 9-10.) One resolution appointed the company's officers. (BAR-J0002223-24, 2 Bullion Opp. Appx. 291-292.) Another authorized Goldstrike to open bank accounts and designated the signers. (BAR-J0002225-26, 2 Bullion Opp. Appx. 293-294.) A third established Goldstrike's fiscal year. (BAR-J0002227-28, 2 Bullion Opp. Appx. 295-296.) Each resolution constituted activities of control, direction and coordination from Salt Lake in 2009.[19]

III. Toronto was not the "nerve center" of Goldstrike in 2009.

Faced with irrefutable evidence that Goldstrike's "nerve center" was not in Nevada, Bullion attempts to bypass Salt Lake, asserting Toronto as the headquarters of Goldstrike. Bullion offers no competent evidence to support this claim. Bullion cites a May 2009 resolution whereby Goldstrike's sole shareholder appointed Goldstrike's Board, arguing that it was signed by Faith Teo, Goldstrike's Assistant Secretary in Toronto.[20] (BAR-J0002222, 1 Bullion Opp. Appx. 47.) But the fact is she signed in her capacity as an officer of the shareholder, not as an officer of Goldstrike. (*Id.*)[21] Bullion notes further that BGC set global goals and targets for the enterprise, promulgated global supply chain and procurement policies to maximize efficiencies and cost savings, and received reports from Goldstrike relating to its budget. (Opp. at 3, 13-14). These

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[19] Bullion complains that the resolutions do not indicate "where—if anywhere—those resolutions took place." (Opp. at 9.) The only reasonable inference is that the resolutions were signed by the directors in their usual place of residence, and that the majority of the votes needed to pass the resolution were therefore cast in Salt Lake.

[20] There were five officers located in Toronto, and five in Salt Lake. But the officers in Salt Lake were the senior executive officers who were actively involved in controlling, directing, and coordinating Goldstrike's operations. *See supra* Argument, Section I. Bullion comes forward with no evidence establishing that the officers in Toronto were so engaged. *See Soto*, 2016 WL 8856916 at *7 (fact that some of the hospital's officers were employed by parent company was irrelevant because "they were not the hospital's officers who actually directed and controlled New Braunfels Regional during the relevant period of time").

[21] Bullion cites language in the resolution ratifying the acts of the officers and directors as evidence that Teo controlled, directed and coordinated the activities of Goldstrike from Canada. (Opp. at 9, 13.) Ratification of an act is not the same as taking an act. The ratified acts were undertaken by the directors and officers of Goldstrike, largely from Salt Lake.

commonly exercised acts of a global parent managing its global portfolio do not render the parent the "nerve center" of its subsidiaries, especially where the executives in Salt Lake controlled, directed and coordinated how those policies were applied and implemented at Goldstrike. (Astorga Dep. at 119:10-120:4, 1 Reply Appx. 040-041.)

The "nerve center" of a subsidiary must be assessed separately, based on the location of its own officers and directors, and analyzing where those officers and directors exerted overall direction, control and coordination of the subsidiary's activities. *Hoschar v. Appalachian Pwr. Co.*, 739 F.3d 163, 173 n. 4 (2014). The fact that an ultimate parent may exert some control, even "high level control" over its wholly owned subsidiary, does not render the headquarters of the corporate parent the "nerve center" for purposes of diversity jurisdiction. *Salzano-Pascuzzi v. Lucas Insertco Pharm. Printing Co. of P.R.*, 135 F. Supp. 2d 277, 280-81 (D. Puerto Rico 2001) (applying First Circuit "nerve center" test pre-*Hertz*); *see also Danjaq, S.A. v. Pathe Commc'ns Corp.*, 979 F.2d 772, 775 (9th Cir. 1992); *Johnson*, 724 F.3d at 351. The evidence establishes that Toronto's role with respect to Goldstrike was that of a parent monitoring its investment. (Measom Dep. at 22:13-23:19 & 23:20-24:6, 1 Reply Appx. 072-074.) Goldstrike's parent did not itself direct, control or coordinate Goldstrike's activities; it delegated such duties to the officers and executives in Salt Lake. (*See* Measom Dep. at 22:13-15, 1 Reply Appx. 072; Bolland Dep. at 13:20-14:5 & 60:10-19, 1 Reply Appx. 085-086, 092.; *see also supra* notes 4, 8-10, 16, 20.)

