

# NEWMONT MINING CORP /DE/

## FORM S-3ASR

(Automatic shelf registration statement of securities of well-known seasoned issuers)

Filed 12/15/11

Address	6363 SOUTH FIDDLERS GREEN CIRCLE GREENWOOD VILLAGE, CO 80111
Telephone	303-863-7414
CIK	0001164727
Symbol	NEM
SIC Code	1040 - Gold And Silver Ores
Industry	Gold & Silver
Sector	Basic Materials
Fiscal Year	12/31

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**NEWMONT MINING CORPORATION**  
( Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**6363 South Fiddlers Green Circle  
Greenwood Village, Colorado 80111  
(303) 863-7414**  
(Address of principal executive offices)

**84-1611629**  
(I.R.S. Employer Identification No.)

**Stephen P. Gottesfeld**  
**Vice President, General Counsel and Secretary**  
**Newmont Mining Corporation**  
**6363 South Fiddlers Green Circle**  
**Greenwood Village, Colorado 80111**  
**(303) 863-7414**  
(Name, address and telephone number,  
including area code, of agent for service)

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**Approximate date of commencement of proposed sale to the public:** From time to time after this registration statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

#### CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$1.60 per share	4,915,685 <sup>(1)</sup>	\$65.00 <sup>(2)</sup>	\$319,519,525 <sup>(2)</sup>	\$36,616.94

(1) Represents the number of shares of common stock, par value \$1.60 per share (the “Common Stock”), of Newmont Mining Corporation (“Newmont”) that may be issued from time to time upon the redemption, retraction or exchange of an equivalent number of the exchangeable shares of Newmont Mining Corporation of Canada Limited, a wholly owned subsidiary of Newmont formerly known as Newmont NE Holdings Limited (“New NMCCCL”), or upon the liquidation, dissolution or winding up of New NMCCCL. This amount also includes an indeterminate number of additional shares of Common Stock that may be issued pursuant to Rule 416 under the Securities Act to prevent dilution resulting from stock splits, stock dividends, recapitalizations or similar transactions.

(2) Pursuant to Rule 457(c) and 457(f) under the Securities Act, estimated solely for the purpose of calculating the registration fee on the basis of the average of the high and low sales prices for the Common Stock on the New York Stock Exchange on December 12, 2011, which was \$65.00.

4,915,685 Shares



This prospectus relates to shares of our common stock, par value \$1.60 per share, that we may issue from time to time upon the redemption, retraction or exchange of an equivalent number of the exchangeable shares of Newmont Mining Corporation of Canada Limited, our wholly owned subsidiary formerly known as Newmont NE Holdings Limited that we refer to as New NMCCCL in this prospectus, or upon the liquidation, dissolution or winding up of New NMCCCL.

The exchangeable shares will be issued in connection with the reorganization of certain of our subsidiaries in a plan of arrangement to shareholders of Newmont Canada FN Holdings Limited, our wholly owned subsidiary formerly known as Newmont Mining Corporation of Canada Limited, or Old NMCCCL, who make a valid election to receive exchangeable shares of New NMCCCL in lieu of receiving shares of our common stock. Each exchangeable share may be exchanged at the option of the holder for one share of our common stock. In addition, under certain circumstances, New NMCCCL can redeem the exchangeable shares in exchange for shares of our common stock on a one-for-one basis.

Because the shares of our common stock offered by this prospectus will be issued only in exchange for or upon redemption of the exchangeable shares, we will not receive any cash proceeds from this offering. We are paying all expenses of registration incurred in connection with this offering.

Our common stock is listed on the New York Stock Exchange under the symbol "NEM." The last reported sale price of our common stock on the New York Stock Exchange on December 13, 2011 was \$63.15 per share.

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**Investing in our securities involves risks. You should carefully read and evaluate the risks described under "Risk Factors" beginning on page 2 of this prospectus as well as the risk factors and other information contained in our filings with the Securities and Exchange Commission and incorporated by reference into this prospectus.**

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

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The date of this prospectus is December 14, 2011

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**You should rely only on the information contained in or incorporated by reference in this prospectus. We have not authorized any other person to provide you with information that is different. If anyone provides you with different or inconsistent information, you should not rely on it. We are offering to sell, and seeking offers to buy, these shares of our common stock only in jurisdictions where such offers and sales are permitted. You should not assume that the information provided by this prospectus or the documents incorporated by reference in this document is accurate as of any date other than their respective dates. Our business, financial condition, results of operations or prospects may have changed since those dates.**

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## ABOUT THIS PROSPECTUS

The following information about Newmont should be read in conjunction with the information described under “Where You Can Find More Information” in this prospectus, which information forms a part of this prospectus.

Unless we have indicated otherwise, or the context otherwise requires, references in this document to “Newmont,” “the Company,” “we,” “us,” “our Company” or “our” refer to Newmont Mining Corporation and its consolidated subsidiaries, except where it is clear that such terms refer to Newmont Mining Corporation only.

References in this document to “ounces attributable to Newmont” or “pounds attributable to Newmont” mean that portion of gold or copper produced, sold or included in proven and probable reserves that is attributable to Newmont’s ownership or economic interest.

Unless we have indicated otherwise, or the context otherwise requires, references in this prospectus to “\$” or “dollar” are to the lawful currency of the United States.

## FORWARD-LOOKING STATEMENTS

Some statements contained in this document, including information incorporated by reference herein, are “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and are intended to be covered by the safe harbor created by those sections. Words such as “expect(s),” “feel(s),” “believe(s),” “will,” “may,” “anticipate(s),” “estimate(s),” “should,” “intend(s)” and similar expressions are intended to identify forward-looking statements. Our forward-looking statements include, without limitation:

- estimates regarding future earnings and the sensitivity of earnings to gold and other metal prices;
- estimates of future mineral production and sales;
- estimates of future production costs, other expenses and taxes for specific operations and on a consolidated basis;
- estimates of future cash flows and the sensitivity of cash flows to gold and other metal prices;
- estimates of future capital expenditures, construction, production or closure activities and other cash needs, for specific operations and on a consolidated basis, and expectations as to the funding or timing thereof;
- estimates as to the projected development of certain ore deposits, including the timing of such development, the costs of such development and other capital costs, financing plans for these deposits and expected production commencement dates;
- estimates of reserves and statements regarding future exploration results and reserve replacement and the sensitivity of reserves to metal price changes;
- statements regarding the availability, terms and costs related to future borrowing, debt repayment and financing;
- estimates regarding future exploration expenditures, results and reserves;
- statements regarding fluctuations in financial and currency markets;

- estimates regarding potential cost savings, productivity, operating performance, and ownership and cost structures;
- expectations regarding the completion and timing of acquisitions or divestitures and projected synergies and costs associated with acquisitions;
- expectations regarding the start-up time, design, mine life, production and costs applicable to sales and exploration potential of our projects;
- statements regarding modifications to hedge and derivative positions;
- statements regarding political, economic or governmental conditions and environments;
- statements regarding future transactions;
- statements regarding the impacts of changes in the legal and regulatory environment in which we operate;
- estimates of future costs and other liabilities for certain environmental matters; and
- estimates of pension and other post-retirement costs.

Where we express an expectation or belief as to future events or results, such expectation or belief is expressed in good faith and believed to have a reasonable basis. However, our forward-looking statements are subject to risks, uncertainties, and other factors, which could cause actual results to differ materially from future results expressed, projected or implied by those forward-looking statements. Such risks include, but are not limited to:

- the price of gold, copper and other commodities;
- currency fluctuations;
- geological and metallurgical assumptions;
- operating performance of equipment, processes and facilities;
- labor and community relations;
- timing of receipt of necessary governmental permits or approvals;
- domestic and foreign laws or regulations, particularly relating to the environment and mining;
- domestic and international economic and political conditions;
- our ability to obtain or maintain necessary financing; and
- other risks and hazards associated with mining operations.

More detailed information regarding these factors is included in “Risk Factors” beginning on page 2 of this prospectus and the sections titled “Business,” “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our reports and other documents on file with the SEC. Many of these factors are beyond our ability to control or predict. Given these uncertainties, readers are cautioned not to place undue reliance on our forward-looking statements.

All subsequent written and oral forward-looking statements attributable to Newmont or to persons acting on its behalf are expressly qualified in their entirety by these cautionary statements. We disclaim any intention or obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

## THE COMPANY

Newmont is primarily a gold producer with significant assets or operations in the United States, Australia, Peru, Indonesia, Ghana, Canada, New Zealand and Mexico. At December 31, 2010, we had proven and probable gold reserves attributable to Newmont of 93.5 million ounces and an aggregate land position of approximately 27,500 square miles (71,100 square kilometers). Newmont is also engaged in the production of copper, principally through its Batu Hijau operation in Indonesia and its Boddington operation in Australia.

### Products

#### *Gold*

We had consolidated production of 6.5 million ounces of gold (5.4 million ounces attributable to Newmont) in 2010, 6.5 million ounces (5.2 million ounces) in 2009 and 6.2 million ounces (5.2 million ounces) in 2008. We had consolidated production of 4.4 million ounces of gold (3.9 million ounces attributable to Newmont) in the nine months ended September 30, 2011, and 4.9 million ounces of gold (4.0 million ounces) in the nine months ended September 30, 2010. For 2010, 2009 and 2008, 81%, 83% and 88%, respectively, of our net revenues were attributable to consolidated gold sales. For the nine months ended September 30, 2011 and September 30, 2010, 87% and 80%, respectively, of our net revenues were attributable to consolidated gold sales. Of our 2010 consolidated gold production, approximately 30% came from North America, 23% from South America, 39% from Asia Pacific and 8% from Africa. Of our consolidated gold production in the nine months ended September 30, 2011, approximately 31% came from North America, 21% from South America, 37% from Asia Pacific and 11% from Africa.

#### *Copper*

We had consolidated production of 600 million pounds of copper (327 million pounds attributable to Newmont) in 2010, 504 million pounds (227 million pounds) in 2009 and 285 million pounds (128 million pounds) in 2008. We had consolidated production of 278 million pounds of copper (159 million pounds attributable to Newmont) in the nine months ended September 30, 2011, and 463 million pounds of copper (253 million pounds) in the nine months ended September 30, 2010. For 2010, 2009 and 2008, 19%, 17% and 12%, respectively, of our net revenues were attributable to consolidated copper sales. For the nine months ended September 30, 2011 and September 30, 2010, 13% and 20%, respectively, of our net revenues were attributable to consolidated copper sales.

### Additional Information

Our principal executive offices are located at 6363 South Fiddlers Green Circle, Greenwood Village, Colorado 80111. Our telephone number is (303) 863-7414. We maintain a website at <http://www.newmont.com>. Information presented on or accessed through our website is not incorporated into, or made part of, this prospectus.

## RISK FACTORS

*You should consider carefully the risks described in our Annual Report on Form 10-K for the year ended December 31, 2010, as updated and supplemented by the discussion below, before making an investment decision. Such risks and uncertainties are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. If any of the described risks actually occurs, our business, financial condition or results of operations could be materially adversely affected.*

*This prospectus and the documents incorporated by reference herein also contain forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of a number of factors, including the risks described below and elsewhere in this prospectus. See "Forward-looking Statements."*

### ***A substantial or extended decline in gold or copper prices would have a material adverse effect on Newmont.***

Our business is dependent on the prices of gold and copper, which fluctuate on a daily basis and are affected by numerous factors beyond our control. Factors tending to influence prices include:

- gold sales or leasing by governments and central banks or changes in their monetary policy, including gold inventory management and reallocation of reserves;
- speculative short positions taken by significant investors or traders in gold or copper;
- the strength of the U.S. dollar;
- expectations of the future rate of inflation;
- interest rates;
- recession or reduced economic activity in the United States and other industrialized or developing countries;
- decreased industrial, jewelry or investment demand;
- increased supply from production, disinvestment and scrap;
- forward sales by producers in hedging or similar transactions; and
- availability of cheaper substitute materials.

Any decline in our realized gold or copper price adversely impacts our revenues, net income and cash flows, particularly in light of our strategy of not engaging in hedging transactions with respect to gold or copper. We have recorded asset write-downs in the past and may experience additional write-downs as a result of lower gold or copper prices in the future.

In addition, sustained lower gold or copper prices can:

- reduce revenues further through production declines due to cessation of the mining of deposits, or portions of deposits, that have become uneconomic at prevailing gold or copper prices;
- reduce or eliminate the profit that we currently expect from ore stockpiles and ore on leach pads;
- halt or delay the development of new projects;

- reduce funds available for exploration with the result that depleted reserves may not be replaced; and
- reduce existing reserves by removing ores from reserves that can no longer be economically processed at prevailing prices.

Also see the discussion in Item 1, Business, Gold or Copper Price included in our Annual Report on Form 10-K for the year ended December 31, 2010 incorporated by reference in this prospectus.

***We may be unable to replace gold and copper reserves as they become depleted.***

Gold and copper producers must continually replace reserves depleted by production to maintain production levels over the long term and provide a return on invested capital. Depleted reserves can be replaced in several ways, including by expanding known ore bodies, by locating new deposits, or by acquiring interests in reserves from third parties. Exploration is highly speculative in nature, involves many risks and frequently is unproductive. Our current or future exploration programs may not result in new mineral producing operations. Even if significant mineralization is discovered, it will likely take many years from the initial phases of exploration until commencement of production, during which time the economic feasibility of production may change.