IV. Goldstrike's lack of registration with the Utah Secretary of State is of no consequence.

That Goldstrike did not register to do business in Utah is of no consequences. *See Thunder Properties, Inc. v. Wood*, 3:14–cv–00068–RCJ–WGC, 2017 WL 777183, at *2 (D. Nev. Feb. 28, 2017) (fact that company did not register or pay franchise taxes in California not dispositive in "nerve center" analysis). Acts taken to control, direct, and coordinate Goldstrike's activities from Salt Lake were valid without registration. *See* Utah Code. Ann. § 16-10a-1502(5).[22]

[22] Bullion cites *In re West Coast Interventional Pain Med., Inc.*, 435 B.R. 569 (N.D. Ind. 2010), for the proposition that "[a] corporation's failure to apply for authorization to do business in a state is at least some evidence that the corporation has not established its nerve center in that state." (Opp. at 15). *West Coast Interventional* applied a California statute governing suspended corporations,

V. Principles of "justice" and "equity" have no place in the jurisdictional analysis.

Bullion claims that the only "just" result is denial of the Renewed Motion. (Opp. at 16). But principles of "justice" and "equity" have no place in the analysis.[23] *See, e.g. Herman Family Revocable Tr.t v. Teddy Bear*, 254 F.3d 802, 807 (9th Cir. 2001)) ("[Q]uestions of time, cost, and efficiency do not undergird jurisdiction. Nor is jurisdiction a question of equity"). "[A] court lacking jurisdiction to hear a case may not reach the merits even if acting 'in the interest of justice." *id.* (internal quotations omitted).

CONCLUSION

For the reasons set forth above and in the Renewed Motion, Bullion has not met its burden of persuasion in establishing Goldstrike as a citizen of Nevada (or Toronto) rather than a citizen of Utah in 2009. Indeed, the competent evidence establishes that Goldstrike's "nerve center" was in Salt Lake during this time. Because Bullion and Goldstrike were both citizens of Utah when this case was filed, there is no diversity jurisdiction and this Court should dismiss the case.

Dated: May 25, 2018.

PARSONS BEHLE & LATIMER

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finding that "suspension under California law appears to significantly impair an entity's ability to conduct business." 435 B.R. at 576. Utah law does not similarly impair the ability of an unregistered company to conduct business in the state.

[23] It is irrelevant that Goldstrike did not file its Renewed Motion until "seven years after the *Hertz* decision." (Opp. at 16.) The parties and the court have an independent and ongoing obligation to determine whether subject matter jurisdiction exists. *Mashiri v. Dept. of Educ.*, 724 F.3d 1028, 1031 (9th Cir. 2013). "The objection that a federal court lacks subject-matter jurisdiction . . . may be raised by a party, or by a court on its own initiative, at any stage of the litigation, even after trial and the entry of judgment." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 504 (2006).

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of May 2018, a true and correct copy of the foregoing **REPLY IN SUPPORT OF BARRICK GOLDSTRIKE MINES INC.'S RENEWED MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION**, was served on the following electronically via the ECF system:

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EXHIBIT 6

EXHIBIT 6

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

BULLION MONARCH MINING, INC.,

Plaintiff,

v.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant.

Case No. 3:09-cv-00612-MMD-WGC

ORDER

I. SUMMARY

Plaintiff Bullion Monarch Mining, Inc. sued Defendant Barrick Goldstrike Mines, Inc. in an attempt to recover royalties on the proceeds of a gold mine. (ECF No. 2.) Some eight years later, Defendant has moved to dismiss for lack of subject matter jurisdiction (the "Motion"), specifically arguing the parties were not diverse at the time this case was split from a related case.[1] (ECF No. 281.) Because the Court agrees with Defendant that its nerve center was located in Salt Lake City, Utah, in June 2009, the Court will grant Defendant's Motion. The Court will also grant Plaintiff's related motions to seal.[2] (ECF Nos. 283, 284, 292.)

[1]The Court also reviewed Plaintiff's response (ECF No. 285), and Defendant's reply (ECF No. 297), along with the corresponding appendices and exhibits.

[2]While there is a "strong presumption" in favor of access, and a party seeking to seal judicial materials must identify "compelling reasons" that outweigh the "public interest in understanding the public process," *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178–1180 (9th Cir. 2006), there may be compelling reasons to seal "business information that might harm a litigant's competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). Here, compelling reasons exist. Specifically, Plaintiff has moved to selectively seal references to, and exhibits describing, Defendant's confidential business information. (ECF Nos. 283, 284, 292.) This information may harm Defendant's competitive standing if revealed. Thus, Plaintiff's motions are granted. Plaintiff will file redacted versions of the applicable documents within fifteen days.

II. BACKGROUND

The Court refers to its prior order in which it described the facts of this case. (ECF No. 224 at 2-5.) It will not restate those facts here because they are largely irrelevant to Defendant's Motion. As relevant here, Defendant represents that it moved to dismiss for lack of jurisdiction after Defendant became aware of the potential jurisdictional defect in this case, while preparing a proposed joint pretrial order that called for a jurisdictional statement. (ECF No. 281 at 3.) On Plaintiff's motion, Judge Cobb ordered jurisdictional discovery and denied Defendant's motion to dismiss without prejudice. (ECF Nos. 263, 267.) Upon the completion of jurisdictional discovery, and in line with a briefing schedule set by Judge Cobb, Defendant filed its a renewed motion to dismiss for lack of jurisdiction. (ECF No. 281.)

Plaintiff and Defendant agree on many of the threshold questions applicable here. Plaintiff initially filed suit against a third party, and added Defendant as a party to that suit in the spring of 2009. (ECF No. 281 at 4.) Per the parties' agreement, the case between Plaintiff and Defendant was severed from the original case in October 2009, and has been proceeding as a separate case ever since. (*Id.*) Plaintiff alleged, and continues to allege, this Court has diversity jurisdiction over the parties. (*Id.*) The parties agree that the relevant point in time for the jurisdictional inquiry is June 2009, when Plaintiff filed its amended complaint in the original case adding Defendant as a party. (ECF Nos. 281 at 11-12, 285 at 6 n.1.)

The question before the Court is whether Defendant's principal place of business was in Nevada (or Toronto) or Utah in June 2009. The parties agree that Plaintiff is a citizen of Utah, which is both its state of incorporation and the location of its principal place of business. (ECF No. 281 at 4, 5; *see also* ECF No. 2 at 1.) The parties also agree that Defendant is a Colorado corporation. (ECF No. 281 at 4; *see also* ECF No. 2 at 2.) The amount in controversy requirement is satisfied and not in dispute. But the parties disagree as to Defendant's principal place of business in June 2009. If, as Defendant argues, its principal place of business at the time was in Utah, the parties are

not diverse, and this Court has no jurisdiction over this case. (ECF No. 281 at 3-4.) But if, as Plaintiff argues, Defendant's principal place of business in June 2009 was in either Nevada or Toronto, Canada, the parties are diverse, and this Court may continue to exercise diversity jurisdiction over this case. (ECF No. 285 at 1-2.)

III. LEGAL STANDARD

Rule 12(b)(1) of the Federal Rules of Civil Procedure allows defendants to seek dismissal of a claim or action for a lack of subject matter jurisdiction. Although the defendant is the moving party in a motion to dismiss brought under Rule 12(b)(1), the plaintiff is the party invoking the court's jurisdiction. As a result, the plaintiff bears the burden of proving that the case is properly in federal court. *See McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). Plaintiff's burden is subject to a preponderance of the evidence standard. *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

Federal courts are courts of limited jurisdiction. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears. *See Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted). "Because subject matter jurisdiction goes to the power of the court to hear a case, it is a threshold issue and may be raised at any time and by any party." *Mallard Auto. Grp., Ltd. v. United States*, 343 F. Supp. 2d 949, 952 (D. Nev. 2004) (citing Fed. R. Civ. P. 12(b)(1)).

Here, Defendant brings a factual attack on the Court's alleged diversity jurisdiction. In a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction. *See Safe Air for Everyone v. Myer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Once a moving party has converted a motion to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction. *See*

Savage v. Glendale Union High School, 343 F.3d 1036, 1039 n. 2 (citing *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989)); *see also Trentacosta v Front. Pac. Aircraft Indus.*, 813 F.2d 1553, 1559 (9th Cir. 1987) (stating that on a factually attacked 12(b)(1) motion to dismiss, the nonmoving party's burden is that of Rule 56(e)).

IV. DISCUSSION

For the reasons explained below, the Court finds that Plaintiff has not met its burden to establish the Court's subject matter jurisdiction over this case. In contrast, the Court is persuaded by Defendant's argument—supported by the evidence before the Court—that its principal place of business was Salt Lake City, Utah in June 2009. Thus, the Court must dismiss Plaintiff's claims against Defendant without prejudice.

The parties and the Court agree that *Hertz Corp. v. Friend*, 559 U.S. 77 (2010), governs the Court's analysis here. In *Hertz*, the Supreme Court clarified that a corporation's principal place of business, for diversity jurisdiction purposes, is its "nerve center." *Id.* at 92-93. A corporation can have only one nerve center—it is a single place within a single state. *Id.* at 93. A corporation's nerve center is "the place where a corporation's officers direct, control, and coordinate the corporation's activities." *Id.* at 92-93. "And in practice it should normally be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the "nerve center," and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion)." *Id.* at 93. The party asserting federal jurisdiction—here, Plaintiff—must present "competent proof" to substantiate its jurisdictional allegations. *See id.* at 96-97.