We may consider, from time to time, the acquisition of ore reserves related to development properties and operating mines. Such acquisitions are typically based on an analysis of a variety of factors including historical operating results, estimates of and assumptions regarding the extent of ore reserves, the timing of production from such reserves and cash and other operating costs. Other factors that affect our decision to make any such acquisitions may also include our assumptions for future gold or copper prices or other mineral prices and the projected economic returns and evaluations of existing or potential liabilities associated with the property and its operations and projections of how these may change in the future. In addition, in connection with future acquisitions we may rely on data and reports prepared by third parties and which may contain information or data that we are unable to independently verify or confirm. Other than historical operating results, all of these factors are uncertain and may have an impact on our revenue, our cash and other operating issues, as well as contributing to the uncertainties related to the process used to estimate ore reserves. In addition, there may be intense competition for the acquisition of attractive mining properties.

As a result of these uncertainties, our exploration programs and any acquisitions which we may pursue may not result in the expansion or replacement of our current production with new ore reserves or operations, which could have a material adverse effect on our business, prospects, results of operations and financial position.

***Estimates of proven and probable reserves and non reserve mineralization are uncertain and the volume and grade of ore actually recovered may vary from our estimates.***

The reserves stated in this prospectus and in our Annual Report on Form 10-K for the year ended December 31, 2010 incorporated by reference in this prospectus represent the amount of gold and copper that we estimated, at December 31, 2010 and 2009, could be economically and legally extracted or produced at the time of the reserve determination. Estimates of proven and probable reserves are subject to considerable uncertainty. Such estimates are, to a large extent, based on the prices of gold and copper and interpretations of geologic data obtained from drill holes and other exploration techniques. Producers use feasibility studies to derive estimates of capital and operating costs based upon anticipated tonnage and grades of ore to be mined and processed, the predicted configuration of the ore body, expected recovery rates of metals from the ore, the costs of comparable facilities, the costs of operating and processing equipment and other factors. Actual operating costs and economic returns on projects may differ significantly from original estimates.

Further, it may take many years from the initial phases of exploration until commencement of production, during which time the economic feasibility of production may change.

In addition, if the price of gold or copper declines from recent levels, if production costs increase or recovery rates decrease, or if applicable laws and regulations are adversely changed, we can offer no assurance that the indicated level of recovery will be realized or that mineral reserves as currently reported can be mined or processed profitably. If we determine that certain of our ore reserves have become uneconomic, this may ultimately lead to a reduction in our aggregate reported reserves. Consequently, if our actual mineral reserves and resources are less than current estimates, our business, prospects, results of operations and financial position may be materially impaired.

***Increased operating costs could affect our profitability.***

Costs at any particular mining location are subject to variation due to a number of factors, such as changing ore grade, changing metallurgy and revisions to mine plans in response to the physical shape and location of the ore body. In addition, costs are affected by the price of input commodities, such as fuel, electricity, labor, chemical reagents, explosives, steel and concrete. Commodity costs are, at times, subject to volatile price movements, including increases that could make production at certain operations less profitable and changes in laws and regulations affecting their price, use and transport. Reported costs may also be affected by changes in accounting standards. A material increase in costs at any significant location could have a significant effect on our profitability and operating cash flow.

We could have significant increases in capital and operating costs over the next several years in connection with the development of new projects in challenging jurisdictions and in sustaining existing operations. Costs associated with capital expenditures have escalated on an industry-wide basis over the last several years, as a result of factors beyond our control, including the prices of oil, steel and other commodities and labor. Increased costs for capital expenditures may have an adverse effect on the profitability of existing operations and economic returns anticipated from new projects.

***Estimates relating to new development projects are uncertain and we may incur higher costs and lower economic returns than estimated.***

Mine development projects typically require a number of years and significant expenditures during the development phase before production is possible. Such projects could experience unexpected problems and delays during development, construction and mine start-up.

Our decision to develop a project is typically based on the results of feasibility studies, which estimate the anticipated economic returns of a project. The actual project profitability or economic feasibility may differ from such estimates as a result of any of the following factors, among others:

- changes in tonnage, grades and metallurgical characteristics of ore to be mined and processed;
- higher input commodity and labor costs;
- the quality of the data on which engineering assumptions were made;
- adverse geotechnical conditions;
- availability of adequate labor force and supply and cost of water and power;
- fluctuations in inflation and currency exchange rates;

- availability and terms of financing;
- delays in obtaining environmental or other government permits or changes in the laws and regulations related to those permits;
- weather or severe climate impacts; and
- potential delays relating to social and community issues.

Our future development activities may not result in the expansion or replacement of current production with new production, or one or more of these new production sites or facilities may be less profitable than currently anticipated or may not be profitable at all, any of which could have a material adverse effect on our results of operations and financial position.

***We may experience increased costs or losses resulting from the hazards and uncertainties associated with mining.***

The exploration for natural resources and the development and production of mining operations are activities that involve a high level of uncertainty. These can be difficult to predict and often are affected by risks and hazards outside of our control. These factors include, but are not limited to:

- environmental hazards, including discharge of metals, pollutants or hazardous chemicals;
- industrial accidents, including in connection with the operation of mining transportation equipment and accidents associated with the preparation and ignition of large-scale blasting operations, milling equipment and conveyor systems;
- underground fires or floods;
- unexpected geological formations or conditions (whether in mineral or gaseous form);
- ground and water conditions;
- fall-of-ground accidents in underground operations;
- failure of mining pit slopes and tailings dam walls;
- seismic activity; and
- other natural phenomena, such as lightning, cyclonic or tropical storms, floods or other inclement weather conditions.

The occurrence of one or more of these events in connection with our exploration activities and development and production of mining operations may result in the death of, or personal injury to, our employees, other personnel or third parties, the loss of mining equipment, damage to or destruction of mineral properties or production facilities, monetary losses, deferral or unanticipated fluctuations in production, environmental damage and potential legal liabilities, all of which may adversely affect our reputation, business, prospects, results of operations and financial position.

***Shortages of critical parts, equipment and skilled labor may adversely affect our operations and development projects.***

The mining industry has been impacted by increased demand for critical resources such as input commodities, drilling equipment, tires and skilled labor. These shortages have, at times, impacted the efficiency of our operations, and resulted in cost increases and delays in construction of projects; thereby impacting operating costs, capital expenditures and production and construction schedules.

***Mining companies are increasingly required to consider and provide benefits to the communities and countries in which they operate, and are subject to extensive environmental, health and safety laws and regulations.***

As a result of public concern about the real or perceived detrimental effects of economic globalization and global climate impacts, businesses generally and large multinational corporations in natural resources industries, such as Newmont, in particular, face increasing public scrutiny of their activities. These businesses are under pressure to demonstrate that, as they seek to generate satisfactory returns on investment to shareholders, other stakeholders, including employees, governments, communities surrounding operations and the countries in which they operate, benefit and will continue to benefit from their commercial activities. Such pressures tend to be particularly focused on companies whose activities are perceived to have a high impact on their social and physical environment. The potential consequences of these pressures include reputational damage, legal suits and social investment obligations.

In addition, our ability to successfully obtain key permits and approvals to explore for, develop and operate mines and to successfully operate in communities around the world will likely depend on our ability to develop, operate and close mines in a manner that is consistent with the creation of social and economic benefits in the surrounding communities. Our ability to obtain permits and approvals and to successfully operate in particular communities may be adversely impacted by real or perceived detrimental events associated with our activities or those of other mining companies affecting the environment, human health and safety of communities in which we operate. Delays in obtaining or failure to obtain government permits and approvals may adversely affect our operations, including our ability to explore or develop properties, commence production or continue operations. Key permits and approvals may be revoked or suspended or may be varied in a manner that adversely affects our operations, including our ability to explore or develop properties, commence production or continue operations.

Our exploration, development, mining and processing operations are subject to extensive laws and regulations governing worker health and safety and the protection of the environment, which generally apply to air and water quality, protection of protected species, hazardous waste management and reclamation. Some of the countries in which we operate have implemented, and are developing, laws and regulations related to climate change and greenhouse gas emissions. We have made, and expect to make in the future, significant expenditures to comply with such laws and regulations. Compliance with these laws and regulations imposes substantial costs and burdens, and can cause delays in obtaining, or failure to obtain, government permits and approvals which may adversely impact our operations.

Future changes in applicable laws, regulations and permits or changes in their enforcement or regulatory interpretation could substantially increase costs to achieve compliance, lead to the revocation of existing or future exploration or mining rights or otherwise have an adverse impact on our results of operations and financial position. For instance, the operation of our mines in the United States is subject to regulation by the Federal Mine Safety and Health Administration (“MSHA”) under the Federal Mine Safety and Health Act of 1977 (the “Mine Act”). MSHA inspects our mines on a regular basis and issues various citations and orders when it believes a violation has occurred under the Mine Act. If such inspections result in an alleged violation, we may be subject to fines, penalties or sanctions and our mining operations could be subject to temporary or extended closures, which could have an adverse effect on our results of operations and financial position. Following passage of The Mine Improvement and New Emergency Response Act of 2006, MSHA significantly increased the numbers of citations and orders charged against mining operations. The dollar penalties assessed for citations issued has also increased in recent years.

In addition, the United States Environmental Protection Agency (“EPA”) is currently seeking to regulate as hazardous waste under the Resource Conservation and Recovery Act (“RCRA”) secondary streams derived from core beneficiation operations, such as our roasting operations, in Nevada. Historically, such streams have been considered exempt from RCRA and have been regulated by the Nevada Division of Environmental Protection. The regulation of these streams as hazardous waste under RCRA could subject us to civil and criminal penalties for past practices and require us to incur substantial future costs to modify our waste water collection systems and retrofit our tailings storage facilities at our Nevada mining operations, which could have an adverse effect on our results of operations and financial position.

Increased global attention or regulation on water quality discharge, such as recently enacted water quality legislation applicable to our operations in Peru, and on restricting or prohibiting the use of cyanide and other hazardous substances in processing activities could similarly have an adverse impact on our results of operations and financial position due to increased compliance and input costs.

We have implemented a management system designed to promote continuous improvement in health and safety, environmental performance and community relations. However, our ability to operate, and thus, our results of operations and our financial position, could be adversely affected by accidents or events detrimental (or perceived to be detrimental) to the health and safety of our employees, the environment or the communities in which we operate.

***Mine closure and remediation costs for environmental liabilities may exceed the provisions we have made.***

Natural resource companies are required to close their operations and rehabilitate the lands that they mine in accordance with a variety of environmental laws and regulations. Estimates of the total ultimate closure and rehabilitation costs for gold and copper mining operations are significant and based principally on current legal and regulatory requirements and mine closure plans that may change materially. For example, we have conducted extensive remediation work at two inactive sites in the United States. We are conducting mill remediation activities at a third site in the United States, an inactive uranium mine and mill formerly operated by a subsidiary of Newmont, but remediation at the mine is subject to dispute. In late 2008, the EPA issued an order regarding water management at the mine. The environmental standards that may ultimately be imposed at this site remain uncertain and a risk exists that the costs of remediation may exceed the financial accruals that have been made for such remediation by a material amount.

Any underestimated or unanticipated rehabilitation costs could materially affect our financial position, results of operations and cash flows. Environmental liabilities are accrued when they become known, are probable and can be reasonably estimated. Whenever a previously unrecognized remediation liability becomes known, or a previously estimated reclamation cost is increased, the amount of that liability and additional cost will be recorded at that time and could materially reduce our consolidated net income attributable to Newmont stockholders in the related period. In addition, regulators are increasingly requesting security in the form of cash collateral, credit, trust arrangements or guarantees to secure the performance of environmental obligations, which could have an adverse effect on our financial position. For a more detailed discussion of potential environmental liabilities, see the discussion in Environmental Matters, Note 31 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2010 and Note 28 to the Condensed Consolidated Financial Statements in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, each of which is incorporated by reference in this prospectus.

The laws and regulations governing mine closure and remediation in a particular jurisdiction are subject to review at any time and may be amended to impose additional requirements and conditions which may cause our provisions for environmental liabilities to be underestimated and could materially affect our financial position or results of operations.

***Regulations and pending legislation governing issues involving climate change could result in increased operating costs which could have a material adverse effect on our business.***

Energy is a significant input to our mining operations, with our principal energy sources being electricity, purchased petroleum products, natural gas and coal.

A number of governments or governmental bodies have introduced or are contemplating regulatory changes in response to the potential impacts of climate change that are viewed as the result of emissions from the combustion of carbon-based fuels. The December 1997 Kyoto Protocol, which ends in 2012, established a set of greenhouse gas emission targets for developed countries that have ratified the Protocol, which include Ghana, Australia and Peru. The Conference of Parties 15 (“COP15”) of the United Nations Framework Convention on Climate Change held in Copenhagen, Denmark in December 2009 was to determine the path forward after the Kyoto Protocol ends. COP15 resulted in the Copenhagen Accord (the “Accord”), a non-binding document calling for economy-wide emissions targets for 2020. Prior to the January 31, 2010 deadline, the United States, Australia, New Zealand, Indonesia, Ghana and Peru re-affirmed their commitment to the Accord. The U.S. Congress and several U.S. states have initiated legislation regarding climate change that will affect energy prices and demand for carbon intensive products. In December 2009, the U.S. Environmental Protection Agency issued an endangerment finding under the U.S. Clean Air Act that current and projected concentrations of certain mixed greenhouse gases, including carbon dioxide, in the atmosphere threaten the public health and welfare. Regulations have been adopted and additional laws or regulations may be promulgated in the United States to address the concerns raised by such endangerment finding. Some of the countries in which we operate have implemented, and are developing, laws and regulations related to climate change and greenhouse gas emissions. Additionally, the Australian Government has introduced legislation authorizing a national emissions trading scheme and mandatory renewable energy targets.

Legislation and increased regulation regarding climate change could impose increased costs on us, our venture partners and our suppliers, including increased energy, capital equipment, environmental monitoring and reporting and other costs to comply with such regulations. Until the timing, scope and extent of any future regulation becomes known, we cannot predict the effect on our financial condition, financial position, results of operations and ability to compete.

The potential physical impacts of climate change on our operations are highly uncertain, and would be particular to the geographic circumstances in areas in which we operate. These may include changes in rainfall and storm patterns and intensities, water shortages, changing sea levels and changing temperatures. These impacts may adversely impact the cost, production and financial performance of our operations.

***Our operations are subject to risks of doing business.***

Exploration, development, production and mine closure activities are subject to political, economic and other risks of doing business, including:

- disadvantages of competing against companies from countries that are not subject to U.S. laws and regulations, including the Foreign Corrupt Practices Act;
- changes in laws or regulations;

- royalty and tax increases or claims, including retroactive increases and claims and requests to renegotiate terms of existing royalties and taxes, by governmental entities, including such increases, claims and/or requests by the governments of Ghana, Indonesia, Australia, Peru, the United States and the State of Nevada;
- increases in training and other costs and challenges relating to requirements by governmental entities to employ the nationals of the country in which a particular operation is located;
- delays in obtaining or renewing, or the inability to obtain, maintain or renew, necessary governmental permits and approvals;
- claims for increased mineral royalties or ownership interests by local or indigenous communities;
- expropriation or nationalization of property;
- currency fluctuations, particularly in countries with high inflation;
- foreign exchange controls;
- restrictions on the ability of local operating companies to sell gold offshore for U.S. dollars, or on the ability of such companies to hold U.S. dollars or other foreign currencies in offshore bank accounts;
- import and export regulations, including restrictions on the export of gold;
- increases in costs relating to, or restrictions or prohibitions on, the use of ports for concentrate storage and shipping, particularly in relation to our Boddington and Batu Hijau operations where use of alternative ports is not currently economically feasible;
- restrictions on the ability to pay dividends offshore or to otherwise repatriate funds;
- risk of loss due to civil strife, acts of war, guerrilla activities, insurrection and terrorism;
- risk of loss due to criminal activities such as trespass, illegal mining, theft and vandalism;
- risk of loss due to disease and other potential endemic health issues;
- disadvantages relating to submission to the jurisdiction of foreign courts or arbitration panels or enforcement or appeals of judgments at foreign courts or arbitration panels against a sovereign nation within its own territory; and
- other risks arising out of foreign sovereignty over the areas in which our operations are conducted, including risks inherent in contracts with government owned entities such as unilateral cancellation or renegotiation of contracts, licenses or other mining rights.

Consequently, our exploration, development and production activities may be affected by these and other factors, many of which are beyond our control, some of which could materially adversely affect our financial position or results of operations.

***Our Batu Hijau operation in Indonesia is subject to political and economic risks.***

We have a substantial investment in Indonesia, a nation that since 1997 has undergone financial crises and devaluation of its currency, outbreaks of political and religious violence and acts of terrorism, changes in national leadership, and the secession of East Timor, one of its former provinces. These factors heighten the risk of abrupt changes in the national policy toward foreign investors, which in turn could result in unilateral modification of concessions or contracts, increased taxation, denial of permits or permit renewals or expropriation of assets. In regard to issues of resource nationalism, certain government

officials and members of parliament may have a preference for national mining companies to own Indonesia's mineral assets and the government has advocated policies intended to result in development of additional in-country processing of minerals mined in Indonesia, including the smelting of copper concentrates.

Violence committed by radical elements in Indonesia and other countries, and the presence of U.S. forces in Iraq and Afghanistan, may increase the risk that operations owned by U.S. companies will be the target of violence. If our Batu Hijau operation were so targeted it could have an adverse effect on our business.

Our Batu Hijau operation has faced opposition from the local community in 2011, including protests and roadblocks, relating to a worker recruitment process. We cannot predict whether similar or more significant incidents will occur and the recurrence of significant opposition from the local community could disrupt mining activities. Any future disruption of mining activities could adversely affect Batu Hijau's assets and operations.

Over the years, we are required to apply for renewals of certain key permits related to Batu Hijau. PT Newmont Nusa Tenggara ("PTNNT"), the entity operating Batu Hijau, employs a submarine tailings disposal ("STD") system. The STD system is operated pursuant to a permit from the government of Indonesia that was renewed in 2011, but is subject to challenge in connection with certain legal proceedings. See Note 31 to the Consolidated Financial Statements in our Annual Report on Form 10-K for the year ended December 31, 2010, and Note 28 to the Condensed Consolidated Financial Statements, included in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, each of which is incorporated by reference in this prospectus, for a more detailed discussion of pending litigation. The STD is a key requirement to continue normal operations at Batu Hijau. A loss of the STD permit renewal could adversely impact Batu Hijau operations and may adversely impact our future operating and financial results.

***Our ownership interest in Batu Hijau has been reduced in accordance with the Contract of Work issued by the Indonesian Government and future reductions in our interest in PTNNT may result in our loss of control over the Batu Hijau operations.***

We operate Batu Hijau and currently have a 31.5% direct ownership interest, held through Nusa Tenggara Partnership B.V. ("NTP") with an affiliate of Sumitomo Corporation of Japan ("Sumitomo"). We have a 56.25% interest in NTP and a Sumitomo affiliate holds the remaining 43.75%. NTP in turn owns 56% of PTNNT, the Indonesian subsidiary that owns Batu Hijau. In December 2009, Newmont entered into a transaction with P.T. Pukuafu Indah ("PTPI"), an unrelated noncontrolling partner of PTNNT, whereby we agreed to advance certain funds to PTPI in exchange for a pledge of PTPI's 20% shareholding in PTNNT; an assignment of dividends payable on the shares, net of withholding tax; a commitment to support the application of our standards to the operation of the Batu Hijau mine; and powers of attorney to vote and sell the PTNNT shares in support of the pledge, enforceable in an event of default as further security for the funding. On June 25, 2010, PTPI completed the sale of approximately a 2.2% interest in PTNNT to PT Indonesia Masbaga Investama ("PTIMI") and Newmont entered into a transaction with PTIMI, whereby we agreed to advance certain funds to PTIMI in exchange for: a pledge of PTIMI's 2.2% shareholding in PTNNT; an assignment of dividends payable on the shares, net of withholding tax; and a commitment to support the application of our standards to the operation of the Batu Hijau mine. Based on the above transactions, Newmont recognized an additional 17% effective economic interest in PTNNT. Combined with Newmont's 56.25% ownership in NTP, Newmont has a 48.5% effective economic interest in PTNNT and continues to consolidate Batu Hijau in its Consolidated Financial Statements.

Under the Contract of Work executed in 1986 between the Indonesian government and PTNNT (the “Contract of Work”), 51% of PTNNT’s shares were required to be offered for sale, first, to the Indonesian government or, second, to Indonesian nationals by March 31, 2010. On May 6, 2011, we announced that a definitive agreement was signed with an agency of the Indonesian Government’s Ministry of Finance for the sale of the final 7% divestiture stake in PTNNT. Subsequently, a dispute over the legality of the purchase under relevant laws and regulations has arisen between certain members of Parliament and the Ministry of Finance, and the transaction has not yet closed. Upon closing of the transaction, our ownership interest in the Batu Hijau mine’s production, assets and proven and probable equity reserves will be reduced to 27.56% and ownership interest of NTP in PTNNT will be reduced to 49%, thus potentially reducing our ability to control the operation at Batu Hijau. In addition, we will have a 17% effective economic interest in PTNNT following the closing of the transaction through financing arrangements with existing shareholders and we have identified Variable Interest Entities in connection with our economic interests in PTNNT due to certain funding arrangements and shareholder commitments. Therefore, we expect to continue to consolidate PTNNT in our consolidated financial statements after the final 7% sale is completed. Loss of control over PTNNT operations may result in our deconsolidation of PTNNT for accounting purposes, which would reduce our reported consolidated sales, total assets and operating cash flows. See Note 31 to the Consolidated Financial Statements for more information about the PTNNT share divestiture in our Annual Report on Form 10-K for the year ended December 31, 2010, and Note 28 to the Condensed Consolidated Financial Statements, included in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, each of which is incorporated by reference in this prospectus.

As part of the negotiation of the share sale agreements with PT Multi Daerah Bersaing (“PTMDB”), the nominee of the local governments, the parties executed an operating agreement (the “Operating Agreement”), under which each recognizes the rights of Newmont and Sumitomo to apply their operating standards to the management of PTNNT’s operations, including standards for safety, environmental stewardship and community responsibility. The Operating Agreement became effective in February 2010 and will continue for so long as Newmont and Sumitomo own more shares of PTNNT than PTMDB. If the Operating Agreement terminates, then Newmont may lose control over the applicable operating standards for Batu Hijau and will be at risk for operations conducted in a manner that either detracts from value or results in safety, environmental or social standards below those adhered to by Newmont and Sumitomo.

***The Contract of Work has been and may continue to be the subject of dispute or legal review and is subject to termination by the Indonesian government if we do not comply with our obligations, which would result in loss of all or much of the value of Batu Hijau.***

The divestiture provisions of the Contract of Work have been the subject of dispute. In 2008, the Ministry of Energy and Mineral Resources of the Indonesian government (the “MEMR”) alleged that PTNNT was in breach of its divestiture requirements under the Contract of Work and threatened to terminate the Contract of Work if PTNNT did not agree to divest shares in accordance with the direction of the MEMR. The matter was resolved by an international arbitration panel in March 2009. The arbitration decision led to NTP divesting 24% of PTNNT’s shares to PTMDB, the party nominated by the MEMR.

Although the Indonesian government has acknowledged that PTNNT is currently in compliance with the Contract of Work, future disputes may arise under the Contract of Work. Moreover, there have been statements, from time to time, by some within the Indonesian government who advocate elimination of Contracts of Work and who may try to instigate future disputes surrounding the Contract of Work, particularly given that Batu Hijau is one of the largest businesses within the country. Although any dispute under the Contract of Work is subject to international arbitration, there can be no assurance that

we would prevail in any such dispute and any termination of the Contract of Work could result in substantial diminution in the value of our interests in PTNNT. See Note 31 to the Consolidated Financial Statements in our Annual Report on Form 10-K for the year ended December 31, 2010 and Note 28 to the Condensed Consolidated Financial Statements in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, each of which is incorporated by reference in this prospectus, for more information about the disputes involving the Contract of Work.

In January 2009, the Indonesian Government passed a new mining law. While the law preserves the right of PTNNT to operate our Batu Hijau operations pursuant to the Contract of Work, the Indonesian government seeks to renegotiate certain provisions of the Contract of Work to conform to certain provisions of the new mining law, which could include requests for, among other things, higher royalty rates.

***Our operations in Peru are subject to political risks.***

During the last several years, Minera Yanacocha S.R.L. (“Yanacocha”), in which we own a 51.35% interest, and whose properties include the mining operations at Yanacocha and the Conga project, has been the target of local political and community protests, some of which blocked the road between the Yanacocha mine and Conga project complexes and the City of Cajamarca in Peru and resulted in vandalism and equipment damage. In spite of the multi-year approval process followed by Yanacocha and the Peruvian government for the Conga project, recently in October 2011, anti-mining activists expressed concerns about perceived impacts of the Conga project on the local water supply resulting in an increase in protest activity. As a result, on November 30, 2011, the Company, in agreement with the government of Peru, suspended construction activities at the Conga project for the safety of employees and community members. The Company continues to engage in dialogue with local community leaders and government representatives. We cannot predict whether similar or more significant incidents will occur. The recurrence of significant political or community opposition or protests could adversely affect Conga’s development or Yanacocha’s assets and operations.

In December 2006, Yanacocha, along with other mining companies in Peru, entered into a five-year agreement with the central government to contribute 3.75% of net profits to fund social development projects. Until April 2011, the government had generally taken positions promoting private investment. In the second quarter of 2011, Presidential and Congressional elections have resulted in a change in government in Peru. While we are unable to predict the positions that will be taken by the new administration or laws that will be passed by the new Congress, or how any change will affect Yanacocha, such changes may include increased labor regulations, environmental and other regulatory requirements, additional taxes and royalties. For example, during the third quarter of 2011, the new government enacted four new tax laws. In addition, we cannot predict future positions of such government on foreign investment, mining concessions, land tenure or other regulation. Any change in government positions on these issues could adversely affect Yanacocha’s assets and operations, which could have a material adverse effect on our results of operations and financial position.

***Our Company and the mining industry are facing continued geotechnical challenges, which could adversely impact our production and profitability.***

Newmont and the mining industry are facing continued geotechnical challenges due to the older age of certain of our mines and a trend toward mining deeper pits and more complex deposits. This leads to higher pit walls, more complex underground environments and increased exposure to geotechnical instability and hydrological impacts. As our operations are maturing, the open pits at many of our sites are getting deeper and we have experienced certain geotechnical failures at some of our mines, including, without limitation, in Indonesia at the Batu Hijau open-pit mine and at our operations in Nevada and Peru.

No absolute assurances can be given that unanticipated adverse geotechnical and hydrological conditions, such as landslides and pit wall failures, will not occur in the future or that such events will be detected in advance. Geotechnical instabilities can be difficult to predict and are often affected by risks and hazards outside of our control, such as severe weather and considerable rainfall, which may lead to periodic floods, mudslides, wall instability, and seismic activity, which may result in slippage of material.

Geotechnical failures could result in limited or restricted access to mine sites, suspension of operations, government investigations, increased monitoring costs, remediation costs, loss of ore and other impacts, which could cause one or more of our projects to be less profitable than currently anticipated and could result in a material adverse effect on our results of operations and financial position.

***Currency fluctuations may affect our costs.***

Currency fluctuations may affect the costs that we incur at our operations. Gold and copper is sold throughout the world based principally on the U.S. dollar price, but a portion of our operating expenses are incurred in local currencies. The appreciation of those local currencies against the U.S. dollar increases our costs of production in U.S. dollar terms at mines located outside the United States.

The foreign currency that primarily impacts our results of operations is the Australian dollar. We estimate that every \$0.10 increase in U.S. dollar/Australian dollar exchange rate increases annually the U.S. dollar *Costs applicable to sales* by approximately \$79 for each ounce of gold produced from operations in Australia before taking into account the impact of currency hedging. We hedge up to 90% of our future forecasted Australian dollar denominated operating expenditures to reduce the variability of our Australian dollar exposure. At September 30, 2011, we have hedged 84%, 70%, 53%, 37%, 19% and 6% of our forecasted Australian denominated operating costs in 2011, 2012, 2013, 2014, 2015 and 2016, respectively. Our Australian dollar derivative programs will limit the benefit to Newmont of future decreases, if any, in the U.S. dollar/Australian dollar exchange rates. For additional information, see Item 7, Management's Discussion and Analysis of Consolidated Financial Condition and Results of Operations, Results of Consolidated Operations, Foreign Currency Exchange Rates, in our Annual Report on Form 10-K for the year ended December 31, 2010, and Item 2, Management's Discussion and Analysis of Results of Operations and Financial Condition, Results of Consolidated Operations, Foreign Currency Exchange Rates, in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, each of which is incorporated by reference in this prospectus. For a more detailed description of how currency exchange rates may affect costs, see discussion in Foreign Currency in Item 7A, Quantitative and Qualitative Discussions About Market Risk, included in our Annual Report on Form 10-K for the year ended December 31, 2010, and in Item 3, Quantitative and Qualitative Discussions About Market Risk, included in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, each of which is incorporated by reference in this prospectus.

***Our business requires substantial capital investment and we may be unable to raise additional funding on favorable terms.***

The construction and operation of potential future projects including the Akyem project in Ghana, the Conga project in Peru, the Hope Bay project in Nunavut, Canada, and various exploration projects will require significant funding. Our operating cash flow and other sources of funding may become insufficient to meet all of these requirements, depending on the timing and costs of development of these and other projects. As a result, new sources of capital may be needed to meet the funding requirements of these investments, fund our ongoing business activities and pay dividends. Our ability to raise and service significant new sources of capital will be a function of macroeconomic conditions, future gold and copper prices, our operational performance and our current cash flow and debt position, among other factors. In the event of lower gold and copper prices, unanticipated operating or financial challenges, or a further dislocation in the financial markets as experienced in recent years, our ability to pursue new business opportunities, invest in existing and new projects, fund our ongoing operations, retire or service all of our outstanding debt and pay dividends could be significantly constrained.

***Any downgrade in the credit ratings assigned to our debt securities could increase our future borrowing costs and adversely affect the availability of new financing.***

There can be no assurance that any rating currently assigned by Standard & Poor's Rating Services or Moody's Investors Service to Newmont Mining Corporation will remain for any given period of time or that a rating will not be lowered if, in that rating agency's judgment, future circumstances relating to the basis of the rating so warrant. If we are unable to maintain our outstanding debt and financial ratios at levels acceptable to the credit rating agencies, or should our business prospects deteriorate, our ratings could be downgraded by the rating agencies, which could adversely affect the value of our outstanding securities, our existing debt and our ability to obtain new financing on favorable terms, if at all, and increase our borrowing costs, which in turn could impair our results of operations and financial position.

***To the extent that we seek to expand our operations and increase our reserves through acquisitions, we may experience issues in executing acquisitions or integrating acquired operations.***

From time to time, we examine opportunities to make selective acquisitions in order to expand our operations and reported reserves. The success of any acquisition would depend on a number of factors, including, but not limited to:

- identifying suitable candidates for acquisition and negotiating acceptable terms;
- obtaining approval from regulatory authorities and potentially Newmont's shareholders;
- maintaining our financial and strategic focus and avoiding distraction of management during the process of integrating the acquired business;
- implementing our standards, controls, procedures and policies at the acquired business and addressing any pre-existing liabilities or claims involving the acquired business; and
- to the extent the acquired operations are in a country in which we have not operated historically, understanding the regulations and challenges of operating in that new jurisdiction.

There can be no assurance that we will be able to conclude any acquisitions successfully, or that any acquisition will achieve the anticipated synergies or other positive results. Any material problems that we encounter in connection with such an acquisition could have a material adverse effect on our business, results of operations and financial position.

***Our operations may be adversely affected by energy shortages.***

Our mining operations and development projects require significant amounts of energy. Our principal energy sources are electricity, purchased petroleum products, natural gas and coal. Some of our operations are in remote locations requiring long distance transmission of power, and in some locations we compete with other companies for access to third party power generators or electrical supply networks. A disruption in the transmission of energy, inadequate energy transmission infrastructure or the termination of any of our energy supply contracts could interrupt our energy supply and adversely affect our operations.

We have periodically experienced power shortages in Ghana resulting primarily from drought, increasing demands for electricity and insufficient hydroelectric or other generating capacity which caused curtailment of production at our Ahafo operations. As a result of the mining industry's agreement to construct and install an 80 mega-watt power plant during 2007, the Ghanaian government has agreed, if

required, to curtail power consumption as a result of power shortages and to distribute available power proportionately between participating mines and other industrial and commercial users. The need to use alternative sources of power may result in higher than anticipated costs, which will affect operating costs. Continued power shortages and increased costs may adversely affect our results of operations and financial position.

***Continuation of our mining production is dependent on the availability of sufficient water supplies to support our mining operations.***

Our mining operations require significant quantities of water for mining, ore processing and related support facilities. Our operations in North and South America and Australia are in areas where water is scarce and competition among users for continuing access to water is significant. Continuous production at our mines is dependent on our ability to maintain our water rights and claims and defeat claims adverse to our current water uses in legal proceedings. Although each of our operations currently has sufficient water rights and claims to cover its operational demands, we cannot predict the potential outcome of pending or future legal proceedings relating to our water rights, claims and uses. The loss of some or all water rights for any of our mines, in whole or in part, or shortages of water to which we have rights could require us to curtail or shut down mining production and could prevent us from pursuing expansion opportunities. Laws and regulations may be introduced in some jurisdictions in which we operate which could limit our access to sufficient water resources in our operations, thus adversely affecting our operations.

***The occurrence of events for which we are not insured may affect our cash flow and overall profitability.***

We maintain insurance policies that mitigate against certain risks related to our operations. This insurance is maintained in amounts that we believe are reasonable depending upon the circumstances surrounding each identified risk. However, we may elect not to have insurance for certain risks because of the high premiums associated with insuring those risks or for various other reasons; in other cases, insurance may not be available for certain risks. Some concern always exists with respect to investments in parts of the world where civil unrest, war, nationalist movements, political violence or economic crises are possible. These countries may also pose heightened risks of expropriation of assets, business interruption, increased taxation or unilateral modification of concessions and contracts. We do not maintain insurance policies against political risk. Occurrence of events for which we are not insured may affect our results of operations and financial position.

***Our business depends on good relations with our employees.***

Production at our mines is dependent upon the efforts of our employees and, consequently, our maintenance of good relationships with our employees. Due to union activities or other employee actions, we could experience labor disputes, work stoppages or other disruptions in production that could adversely affect us. At September 30, 2011, union represented employees constituted almost half of our worldwide work force. There can be no assurance that any future disputes will be resolved without disruptions to operations.

***We rely on contractors to conduct a significant portion of our operations and construction projects.***

A significant portion of our operations and construction projects are currently conducted in whole or in part by contractors. As a result, our operations are subject to a number of risks, some of which are outside our control, including:

- negotiating agreements with contractors on acceptable terms;
- the inability to replace a contractor and its operating equipment in the event that either party terminates the agreement;
- reduced control over those aspects of operations which are the responsibility of the contractor;
- failure of a contractor to perform under its agreement;
- interruption of operations or increased costs in the event that a contractor ceases its business due to insolvency or other unforeseen events;
- failure of a contractor to comply with applicable legal and regulatory requirements, to the extent it is responsible for such compliance; and
- problems of a contractor with managing its workforce, labor unrest or other employment issues.

In addition, we may incur liability to third parties as a result of the actions of our contractors. The occurrence of one or more of these risks could adversely affect our results of operations and financial position.

***We are subject to litigation and may be subject to additional litigation in the future.***

We are currently, and may in the future become, subject to litigation, arbitration or other legal proceedings with other parties. If decided adversely to Newmont, these legal proceedings, or others that could be brought against us in the future, could have a material adverse effect on our financial position or prospects. For a more detailed discussion of pending litigation, see Note 31 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2010 and Note 28 to the Condensed Consolidated Financial Statements in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, each of which is incorporated by reference in this prospectus.

In the event of a dispute arising at our foreign operations, we may be subject to the exclusive jurisdiction of foreign courts or arbitral panels, or may not be successful in subjecting foreign persons to the jurisdiction of courts or arbitral panels in the United States. Our inability to enforce our rights and the enforcement of rights on a prejudicial basis by foreign courts or arbitral panels could have an adverse effect on our results of operations and financial position.

***Title to some of our properties may be defective or challenged.***

Although we have conducted title reviews of our properties, title review does not necessarily preclude third parties from challenging our title or related property rights. While we believe that we have satisfactory title to our properties, some titles may be defective or subject to challenge. In addition, certain of our Australian properties could be subject to native title or traditional landowner claims, and our ability to use these properties is dependent on agreements with traditional owners of the properties. For information regarding native title or traditional landowner claims, see the discussion under the Australia/New Zealand section of Item 2, Properties in our Annual Report on Form 10-K for the year ended December 31, 2010, which is incorporated by reference in this prospectus.

***Competition from other natural resource companies may harm our business.***

We compete with other natural resource companies to attract and retain key executives, skilled labor, contractors and other employees. We also compete with other natural resource companies for specialized equipment, components and supplies, such as drill rigs, necessary for exploration and development, as well as for rights to mine properties containing gold, copper and other minerals. We may be unable to continue to attract and retain skilled and experienced employees, to obtain the services of skilled personnel and contractors or specialized equipment or supplies, or to acquire additional rights to mine properties.

***Our ability to recognize the benefits of deferred tax assets is dependent on future cash flows and taxable income.***

We recognize the expected future tax benefit from deferred tax assets when the tax benefit is considered to be more likely than not of being realized, otherwise, a valuation allowance is applied against deferred tax assets. Assessing the recoverability of deferred tax assets requires management to make significant estimates related to expectations of future taxable income. Estimates of future taxable income are based on forecasted cash flows from operations and the application of existing tax laws in each jurisdiction. To the extent that future cash flows and taxable income differ significantly from estimates, our ability to realize the deferred tax assets could be impacted. Additionally, future changes in tax laws could limit our ability to obtain the future tax benefits represented by our deferred tax assets. At September 30, 2011, Newmont's current and long-term deferred tax assets were \$425 million and \$1,629 million, respectively.

***Returns for investments in pension plans are uncertain.***

We maintain pension plans for certain employees which provide for specified payments after retirement. The ability of the pension plans to provide the specified benefits depends on our funding of the plans and returns on investments made by the plans. Returns, if any, on investments are subject to fluctuations based on investment choices and market conditions. A sustained period of low returns or losses on investments could require us to fund the pension plans to a greater extent than anticipated. During the second half of 2008 and early 2009, market conditions caused the value of the investments in our pension plans to decrease significantly. As a result, we contributed \$161, \$55 and \$12 million to the pension plans in 2010, 2009 and the nine months ended September 30, 2011, respectively. If future plan investment returns are not sufficient, we may be required to increase the amount of future cash contributions. For a more detailed discussion of the funding status and expected benefit payments to plan participants, see the discussion in Employee Related Benefits, Note 8 to the Consolidated Financial Statements in our Annual Report on Form 10-K for the year ended December 31, 2010, which is incorporated by reference in this prospectus.

***The price of our common stock may be volatile, which may make it difficult for holders of our common stock to resell the common stock when they want or at prices they find attractive.***

The market price and volume of our common stock may be subject to significant fluctuations due not only to general stock market conditions but also to a change in sentiment in the market regarding our operations, business prospects or liquidity. Among the factors that could affect the price of our common stock are:

- changes in gold, and to a lesser extent, copper prices;
- operating and financial performance that vary from the expectations of management, securities analysts and investors;

- developments in our business or in the mining sector generally;
- regulatory changes affecting our industry generally or our business and operations;
- the operating and stock price performance of companies that investors consider to be comparable to us;
- announcements of strategic developments, acquisitions and other material events by us or our competitors;
- our ability to integrate and operate the companies and the businesses that we acquire; and
- changes in global financial markets and global economies and general market conditions, such as interest or foreign exchange rates, stock, commodity, credit or asset valuations or volatility.

The stock markets in general have experienced extreme volatility that has at times been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock.

***There may be future sales or other dilution of our equity, which may adversely affect the market price of our common stock.***

We are not restricted from issuing additional common stock, including securities that are convertible into or exchangeable for, or that represent the right to receive, common stock. The issuance of additional shares of our common stock, including in connection with the conversion of the 2012 notes, the convertible senior notes due 2014 or the convertible senior notes due 2017 or other issuances of convertible securities, including outstanding exchangeable shares, options and warrants, or otherwise will dilute the ownership interest of our existing common stockholders. The market price of our common stock could decline and our ability to raise capital through the sale of additional equity securities could be impaired as a result of such issuances as well as any other sales of a large block of shares of our common stock or similar securities in the market, or the perception that such sales could occur or as a result of any hedging or arbitrage trading activity that we expect to develop involving our common stock.

***Holders of our common stock may not receive dividends on the common stock.***

Holders of our common stock are entitled to receive only such dividends as our board of directors may declare out of funds legally available for such payments. We are incorporated in Delaware and governed by the Delaware General Corporation Law. Delaware law allows a corporation to pay dividends only out of surplus, as determined under Delaware law or, if there is no surplus, out of net profits for the fiscal year in which the dividend was declared and for the preceding fiscal year. Under Delaware law, however, we cannot pay dividends out of net profits if, after we pay the dividend, our capital would be less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets. Furthermore, holders of our common stock may be subject to the prior dividend rights of holders of our preferred stock or depositary shares representing such preferred stock then outstanding. Our ability to pay dividends will be subject to our future earnings, capital requirements and financial condition, as well as with our compliance with covenants and financial ratios related to existing or future indebtedness. Although we have historically declared cash dividends on our common stock, we are not required to do so and our board of directors may reduce, defer or eliminate our common stock dividend in the future.

***Anti-takeover provisions could enable our management to resist a takeover attempt by a third party and limit the power of our stockholders.***

Provisions of Delaware law and of our certificate of incorporation and by-laws could make it more difficult for a third party to acquire control of us or have the effect of discouraging, delaying or preventing a third party from attempting to acquire control of us, even if an acquisition might be in the best interest of our stockholders. For example, we are subject to Section 203 of the Delaware General Corporation Law, which would make it more difficult for another party to acquire us without the approval of our board of directors. Additionally, our certificate of incorporation authorizes our board of directors to issue preferred stock or adopt other anti-takeover measures without shareholder approval. The existence and adoption of these provisions could adversely affect the voting power of holders of common stock and limit the price that investors might be willing to pay in the future for shares of our common stock.

***Non-U.S. Holders may be subject to U.S. withholding tax and U.S. income tax under the Foreign Investment in Real Property Tax Act.***

We may currently be or may become a “United States real property holding corporation” for U.S. federal income tax purposes. As a result, under U.S. federal income tax laws enacted as part of the Foreign Investment in Real Property Tax Act, holders of our common stock who are Non-U.S. Holders (as defined under “Material United States Federal Income Tax Considerations – Consequences to Non-U.S. Holders of Owning and Disposing of Newmont Common Stock Acquired in the Exchange” in this prospectus) may be subject to U.S. federal withholding tax or U.S. federal income tax, or both, in respect of certain distributions made on our common stock and upon the disposition of our common stock. Shareholders who are Non-U.S. Holders are urged to consult their tax advisors with respect to the U.S. federal income tax consequences that may arise if we are or were to become a United States real property holding corporation.

## USE OF PROCEEDS

We will not receive any cash proceeds from the issuance of our common stock in exchange for the exchangeable shares of New NMCCCL.

## COMMON STOCK PRICE RANGE

Our common stock is listed on the NYSE and is traded under the symbol “NEM.” The following table sets forth, for the periods indicated, the high and low sales prices per share of our common stock as reported in composite NYSE trading.

	<b>Price Range of Common Stock</b>	
	<b><u>High</u></b>	<b><u>Low</u></b>
<b>2009</b>		
First Quarter	\$46.90	\$35.03
Second Quarter	\$48.87	\$38.14
Third Quarter	\$47.12	\$37.89
Fourth Quarter	\$55.83	\$41.50
<b>2010</b>		
First Quarter	\$51.94	\$42.86
Second Quarter	\$61.74	\$51.53
Third Quarter	\$64.94	\$55.40
Fourth Quarter	\$64.72	\$59.09
<b>2011</b>		
First Quarter	\$61.09	\$50.39
Second Quarter	\$59.23	\$51.59
Third Quarter	\$69.90	\$53.74
Fourth Quarter (through December 13, 2011)	\$72.42	\$58.95

The reported last sale price of our common stock on the NYSE on December 13, 2011 was \$63.15 per share. As of November 30, 2011, there were 488,429,224 shares of our common stock outstanding held by approximately 12,296 record holders, not including beneficial owners of shares registered in nominee or street name.

## DIVIDEND POLICY

Our gold price-linked dividend policy, as approved by our board of directors in April 2011 and amended in September 2011, contemplates a quarterly dividend based on our average realized gold price for the preceding quarter. Under the policy, unless otherwise determined by our board of directors, the dividend will be calculated based upon the average realized gold price during the preceding quarter (subject to certain adjustments) in the manner contemplated by the table below:

<b><u>Prior Quarter Average Realized Gold Price</u></b>	<b><u>Associated Quarterly Dividend Payout/share</u></b>	<b><u>Associated Annualized Equivalent Payout/share</u></b>
\$1,100 – \$1,199	\$0.10	\$0.40
\$1,200 – \$1,299	\$0.15	\$0.60
\$1,300 – \$1,399	\$0.20	\$0.80
\$1,400 – \$1,499	\$0.25	\$1.00
\$1,500 – \$1,599	\$0.30	\$1.20
\$1,600 – \$1,699	\$0.35	\$1.40
\$1,700 – \$1,799	\$0.425	\$1.70
\$1,800 – \$1,899	\$0.50	\$2.00
\$1,900 – \$1,999	\$0.575	\$2.30
\$2,000 – \$2,099	\$0.675	\$2.70
\$2,100 – \$2,199	\$0.775	\$3.10
\$2,200 – \$2,299	\$0.875	\$3.50
\$2,300 – \$2,399	\$0.975	\$3.90
\$2,400 – \$2,499	\$1.075	\$4.30
\$2,500 – \$2,599	\$1.175	\$4.70

In 2011, we declared the following dividends per share of common stock outstanding:

- a regular quarterly dividend of \$0.15 per share, paid on March 30, 2011;
- a regular quarterly dividend of \$0.20 per share, paid on June 29, 2011;
- a regular quarterly dividend of \$0.30 per share, paid on September 29, 2011; and
- a regular quarterly dividend of \$0.35 per share, to be paid on December 30, 2011 to the holders of record at the close of business on December 8, 2011.

In 2010, we declared a dividend of \$0.10 per share of common stock outstanding in the first and second quarters, and a dividend of \$0.15 per share of common stock outstanding in the third and fourth quarters, for a total of \$0.50 during 2010. We declared a dividend of \$0.10 per share of common stock outstanding in each quarter of 2009 for a total of \$0.40 during 2009.

The exchangeable shares are exchangeable at the option of the holders into Newmont common stock on a one-for-one basis. Holders of exchangeable shares are therefore entitled to receive dividends equivalent to those that we declare on our common stock. In 2011, Old NMCCCL declared regular quarterly dividends on the exchangeable shares of Old NMCCCL totaling CDN\$0.1489 per share payable on March 30,

2011 to holders of record at the close of business on March 15, 2011, CDN\$0.1914 per share payable on June 29, 2011 to holders of record at the close of business on June 16, 2011, CDN\$0.2842 per share payable on September 29, 2011 to holders of record at the close of business on September 8, 2011 and CDN\$0.3535 per share payable on December 30, 2011 to holders of record at the close of business on December 8, 2011.

The determination of the amount of future dividends will be made by our board of directors from time to time and will depend on our future earnings, capital requirements, financial condition and other relevant factors. See “Risk Factors – Holders of our common stock may not receive dividends on the common stock.”

## DESCRIPTION OF CAPITAL STOCK

At November 30, 2011, we had 755,000,000 shares of authorized capital stock. Those shares consisted of: 5,000,000 shares of preferred stock, par value \$5.00 per share, of which one share of special voting stock was outstanding; and 750,000,000 shares of common stock, par value \$1.60 per share, of which (1) 488,429,224 shares were outstanding and (2) 6,539,635 shares were issuable upon conversion of the exchangeable shares of Old NMCCL, having economic rights equivalent to those of our common stock and exchangeable on a one-for-one basis with shares of our common stock.

## MATERIAL CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of Goodmans LLP, counsel to Newmont, the following discussion summarizes the material Canadian federal income tax considerations generally applicable as of the date hereof under the *Income Tax Act* (Canada) (the “**ITA**”) to holders of exchangeable shares (the “**Exchangeable Shares**”) of New NMCCCL (i) that dispose of Exchangeable Shares for shares of Newmont common stock and (ii) of holding and disposing of shares of Newmont common stock. This discussion is applicable to holders of Exchangeable Shares who, for purposes of the ITA at all relevant times: (a) hold their Exchangeable Shares, and will hold shares of Newmont common stock, as “capital property”; (b) deal at arm’s length with, and are not “affiliated” with, any of the Newmont or its subsidiaries; (c) do not use or hold Exchangeable Shares, and will not use or hold shares of Newmont common stock in the course of carrying on a business, and did not acquire the Exchangeable Shares, or shares of Newmont common stock in one or more transactions considered to be “an adventure or concern in the nature of trade”; and (d) in respect of whom Newmont is not a “foreign affiliate” (a “**Relevant Shareholder**”). A Relevant Shareholder that is resident in Canada for the purposes of the ITA who might not otherwise be considered to hold Exchangeable Shares as capital property may, in certain circumstances, be entitled to have the Exchangeable Shares and any other “Canadian security” held by it in the taxation year of the election and all subsequent taxation years treated as capital property by making the irrevocable election permitted by subsection 39(4) of the ITA. A Relevant Shareholder contemplating making such an election should consult their own tax advisor.

This summary is not applicable to a Relevant Shareholder: (a) that is a “financial institution” for the purposes of the “mark-to-market property” rules in the ITA; (b) that is a “specified financial institution”; (c) an interest in which is a “tax shelter investment”; or (d) that has elected to have the “functional currency” reporting rules under the ITA apply.

For purposes of this summary, terms which appear in quotation marks (other than cross references to other sections of this prospectus or terms defined in the preceding paragraphs of this summary) have the meanings given to them by the relevant provisions of the ITA.

This summary is based on the current provisions of the ITA and the regulations thereunder, the administrative and assessing policies and practices published by the Canada Revenue Agency (the “**CRA**”) prior to the date of this prospectus and specific proposals to amend the ITA and regulations thereunder publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date of this prospectus (referred to as the “tax proposals”). No assurance can be given that any of the tax proposals will be enacted in the form announced or at all.

This summary does not take into account or anticipate any changes in law or administrative and assessing policies and practices, other than the tax proposals, nor does it take into account provincial or territorial tax laws or tax laws of countries other than Canada.

This discussion is a general description of material Canadian federal income tax considerations material to Relevant Shareholders who dispose of Exchangeable Shares and who hold and dispose of shares of Newmont common stock and does not deal with all possible tax consequences. In addition, this summary does not take into account the particular circumstances of any individual Relevant Shareholder and does not address consequences which may be particular to an individual Relevant Shareholder. Therefore, Relevant Shareholders should consult their own tax advisors regarding the particular consequences to them.

For purposes of the ITA, all amounts relating to the acquisition, holding or disposition of shares of Newmont common stock must be expressed in Canadian dollars. Amounts denominated in U.S. dollars

must be converted into Canadian dollars based on the U.S. dollar exchange rate quoted by the Bank of Canada for noon on the particular day such amounts arise.

In preparing this summary, based on views expressed by Newmont, it has been assumed that the respective fair market values of the rights to exchange the Exchangeable Shares for shares of Newmont common stock and the rights to direct the votes attached to Newmont special voting stock, (the “ **Ancillary Rights** ”), and all similar rights in respect of Exchangeable Shares is nominal. This determination of value is not binding on the CRA and it is possible that the CRA could take a contrary view. Counsel expresses no opinion as to the appropriateness or accuracy of this value determination.

### **Relevant Shareholders Resident in Canada**

The following portion of this summary applies to a Relevant Shareholder that is a resident, or is deemed to be a resident, of Canada for the purposes of the ITA (a “ **Relevant Canadian Shareholder** ”).

#### ***Redemption or Exchange of Exchangeable Shares***

The tax treatment of amounts received on a disposition of Exchangeable Shares depends on whether they are disposed of to New NMCCCL or to another person. On a disposition of Exchangeable Shares to New NMCCCL ( *i.e.* , on a retraction or redemption of those shares) in exchange for shares of Newmont common stock (plus the amount of any declared and unpaid dividends on the Exchangeable Shares), a Relevant Canadian Shareholder will generally be considered to:

- realize a deemed dividend equal to the amount by which the proceeds of disposition received from New NMCCCL ( *i.e.* , the fair market value at the time of disposition of the shares of Newmont common stock received plus any amount received in respect of declared and unpaid dividends) exceed the “paid-up capital” of those Exchangeable Shares at that time;
- realize a capital gain (or capital loss), equal to the amount by which such proceeds of disposition, less the amount of such deemed dividend, exceed (or are less than) the sum of: (i) the Relevant Shareholder’s “adjusted cost base” of such Exchangeable Shares determined immediately before the disposition, and (ii) any reasonable costs of disposition; and
- acquire such shares of Newmont common stock at a cost equal to their fair market value at that time (which cost is averaged with the “adjusted cost base” of any other shares of Newmont common stock held by the Relevant Canadian Shareholder as “capital property” at that time for the purposes of determining the holder’s adjusted cost base of all such shares of Newmont common stock).

For a description of the tax treatment of dividends, see “Dividends on Exchangeable Shares.” In the case of a Relevant Canadian Shareholder that is a corporation, in some cases the deemed dividend may be considered not to be a dividend, but rather proceeds of disposition. For a description of the tax treatment of capital gains and losses, see “Capital Gains and Capital Losses.”

On a disposition of Exchangeable Shares to Newmont or Newmont Holdings ULC (“ **NHULC** ”) (or such other company which, in Newmont’s sole discretion, exercises the Call Right, “ **Callco** ”) ( *i.e.* , on the exercise by Newmont or Callco of any of the overriding rights to call the Exchangeable Shares (the “ **Call Rights** ”) or rights of the holders of Exchangeable Shares to require Newmont to exchange the Exchangeable Shares for shares of Newmont common stock on certain insolvency and liquidation events (the “ **Exchange Rights** ”)) in exchange for shares of Newmont common stock (plus the amount of any declared and unpaid dividends), a Relevant Canadian Shareholder will be considered to:

- dispose of those Exchangeable Shares for proceeds of disposition equal to (i) the fair market value determined at the time of disposition of such shares of Newmont common stock, plus (ii) any amount received in respect of declared and unpaid dividends on the Exchangeable Shares, unless the amount described in (ii) is required to be included in computing such Relevant Canadian Shareholder's income as a dividend;
- realize a capital gain (or capital loss) equal to the amount by which such proceeds of disposition exceed (or are less than) the sum of: (i) the Relevant Canadian Shareholder's "adjusted cost base" of the Exchangeable Shares determined immediately before the disposition, and (ii) any reasonable costs of disposition; and
- acquire such shares of Newmont common stock at a cost equal to their fair market value at that time (which cost is averaged with the "adjusted cost base" of any other shares of Newmont common stock held by the Relevant Canadian Shareholder as "capital property" at that time for the purposes of determining the holder's adjusted cost base of all such shares of Newmont common stock).

Because of the Call Rights and the Exchange Rights, a holder of Exchangeable Shares cannot control whether the shares will be acquired by New NMCCCL (by way of retraction or redemption) or by Newmont or Callco (by the way of an acquisition). As outlined above, the income tax consequences of a retraction or redemption differ significantly from those of an acquisition. For a description of the tax treatment of capital gains and losses, see "Capital Gains and Capital Losses."

### *Dividends on Exchangeable Shares*

For purposes of the discussion below, dividends generally include deemed dividends.

Dividends on Exchangeable Shares received by an "individual" (other than certain trusts) are included in computing the individual's income when received and are subject to the normal gross-up and dividend tax credit rules generally applicable to taxable dividends received from a corporation resident in Canada, including the enhanced gross-up and dividend tax credit applicable to any dividend designated as an "eligible dividend" in accordance with the provisions of the ITA. There may be limitations on the ability to designate all dividends on the Exchangeable Shares as "eligible dividends."

In the case of a Relevant Canadian Shareholder that is a corporation (other than a "specified financial institution"), dividends received on the Exchangeable Shares will be included in computing income and generally will be deductible in computing its taxable income.

A "private corporation" or a "subject corporation" may be liable under Part IV of the ITA to pay a refundable tax of 33 1/3% on dividends received on Exchangeable Shares to the extent they are deductible in computing taxable income. A corporation that is a "Canadian-controlled private corporation" throughout the relevant taxation year may be liable to pay an additional refundable tax of 6 2/3% on dividends received on Exchangeable Shares to the extent they are not deductible in computing taxable income.

The Exchangeable Shares will be "taxable preferred shares" and "short-term preferred shares" for the purposes of the ITA. Accordingly, New NMCCCL will be subject to a 45% tax under Part VI.1 of the ITA on dividends paid on the Exchangeable Shares prior to January 1, 2012, and subject to a 40% tax for dividends paid in a year that ends after December 31, 2011, in each case in excess of an annual dividend allowance. In addition, New NMCCCL will be entitled to deduct an amount equal to 3.2 times such tax payable for years ending prior to January 1, 2012, and will be entitled to deduct an amount equal

to 3.5 times such tax payable in years ending after December 31, 2011, in computing its taxable income under Part I of the ITA. Moreover, this deduction may be utilized by other Canadian resident corporations “related” to Newmont, subject to the limitations set out in the ITA. Dividends received on the Exchangeable Shares will not be subject to the 10% tax under Part IV.1 of the ITA.

### ***Dividends on Shares of Newmont Common Stock***

Dividends on shares of Newmont common stock, including the amount of U.S. taxes withheld therefrom, are included in the Relevant Canadian Shareholder’s income when received and are not eligible for:

- the gross-up and dividend tax credit, in the case of recipients who are “individuals”; or
- the deduction in computing taxable income, in the case of recipients that are corporations,

in each case, as described under “Dividends on Exchangeable Shares.” A “Canadian-controlled private corporation” may be liable to pay a refundable tax of  $6\frac{2}{3}\%$  on such amounts. U.S. withholding tax on such amounts may be credited against the Relevant Canadian Shareholder’s income tax payable or deducted from income, subject to limitations in the ITA.

### ***Disposition of Shares of Newmont Common Stock***

On a disposition of shares of Newmont common stock, a Relevant Canadian Shareholder will realize a capital gain (or capital loss) equal to the amount by which the proceeds of disposition received exceed (or are less than) the sum of: (a) the Relevant Canadian Shareholder’s “adjusted cost base” of such shares of Newmont Common Stock, and (b) any reasonable costs of disposition. For a description of the tax treatment of capital gains and losses, see “Capital Gains and Capital Losses.”

### ***Capital Gains and Capital Losses***

Generally, one-half of any capital gain (the “taxable capital gain”) is required to be included in the Relevant Canadian Shareholder’s income for the taxation year of disposition, and one-half of any capital loss (the “allowable capital loss”) must be deducted against the Canadian resident’s “taxable capital gains” for the taxation year of disposition. “Allowable capital losses” in excess of “taxable capital gains” in a particular taxation year generally can be deducted against the net “taxable capital gains” of the three immediately prior taxation years or any later taxation year, subject to certain limitations in the ITA.

When an “individual” (other than certain trusts) realizes a capital gain, alternative minimum tax may arise, depending on the “individual’s” particular circumstances. A “Canadian-controlled private corporation” may be liable to pay an additional refundable tax of  $6\frac{2}{3}\%$  on “taxable capital gains.”

The amount of any capital loss realized by a corporation on the disposition of a share may be reduced by the amount of dividends received or deemed to be received on that share. Similar rules may apply where a corporation is a member of a partnership or a beneficiary of a trust that owns shares, directly or indirectly through a partnership or trust.

### ***Offshore Investment Fund Property***

The ITA contains rules which may require a Relevant Canadian Shareholder to include in income in each taxation year an amount in respect of the holding of an “offshore investment fund property.”

These rules could apply to a Relevant Canadian Shareholder in respect of shares of Newmont common stock held by such holder if, but only if:

- the share of Newmont common stock may reasonably be considered to derive its value, directly or indirectly, primarily from portfolio investments in: (i) shares of one or more corporations, (ii) indebtedness or annuities, (iii) interests in one or more corporations, trusts, partnerships, organizations, funds or entities, (iv) commodities, (v) real estate, (vi) Canadian or foreign resource properties, (vii) currency of a country other than Canada, (viii) rights or options to acquire or dispose of any of the foregoing, or (ix) any combination of the foregoing (collectively, “investment assets”); and
- it may reasonably be concluded, having regard to all the circumstances, that one of the main reasons for such holder acquiring, holding or having an interest in the share of Newmont common stock was to derive a benefit from portfolio investments in investment assets in such a manner that the taxes, if any, on the income, profits and gains from such assets for any particular year are significantly less than the tax would have been applicable under Part I of the ITA if the income, profits and gains had been earned directly by such holder.

If applicable, these rules generally would require a Relevant Canadian Shareholder to include in income for each taxation year in which such holder holds shares of Newmont common stock, an imputed amount determined by applying a prescribed rate of interest to the “designated cost” to the holder of the share of Newmont common stock at the end of each month in the year, less the amount of certain income of such holder from the share of Newmont common stock in the year. Any amount required to be included in computing such holder’s income in respect of shares of Newmont common stock under these rules would be added to the adjusted cost base to such Relevant Canadian Shareholder of such security.

The application of these rules depends, to a large extent, on the reasons for a Relevant Canadian Shareholder acquiring or holding shares of Newmont common stock. Relevant Canadian Shareholders are urged to consult their own tax advisors regarding the application and consequences of these rules.

#### ***Foreign Property Information Reporting***

A holder of Exchangeable Shares or shares of Newmont common stock who is a “specified Canadian entity” for a taxation year or fiscal period and whose total cost amount of “specified foreign property,” including Exchangeable Shares and shares of Newmont common stock, at any time in the year or fiscal period exceeds \$100,000 is required to file an information return for the year or period disclosing prescribed information, including the holder’s cost amount, any dividends received in the year and any gains or losses realized in the year, in respect of such property. With some exceptions, a Relevant Canadian Shareholder who holds Exchangeable Shares or shares of Newmont common stock in the year will be a “specified Canadian entity.” Holders of Exchangeable Shares or shares of Newmont common stock should consult their own tax advisors about the applicability of these rules. On March 4, 2010, the Minister of Finance (Canada) announced proposals to expand existing reporting requirements with respect to specified foreign property to require more detailed information. As of the date hereof, draft legislation with respect to such amended reporting requirements has not been released.

#### **Relevant Shareholders Not Resident in Canada**

The following portion of this summary is applicable to a Relevant Shareholder who is not resident, and is not deemed to be resident, in Canada for the purposes of the ITA and who, for the purposes of the ITA: (a) does not hold or use, and will not hold or use, Exchangeable Shares in connection with carrying on a business in Canada; and (b) is not an insurer carrying on business in Canada and elsewhere (a “**Non-Resident Shareholder**”).

***Exchange of Exchangeable Shares for shares of Newmont Common Stock and Other Dispositions of Exchangeable Shares (Other Than a Redemption or Retraction)***

In general, a Non-Resident Shareholder will not be subject to Canadian federal income tax on a capital gain or loss on the exchange of Exchangeable Shares for shares of Newmont common stock, or on other dispositions of the Exchangeable Shares (other than on redemption by New NMCCCL) provided such Exchangeable Shares do not constitute “taxable Canadian property” to the Non-Resident Shareholder or the Non-Resident Shareholder is not entitled to relief under the provisions of an applicable tax treaty.

An Exchangeable Share generally will not constitute “taxable Canadian property” of the Non-Resident Shareholder unless, at any time during the 60-month period immediately preceding the exchange of the Exchangeable Share, the Non-Resident Shareholder or a person with whom the Non-Resident Shareholder did not deal at arm’s length (or any combination thereof) held more than 25% of the Exchangeable Shares and more than 50% of the fair market value of the Exchangeable Share was derived directly or indirectly from one or any combination of (a) “real or immovable property situated in Canada,” (b) “Canadian resource properties,” (c) “timber resource properties,” and (d) options in respect of, or interests in, or for civil law rights in, property described in (a) to (c), whether or not the property exists.

**Non-Resident Shareholders should consult their own tax advisors to determine whether their Exchangeable Shares are “taxable Canadian property” to such Non-Resident Shareholder and, if so, the consequences to the Non-Resident Shareholder .**

***Redemption of Exchangeable Shares***

On a disposition of an Exchangeable Share to New NMCCCL ( *i.e.* , on a retraction or redemption of those shares in circumstances where the specific Call Right that overrides a retraction request by a holder of Exchangeable Shares and/or that overrides a redemption, is not exercised) in exchange for shares of Newmont common stock (plus the amount of any declared and unpaid dividends on the Exchangeable Shares), a Non-Resident Shareholder generally will be considered to:

- realize a deemed dividend equal to the amount by which the proceeds of disposition received from New NMCCCL (i.e., the fair market value at the time of disposition of the shares of Newmont common stock received plus any amount received in respect of declared and unpaid dividends) exceed the “paid-up capital” of those Exchangeable Shares at that time; and
- realize a capital gain (or capital loss) equal to the amount by which such proceeds of disposition, less the amount of such deemed dividend, exceed (or are less than) the sum of: (i) the Non-Resident Shareholder’s “adjusted cost base” of such Exchangeable Shares determined immediately before the disposition, and (ii) any reasonable costs of disposition.

For a description of the Canadian tax treatment of capital gains and losses, see “Redemption or Exchange of Exchangeable Shares,” and “Capital Gains and Capital Losses,” and for a description of the Canadian tax treatment of dividends, see Dividends on Exchangeable Shares.”

## MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of White & Case LLP, counsel to Newmont, the following discussion summarizes the material United States federal income tax consequences to holders of exchangeable shares of New NMCCCL (“**Exchangeable Shares**”) that exchange such shares for shares of Newmont common stock and the material United States federal income tax consequences to Non-U.S. Holders (as defined below) of holding and disposing of shares of Newmont common stock acquired in such exchange. This summary does not discuss all United States federal income tax considerations that may be relevant to holders in light of their particular circumstances (including but not limited to holders who own or have owned 10% or more of the shares of New NMCCCL, directly, indirectly or by attribution) or to certain holders that may be subject to special treatment under United States federal income tax laws (for example, insurance companies, regulated investment companies, real estate investment trusts, tax-exempt entities, financial institutions, dealers in securities, persons who hold Exchangeable Shares or shares of Newmont common stock as part of a straddle, hedging, constructive sale or conversion transaction, persons whose functional currency is not the U.S. dollar, or holders who are subject to the alternative minimum tax provision of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”). Further, this summary does not discuss aspects of foreign, state or local taxation. This summary is based on interpretations of current provisions of the Code, existing, temporary and proposed regulations promulgated thereunder and administrative and judicial interpretations thereof, all of which are subject to change, possibly with retroactive effect. No advance income tax ruling has been sought or obtained from the U.S. Internal Revenue Service (“**IRS**”) regarding the tax consequences of acquiring shares of Newmont common stock in exchange for Exchangeable Shares and of holding or disposing of shares of Newmont common stock, and the IRS is not precluded from successfully asserting a contrary result.

**This summary is not intended to address all of the United States federal income tax considerations that may apply to a particular holder of Exchangeable Shares or shares of Newmont common stock. Holders of Exchangeable Shares and shares of Newmont common stock should consult their tax advisors with respect to the United States federal, state, local and foreign tax consequences of acquiring shares of Newmont common stock in exchange for Exchangeable Shares and of holding and disposing of shares of Newmont common stock.**

### **Consequences of the Exchange to U.S. Holders**

For purposes of this discussion of the exchange of Exchangeable Shares for shares of Newmont common stock, a U.S. Holder is a beneficial owner of Exchangeable Shares that is (a) an individual citizen or resident of the United States, (b) a corporation or other entity taxable as a corporation created or organized in or under the laws of the United States or any political subdivision thereof, (c) an estate the income of which is includible in its gross income for United States federal income tax purposes without regard to its source, or (d) a trust if (i) a United States court is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all the substantial decisions of the trust, or (ii) a valid election is in effect for the trust to be treated as a U.S. person for United States federal income tax purposes (“**U.S. Holder**”). If a partnership (or any other entity treated as a partnership for United States federal income tax purposes) holds Exchangeable Shares, the tax treatment of the partnership and a partner in such partnership generally will depend upon the status of the partner and the activities of the partnership. Such a partner or partnership should consult its own tax advisor as to the consequences of acquiring shares of Newmont common stock in exchange for Exchangeable Shares.

### *Passive Foreign Investment Company Status of New NMCCCL*

Special U.S. federal income tax rules apply to a U.S. person that holds shares of a non-U.S. corporation that is or has been a passive foreign investment company (“**PFIC**”) at any time during which the U.S. person has held shares or options to acquire shares. A non-U.S. corporation generally is classified as a PFIC for United States federal income tax purposes in any taxable year if, either (a) at least 75% of its gross income is “passive” income, or (b) on average at least 50% of the gross value of its assets is attributable to assets that produce passive income or are held for the production of passive income. If a non-U.S. corporation directly or indirectly owns at least 25% by value of the stock of another corporation, the non-U.S. corporation is treated for purposes of these tests as owning its proportionate share of the assets of the other corporation, and as receiving directly its proportionate share of the other corporation’s income.

The determination as to whether New NMCCCL is a PFIC is made annually. Based on certain estimates of its gross income and gross assets and the nature of its businesses, we believe that New NMCCCL is and will continue to be classified as a PFIC. As a result, the United States federal income tax consequences of the exchange of Exchangeable Shares for shares of Newmont common stock will be as described below.

### *Exchange of Exchangeable Shares for Newmont Common Stock*

The exchange of Exchangeable Shares for shares of Newmont common stock should constitute a taxable transaction for United States federal income tax purposes. As a result, a U.S. Holder generally should be subject to special tax rules with respect to any gain realized from the exchange of Exchangeable Shares for shares of Newmont common stock if, as we believe, New NMCCCL is a PFIC. The amount of the gain will equal the excess of the fair market value of Newmont common stock over the U.S. Holder’s tax basis in the Exchangeable Shares, in each case as determined in U.S. dollars. The initial tax basis of the U.S. Holder’s Exchangeable Shares is the U.S. dollar value of the Canadian dollars denominated purchase price determined on the date of purchase or, if the Exchangeable Shares were acquired by shareholders of Old NMCCCL pursuant to the plan of arrangement, the fair market value of the Exchangeable Shares determined on the effective date of the arrangement, as determined in U.S. dollars. If the Exchangeable Shares are treated as traded on an “established securities market,” a cash basis U.S. Holder (or, if it elects, an accrual basis U.S. Holder) who purchases Exchangeable Shares will determine the U.S. dollar value of the cost of such Exchangeable Shares by translating the amount paid at the spot rate of exchange on the settlement date of the purchase. Such an election by an accrual basis U.S. Holder must be applied consistently from year to year and cannot be revoked without the consent of the IRS.

Under the PFIC rules, unless a U.S. Holder made a “mark-to-market” election, any gain realized on the exchange will be treated as ordinary income and will be subject to tax as if (a) the gain had been realized ratably over such holder’s holding period, (b) the amount deemed realized had been subject to tax in each year of that holding period at the highest tax rate in effect for each such year to which the gain was allocated (other than gain allocated to the taxable year of the disposition and any other taxable year prior to the first year in which New NMCCCL was a PFIC, which is subject to tax at such holder’s ordinary income tax rate), and (c) an interest charge generally applicable to underpayments of tax had been imposed on the taxes deemed to have been payable in those years. If a U.S. Holder’s tax basis in its Exchangeable Shares exceeds the fair market value of the shares of Newmont common stock, such holder generally will recognize a capital loss. Any gain or loss recognized by a U.S. Holder generally will be treated as U.S. source gain or loss for foreign tax credit purposes. The deductibility of capital losses is subject to limitations.

A U.S. Holder's initial tax basis of shares of Newmont common stock would be the fair market value of Newmont common stock on the date of the exchange, as determined in U.S. dollars, and such holder's holding period for such shares would begin on the date of the exchange.

A U.S. Holder of Exchangeable Shares that elected to include gain on the Exchangeable Shares as ordinary income under a mark-to-market election may have tax consequences different from those described above. U.S. Holders that made such an election are urged to discuss the United States federal income tax consequences of the disposition of Exchangeable Shares with their tax advisors.

### **Consequences to Non-U.S. Holders of Owning and Disposing of Newmont Common Stock Acquired in the Exchange**

For purposes of this discussion, a Non-U.S. Holder is a beneficial owner of shares of Newmont common stock that, for United States federal income tax purposes, is not (a) an individual citizen or resident of the United States, (b) a corporation or other entity taxable as a corporation created or organized in or under the laws of the United States or any political subdivision thereof, (c) an estate the income of which is includible in its gross income for United States federal income tax purposes without regard to its source; or (d) a trust if (i) a United States court is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all the substantial decisions of the trust, or (ii) a valid election is in effect for the trust to be treated as a U.S. person for United States federal income tax purposes (" **Non-U.S. Holder** "). If a partnership (or any other entity treated as a partnership for United States federal income tax purposes) holds shares of Newmont common stock, the tax treatment of a partner in such partnership generally will depend on the status of the partner and the activities of the partnership. Such a partner should consult its tax advisor as to its tax consequences.

#### ***Exchange of Exchangeable Shares for Newmont Common Stock***

Generally, a Non-U.S. Holder will not be subject to United States federal income or withholding tax on any gain realized on the exchange of Exchangeable Shares for shares of Newmont common stock unless such gain is effectively connected with such holder's conduct of a trade or business in the United States and, in cases in which certain tax treaties apply, is attributable to a United States permanent establishment. If a Non-U.S. Holder is a foreign corporation, it will be subject to tax on its gain under regular graduated United States federal income tax rates and, in addition, may be subject to the branch profits tax equal to 30% of its effectively connected earnings and profits or at such lower rate as may be specified by an applicable income tax treaty.

#### ***Distributions***

Generally, but subject to the discussions below under "Status as United States Real Property Holding Corporation" and "Backup Withholding Tax and Information Reporting Requirements," distributions of cash or property (other than shares of Newmont common stock, if any, distributed pro rata to all Newmont shareholders) paid to a Non-U.S. Holder will be subject to withholding of United States federal income tax at a 30% rate or such lower rate as may be specified by an applicable United States income tax treaty. In order to obtain the benefit of any applicable United States income tax treaty, a Non-U.S. Holder must (a) provide the withholding agent with a properly completed IRS Form W-8BEN (or other applicable form) and certify under penalties of perjury that such holder is not a U.S. person and is eligible for treaty benefits, or (b) if shares of Newmont common stock are held through certain foreign intermediaries, satisfy the relevant certification requirements of applicable U.S. Treasury regulations. Special certification and other requirements apply to certain Non-U.S. Holders that act as intermediaries (including partnerships).

If a Non-U.S. Holder is eligible for a reduced rate of U.S. federal income tax pursuant to an income tax treaty, then such holder may obtain a refund or credit of any excess amounts withheld by filing timely an appropriate claim with the IRS.

Except as may be otherwise provided in an applicable United States income tax treaty, Non-U.S. Holders that conduct a trade or business within the United States generally will be taxed at ordinary United States federal income tax rates (on a net income basis) on dividends that are effectively connected with the conduct of such trade or business and such dividends will not be subject to the withholding described above. If a Non-U.S. Holder is a foreign corporation, it may also be subject to a 30% "branch profits tax" unless such holder qualifies for a lower rate under an applicable United States income tax treaty. To claim an exemption from withholding because the income is effectively connected with a United States trade or business, a Non-U.S. Holder must provide a properly executed Internal Revenue Service Form W-8ECI (or such successor form as the Internal Revenue Service designates) prior to the payment of dividends.

### ***Sale or Exchange***

Generally, but subject to the discussions below under "Status as United States Real Property Holding Corporation" and "Backup Withholding Tax and Information Reporting Requirements," a Non-U.S. Holder will not be subject to United States federal income or withholding tax on any gain realized on the sale or exchange of shares of Newmont common stock unless (1) such gain is effectively connected with such holder's conduct of a trade or business in the United States and, in cases in which certain tax treaties apply, is attributable to a United States permanent establishment, or (2) if such holder is an individual, such holder is present in the United States for 183 days or more in the taxable year of such sale or exchange and certain other conditions are met. If a Non-U.S. Holder is an individual described in clause (1), above, then such holder will be subject to tax on the net gain derived from the sale or exchange under regular graduated United States federal income tax rates or such lower rate as specified by an applicable income tax treaty. If a Non-U.S. Holder is an individual described in clause (2), above, such holder will be subject to a flat 30% tax on the gain derived from the sale or exchange, which may be offset by United States source capital losses (even though the individual is not considered a resident of the United States). If a Non-U.S. Holder is a foreign corporation described in clause (1), above, it will be subject to tax on its gain under regular graduated United States federal income tax rates and, in addition, may be subject to the branch profits tax equal to 30% of its effectively connected earnings and profits or at such lower rate as may be specified by an applicable income tax treaty.

### ***Status as United States Real Property Holding Corporation***

We believe that Newmont may be or may become a U.S. real property holding corporation within the meaning of the Code. If Newmont has been or was to become a U.S. real property holding corporation, a Non-U.S. Holder might be subject to U.S. federal income tax (but not the branch profits tax) or U.S. federal withholding tax, or both, with respect to gain realized on the disposition of Newmont common stock. However, such gain would not be subject to U.S. federal income or withholding tax if (1) Newmont common stock is regularly traded on an established securities market and (2) the Non-U.S. Holder disposing of such stock did not own, actually or constructively, at any time during the five-year period preceding the disposition, more than 5% of the value of such stock. Non-U.S. Holders are urged to consult their tax advisors with respect to the United States federal income tax consequences that may arise if Newmont is or becomes a United States real property holding corporation.

### ***Federal Estate Tax***

Shares of Newmont common stock held by an individual who at his or her date of death is not a citizen or resident of the United States generally will be subject to United States federal estate tax.

### ***Backup Withholding Tax and Information Reporting Requirements***

We must report annually to the IRS and to certain holders of shares of Newmont common stock the amount of certain distributions made to such holders and the amount of tax, if any, withheld with respect to such distributions. The IRS may make this information available to the tax authorities in the country in which such holders are resident.

In addition, a Non-U.S. Holder may be subject to information reporting requirements and backup withholding tax (currently at a rate of 28%) with respect to certain distributions paid on, and the proceeds of disposition of, shares of Newmont common stock, unless, generally, such holder certifies under penalties of perjury (usually on IRS Form W-8BEN) that such holder is not a U.S. person or such holder otherwise establishes an exemption. Additional rules relating to information reporting requirements and backup withholding tax with respect to payments of the proceeds from the disposition of shares of Newmont common stock are as follows:

- If the proceeds are paid to or through the U.S. office of a broker, the proceeds generally will be subject to backup withholding tax and information reporting, unless a holder certifies under penalties of perjury (usually on IRS Form W-8BEN) that such holder is not a U.S. person or such holder otherwise establishes an exemption.
- If the proceeds are paid to or through a non-U.S. office of a broker that is not a U.S. person and is not a foreign person with certain specified U.S. connections, or a U.S.-related person, information reporting and backup withholding tax generally will not apply.
- If the proceeds are paid to or through a non-U.S. office of a broker that is a U.S. person or a U.S.-related person, the proceeds generally will be subject to information reporting (but not to backup withholding tax), unless the holder certifies under penalties of perjury (usually on IRS Form W-8BEN) that such holder is not a U.S. person.

Any amounts withheld under the backup withholding tax rules may be allowed as a refund or a credit against a Non-U.S. Holder's United States federal income tax liability, provided the required information is timely furnished by such holder to the IRS.

### ***Foreign Accounts***

Withholding taxes may apply to certain types of payments made to "foreign financial institutions" (as specially defined under those rules) and certain other non-U.S. entities. The failure to comply with additional certification, information reporting and other specified requirements could result in a withholding tax being imposed on payments of certain distributions and sales proceeds to foreign intermediaries and certain Non-U.S. Holders. A 30% withholding tax will be imposed on dividends on, or gross proceeds from the sale or other disposition of, shares of Newmont common stock paid to a foreign financial institution or to a foreign non-financial entity, unless (i) the foreign financial institution undertakes certain diligence and reporting obligations or (ii) the foreign non-financial entity either certifies it does not have any substantial U.S. owners or furnishes identifying information regarding each substantial U.S. owner. If the payee is a foreign financial institution, the withholding tax will apply unless the foreign financial institution enters into an agreement with the U.S. Treasury requiring, among other

things, that it undertake to identify accounts held by certain U.S. persons or U.S.-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements.

Although this legislation currently applies to applicable payments made after December 31, 2012, in recent guidance, the IRS has indicated that U.S. Treasury regulations will be issued providing that the withholding provisions described above will apply to payments of dividends on shares of Newmont common stock made on or after January 1, 2014 and to payments of gross proceeds from a sale or other disposition of such stock on or after January 1, 2015. Non-U.S. Holders should consult their tax advisors regarding this legislation.

**The above description is not intended to constitute a complete analysis of all tax consequences relating to acquiring shares of Newmont common stock in exchange for Exchangeable Shares and of holding and disposing of shares of Newmont common stock. Holders of Exchangeable Shares and shares of Newmont common stock should consult their tax advisors concerning the tax consequences of their particular situations.**

## **PLAN OF DISTRIBUTION**

The shares of our common stock offered in this prospectus will be issued in exchange for exchangeable shares of New NMCCCL. No broker, dealer or underwriter has been engaged in connection with this offering. The rights of holders of exchangeable shares of New NMCCCL and the terms upon which the exchangeable shares may be exchanged or redeemed for shares of our common stock are set forth in the plan of arrangement, including the exchangeable share provisions, and certain provisions of the form of voting and exchange trust agreement, which are attached as exhibits 2.2 and 99.1 respectively, to the registration statement of which this prospectus is a part.

## EXPERTS

Our financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this document by reference to our Annual Report on Form 10-K for the year ended December 31, 2010 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

Ian Douglas, Newmont's Group Executive Reserves, is the Qualified Person responsible for the preparation of the scientific and technical information concerning our mineral properties in this prospectus. The reserves disclosed and incorporated by reference in this prospectus have been prepared in compliance with Industry Guide 7 published by the SEC. We have determined that such reserves would be substantively the same as those prepared using the Guidelines established by the Canadian Institute of Mining, Metallurgy and Petroleum. For a description of the key assumptions, parameters and methods used to estimate mineral reserves on our material properties, as well as a general discussion of the extent to which the estimates may be affected by any known environmental, permitting, legal, title, taxation, socio-political, marketing or other relevant factors, please see our Annual Report on Form 10-K for the year ended December 31, 2010 and our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, each of which is incorporated by reference in this prospectus, and our Management's Discussion and Analysis of Financial Condition and Results of Operations, as filed from time to time on EDGAR in the United States.

## LEGAL MATTERS

The validity of the shares of common stock offered by this prospectus will be passed upon for us by White & Case LLP, New York, New York. Certain Canadian federal tax matters will be passed upon by Goodmans LLP, as set forth under "Material Canadian Federal Income Tax Considerations." Certain United States federal tax matters will be passed upon by White & Case LLP as set forth under "Material United States Federal Income Tax Considerations."

## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. Our SEC filings are available to the public from our web site at <http://www.newmont.com> or from the SEC's web site at <http://www.sec.gov>. The information on our website is not incorporated by reference into and is not made a part of this prospectus. You may also read and copy any document we file at the SEC's public reference room located at 100 F Street, NE, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms.

As required by the Securities Act, we have filed with the SEC a registration statement on Form S-3 relating to the shares of common stock offered by this prospectus. This prospectus is a part of that registration statement, which includes additional information. Whenever a reference is made in this prospectus to a contract or other document of ours, please be aware that the reference is only a summary and that you should refer to the exhibits that are a part of the registration statement for a copy of the contract or other document. You may review a copy of the registration statement at the SEC's public reference room in Washington, D.C., as well as through the SEC's website.

We "incorporate by reference" in this prospectus certain information that we file with the SEC, which means that we disclose important information to you by referring you to those documents. The

information incorporated by reference is considered to be a part of this prospectus, and information in documents that we file later with the SEC will automatically update and, where applicable, supersede information contained in documents filed earlier with the SEC or contained in this prospectus. We incorporate by reference in this prospectus the documents listed below that have been previously filed with the SEC. These documents contain important information about us and our financial condition.

<b>Newmont SEC Filings (File No. 001-31240)</b>	<b>Period</b>
Annual Report on Form 10-K (including the portions of our proxy statement for our 2011 annual meeting of stockholders incorporated by reference therein)	Year ended December 31, 2010
Quarterly Report on Form 10-Q	Quarters ended March 31, 2011, June 30, 2011 and September 30, 2011
Current Reports on Form 8-K	Filed February 8, 2011, March 10, 2011, March 11, 2011, April 7, 2011, April 22, 2011, May 10, 2011, May 26, 2011, July 1, 2011, July 15, 2011, October 11, 2011 and October 25, 2011
The description of our capital stock contained in our Registration Statement on Form S-3	Filed on September 15, 2009, including any amendment or report filed for the purpose of updating that description

We also incorporate by reference in this prospectus any future filings that we may make with the SEC under Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act until we distribute all of the securities that may be offered by this prospectus. However, we are not incorporating by reference any information furnished under Items 2.02 or 7.01 (or corresponding information furnished under Item 9.01 or included as an exhibit) of any Current Report on Form 8-K.

You may request a copy of these filings at no cost to you, by writing or telephoning us as follows:

Newmont Mining Corporation  
6363 South Fiddlers Green Circle  
Greenwood Village, Colorado 80111  
Attn: Office of the Secretary  
(303) 863-7414

This prospectus incorporates documents by reference which are not presented in or delivered with this prospectus. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front of those documents. You should rely only on the information contained in this prospectus and in the documents that we have incorporated by reference into this prospectus. We have not authorized anyone to provide you with different information. We are not making an offer of the securities described in this prospectus in any state or jurisdiction where the offer is not permitted.

4,915,685 Shares



Common Stock

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PROSPECTUS

December 14, 2011

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**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

The estimated fees and expenses payable by the Registrant in connection with the issuance and distribution of the securities being registered hereby are set forth in the following table:

SEC registration fee	\$ 36,600
Printing expenses	\$ 10,000
Accounting fees and expenses	\$ 40,000
Legal fees and expenses	\$ 50,000
Miscellaneous	<u>\$ 10,000</u>
<b>Total</b>	<u><u>\$ 146,600</u></u>

**Item 15. Indemnification of Directors and Officers**

Article Tenth of the Registrant's Certificate of Incorporation provides that its directors shall be protected from personal liability, through indemnification or otherwise, to the fullest extent permitted under the General Corporation Law of the State of Delaware as from time to time in effect.

The Registrant's By-Laws provide that each person who at any time is or shall have been a director or officer of the Registrant, or is or shall have been serving another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity at the request of the Registrant and his or her heirs, executors and administrators, shall be indemnified by the Registrant in accordance with and to the full extent permitted by the General Corporation Law of the State of Delaware. Article VI of the Registrant's By-Laws facilitates enforcement of the right of directors and owners to be indemnified by establishing such right as a contract right pursuant to which the person entitled thereto may bring suit as if the indemnification provisions of the By-Laws were set forth in a separate written contract between Registrant and the director or officer.

Section 145 of the General Corporation Law of the State of Delaware authorizes and empowers each Delaware corporation to indemnify its directors, officers, employees and agents against liabilities incurred in connection with, and related expenses resulting from, any claim, action or suit brought against any such person as a result of his or her relationship with the corporation, provided that such persons acted in good faith and in a manner such person reasonably believed to be in, and not opposed to, the best interests of the corporation in connection with the acts or events on which such claim, action or suit is based. The finding of either civil or criminal liability on the part of such person in connection with such acts or events is not necessarily determinative of the question of whether such person has met the required standard of conduct and is, accordingly, entitled to be indemnified. The foregoing statements are subject to the detailed provisions of Section 145 of the General Corporation Law of the State of Delaware.

In addition, the Registrant has obtained a directors' and officers' liability and company reimbursement policy that insures against certain liabilities under the Securities Act of 1933, subject to applicable retentions.

**Item 16. Exhibits**

The exhibits to this registration statement are listed in the exhibit index, which appears elsewhere herein and is incorporated herein by reference.

**Item 17. Undertakings**

- (a) The undersigned Registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
    - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
    - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the “ *Calculation of Registration Fee* ” table in the effective registration statement; and
    - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however, that paragraphs (i), (ii) and (iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.*
  - (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
  - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
- (A) Each prospectus filed by a Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
  - (B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however, that* no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.
- (5) That, for the purpose of determining liability of a Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
- (i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;
  - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;
  - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
  - (iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

- (b) The undersigned Registrant hereby further undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by a Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Greenwood Village, State of Colorado, on December 14, 2011.

### NEWMONT MINING CORPORATION

By: /s/ Russell Ball

Name Russell Ball  
Title Executive Vice President  
and  
Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in their respective capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>*</u> Richard T. O'Brien	President, Chief Executive Officer and Director (Principal Executive Officer)	December 14, 2011
<u>/s/ Russell Ball</u> Russell Ball	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	December 14, 2011
<u>/s/ David Ottewell</u> David Ottewell	Vice President and Controller (Principal Accounting Officer)	December 14, 2011
<u>*</u> Glen A. Barton	Director	December 14, 2011
<u>*</u> Bruce R. Brook	Director	December 14, 2011
<u>*</u> Vincent A. Calarco	Director	December 14, 2011
<u>*</u> Joseph A. Carrabba	Director	December 14, 2011
<u>*</u> Noreen Doyle	Director	December 14, 2011
<u>*</u> Veronica M. Hagen	Director	December 14, 2011

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>*</u> Michael S. Hamson	Director	December 14, 2011
<u>*</u> Jane Nelson	Director	December 14, 2011
<u>*</u> John B. Prescott	Director	December 14, 2011
<u>*</u> Donald C. Roth	Director	December 14, 2011
<u>*</u> Simon R. Thompson	Director	December 14, 2011

By: /s/ Stephen P. Gottesfeld  
Name: Stephen P. Gottesfeld  
Title: Attorney-in-fact

## EXHIBIT INDEX

Exhibit Number	Description of Documents
2.1	Arrangement Agreement, dated October 31, 2011, among Newmont Mining Corporation, Newmont Mining Corporation of Canada Limited, Newmont Holdings ULC, Newmont NE Holdings Limited and Newmont NE Subco Limited.
2.2	Plan of Arrangement and the Exchangeable Shares Provisions, as approved by the Supreme Court of Ontario by final order dated December 13, 2011 (included as Exhibit A to the Arrangement Agreement filed as Exhibit 2.1).
3.1	Certificate of Incorporation of Newmont Mining Corporation, restated as of October 28, 2009. Incorporated by reference to Exhibit 3.1 to Newmont's Form 10-Q for the period September 30, 2009, and filed with the Securities and Exchange Commission on October 29, 2009.
3.2	By-laws of Newmont Mining Corporation, as amended and restated effective December 8, 2010. Incorporated by reference to Exhibit 3.1 to Newmont's Form 8-K filed with the Securities and Exchange Commission on December 10, 2010.
3.3	Certificate of Designations of the New Special Voting Stock.
5.1	Opinion of White & Case LLP as to the validity of the securities being offered.
8.1	Opinion of Goodmans LLP as to certain Canadian tax matters.
8.2	Opinion of White & Case LLP as to certain United States tax matters.
23.1	Consent of PricewaterhouseCoopers LLP.
23.2	Consent of White & Case LLP (included in the Opinion of White & Case LLP filed as Exhibits 5.1 and 8.2).
23.3	Consent of Goodmans LLP (included in the Opinion of Goodmans LLP filed as Exhibit 8.1).
24.1	Powers of attorney.
99.1	Form of Voting and Exchange Trust Agreement, to be entered into by Newmont Mining Corporation, Newmont Mining Corporation of Canada Limited and Computershare Trust Company of Canada.
99.2	Form of Support Agreement, to be entered into by Newmont Mining Corporation, Newmont Mining Corporation of Canada Limited and Newmont Holdings ULC.

**ARRANGEMENT AGREEMENT**

**THIS ARRANGEMENT AGREEMENT** is made as of the 31st day of October, 2011

**AMONG:**

**NEWMONT MINING CORPORATION** , a corporation governed by the laws of the State of Delaware  
(“ **Newmont** ”)

- and -

**NEWMONT HOLDINGS ULC** , an unlimited liability company governed by the laws of the Province of Nova Scotia  
(“ **NHULC** ”)

- and -

**NEWMONT MINING CORPORATION OF CANADA LIMITED** , a corporation governed by the federal laws of Canada  
(“ **NMCCL** ”)

- and -

**NHULC**, on behalf of a corporation to be incorporated under the laws of the Province of British Columbia  
(“ **New Exchangeco** ”)

- and -

**NHULC** , on behalf of a corporation to be incorporated under the laws of the Province of British Columbia  
(“ **New Exchangeco Sub** ”)

**WHEREAS** , the Parties wish to carry out the Arrangement on the terms and subject to the conditions set forth in this Agreement;

**NOW THEREFORE** , in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties hereby covenant and agree as follows:

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**ARTICLE 1  
INTERPRETATION**

**1.1**      **Definitions**

In this Agreement, the following terms have the following meanings:

- (a)      “ **Affiliate** ” has the meaning ascribed thereto in National Instrument 45-106 – Prospectus and Registration Exemptions, as it exists on the date hereof;
  - (b)      “ **Agreement** ”, “ **herein** ”, “ **hereof** ”, “ **hereto** ”, “ **hereunder** ” and similar expressions mean and refer to this Arrangement Agreement (including the schedules and exhibits hereto) as supplemented, modified or amended, and not to any particular article, section, schedule or other portion hereof;
  - (c)      “ **Arrangement** ” means an arrangement under section 192 of the CBCA, on the terms and conditions set forth in the Plan of Arrangement as amended, modified or supplemented;
  - (d)      “ **Arrangement Resolution** ” means the special resolution of NMCCL Shareholders approving the Arrangement;
  - (e)      “ **Articles of Arrangement** ” means the articles of arrangement in respect of the Arrangement required under subsection 192(6) of the CBCA to be filed with the Director after the Final Order has been granted;