Defendant argues that its nerve center was located in Salt Lake City, Utah in June 2009. (ECF No. 281.) Plaintiff counters that Defendant's nerve center was located either in Nevada or Toronto, Canada in June 2009. (ECF No. 285.) As mentioned, the Court agrees with Defendant.

Defendant proffered unrebutted evidence that the majority of its corporate officers and executives lived and worked out of offices leased by Defendant's corporate parent in Salt Lake City in 2009. The Court finds this evidence persuasive in finding that Defendant's nerve center was in Salt Lake City at the time. First, five out of ten of Defendant's officers—including its President and CEO Greg Lang ("Lang"), Vice President Mike Feehan, and CFO Blake Meason—lived and worked out of Salt Lake City at the time. (ECF Nos. 281 at 13, 281-7 at 8-9, 297 at 2.) Second, four out of six of the members of Defendant's board of directors lived and worked in Salt Lake City at the time. (ECF No. 281-7 at 6.) Third, eight out of ten of Lang's direct reports lived and worked in Salt Lake City at the time. (*Id.* at 9-10.) Fourth, all of Defendant's witnesses deposed during jurisdictional discovery—including some of Defendant's corporate officers—offered unrebutted testimony that Defendant's corporate headquarters were in Salt Lake City at the time.[3] (ECF No. 297 at 7.)

Plaintiff responds with the creative but ultimately unpersuasive argument that the Court should ignore the location of Defendant's corporate officers and instead look at the location of Defendant's *de facto* executives. (ECF No. 285 at 5-8.) Defendant's main business is the operation of a gold mine outside of Elko, Nevada. Thus, Plaintiff argues the Court should primarily look at that mine's general manager's location and find that his location—in Nevada—was Defendant's nerve center. (*Id.*) The mine's general manger oversaw nine direct reports who were also based in Nevada, and was ultimately responsible for the 1600 employees and 400-500 independent contractors that worked in and around the mine. (ECF Nos. 285 at 2, 6-7, 281-7 at 10-12, 15.) The mine's general manager also, understandably, ran the mine from Nevada—he made decisions about

[3]Defendant did not properly authenticate the six deposition transcripts it attached as exhibits to its Motion. (ECF Nos. 281-1, 281-2, 281-3, 281-4, 281-5, 281-6.) Nonetheless, the Court will consider them because Plaintiff attached properly authenticated versions of the same transcripts to its response (ECF Nos. 289-7, 286-1, 289-3, 286-8, 286-10, 286-9), both parties cite to them, and neither party contests the authenticity of the transcripts. *See Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 776 (9th Cir. 2002).

how to operate the mine, issued Requests for Proposals to subcontractors, conducted equipment inventories, held meetings, hired and fired people, and served as a point of contact for state and local officials. (ECF No. 285 at 5-8.)

But the mine's general manager at the time testified at his deposition that he reported to executives in Salt Lake City. (ECF No. 297 at 4-5.) He had to give weekly reports to executives in Salt Lake City on the mine's progress, they had to approve the budgets he presented, and they also had to approve higher-level hires the general manager wanted to make. (*Id.* at 5.) Executives in Salt Lake City also set human resources policies, and mine-related policies such as production targets and life-of-mine plans. (*Id.*) Thus, the mine's general manger is better characterized as part of Defendant's nervous system than as its sole nerve center.[4]

Further, Plaintiff's *de facto* executive argument conflicts with the Court's reading of *Hertz*. The *Hertz* Court provided a hypothetical intended to clarify the application of the nerve center test this Court finds analogous to these facts. "For example, if the bulk of a company's business activities visible to the public take place in New Jersey, while its top officers direct those activities just across the river in New York, the 'principal place of business' is New York." *Hertz*, 559 U.S. at 96. Here, Utah is New York, while Nevada is New Jersey. While it does appear that the bulk of Defendant's business activities were in Nevada, Defendant's top officers were directing those activities just across the state border in Utah. Thus, Defendant's nerve center was in Salt Lake City. *See id.*; *see also Dawson v. Richmond Am. Homes of Nevada, Inc.*, Case No. 2:12-cv-01563-MMD, 2013 WL 1405338, at *2 (D. Nev. Apr. 5, 2013) (finding that nerve center was located where

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[4]Plaintiff also argues that a contracts administrator named Tony Astorga was a *de facto* corporate officer relevant to this analysis, but the Court disagrees. (ECF No. 285 at 6-8.) Instead, the Court agrees with Defendant that Mr. Astorga was part of an administrative supply chain team that reported into executives in Salt Lake City. (ECF No 297 at 5-6.) Indeed, the entire shared services center where Mr. Astorga worked, consisting of various administrative personnel and located in Elko, Nevada, appears to have reported into Salt Lake City. (*Id.*) And while Mr. Astorga negotiated contracts on Defendant's behalf, he used forms provided by Salt Lake City and was confined both in terms of his signing authority and his discretion in negotiating contract terms. (*Id.*).

the majority of Defendant's corporate officers worked and set direction even though Defendant's president managed day-to-day operations from a different state); *Corral v. Homeeq Servicing Corp.*, Case No. 2:10-cv-00465, 2010 WL 3927660, at *3-4 (D. Nev. Oct. 6, 2010) ("Absent such high-level officers directing the corporation from Nevada, Defendant cannot be deemed to have its principal place of business here.").

The Court is also unpersuaded by several of Plaintiff's subsidiary arguments that Defendant's nerve center was located in Nevada in June 2009. Plaintiff argues that Defendant's nerve center could not have been in Utah because it did not register to do business in Utah in 2009, or any other year. (ECF No. 285 at 2, 14-15.) But this lack of registration in Utah is not determinative here. *See Thunder Properties, Inc. v. Wood*, Case No. 3:14-cv-00068-RCJ-WGC, 2017 WL 777183, at *2 (D. Nev. Feb. 28, 2017); *Pound for Pound Promotions, Inc. v. Golden Boy Promotions, Inc.*, Case No. 2:16-cv-01872-GMN-PAL, 2017 WL 1157853, at *2 (D. Nev. Mar. 28, 2017). Plaintiff also argues that Defendant's nerve center was in Nevada because Defendant listed its office and/or mine addresses on various tax documents, filings with Nevada state agencies, and contracts. (ECF No. 285 at 5.) But the stated location of a business on contracts and required filings does not dictate the location of that business' nerve center. *See Hertz*, 559 U.S. at 97.

In addition, Plaintiff argues that the Court should not consider Defendant's corporate officers in Salt Lake City because they were employed by Defendant's corporate parent, and held similar executive roles with a number of other subsidiaries owned by Defendant's ultimate corporate parent. (ECF No. 285.) But corporate officers can hold executive roles at multiple related subsidiaries without changing the result of this jurisdictional inquiry. *See Cent. W. Virginia Energy Co. v. Mountain State Carbon, LLC*, 636 F.3d 101, 106-7 (4th Cir. 2011). And given the evidence presented by Defendant tending to show that its Salt Lake City-based executives oversaw Defendant's operations in Nevada, and the undisputed evidence that the Salt Lake City-based executives were formally listed as Defendant's corporate officers, the Court declines to

exclude consideration of them in this jurisdictional analysis. (ECF Nos. 281 at 14-15, 281-7 at 8-9, 281-8, 297 at 2, 4, 6-7.)

Finally, Plaintiff argues in the alternative that Defendant's nerve center was Toronto, Canada—the headquarters of Defendant's ultimate corporate parent. (ECF No. 285 at 12-14.) However, Defendant's unrebutted evidence tends to show that executives in Salt Lake City—not Toronto—directed and controlled Defendant's activities. (ECF Nos. 281-2 at 10-12, 281-3 at 4-5, 281-6 at 10-11.) Plaintiff also contends that a 2009 shareholder's resolution lists a Canadian address and was signed by a Canadian member of Defendant's board of directors, which show that Defendant was controlled by a nerve center in Toronto. (ECF No. 285 at 9.) However, again, the address written on an official form is not necessarily relevant to this analysis. *See Hertz*, 559 U.S. at 97. Further, while it is true that some members of Defendant's board were located in Toronto, the majority were located in Salt Lake City. (ECF No. 281-7 at 6.) Thus, given the evidence before the Court, Toronto was not Defendant's nerve center in June 2009.

In sum, the Court agrees with Defendant that its principal place of business in June 2009 was Salt Lake City, Utah, which renders it a citizen of Utah for purposes of diversity jurisdiction. Because Plaintiff was also a citizen of Utah at the time, the parties are not diverse.

V. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of Defendant's Motion.

It is therefore ordered that Defendant's motion to dismiss (ECF No. 281) is granted. Plaintiff's claims are dismissed without prejudice.

It is further ordered that Plaintiff's motions to seal (ECF Nos. 283, 284, 292) are granted. Plaintiff will file redacted versions of the applicable documents, as Plaintiff stated in the motions to seal, within fifteen days from the date of the entry of this order.

The Clerk of the Court is directed to enter judgment in accordance with this order and close this case.

DATED THIS 1st day of November 2018.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE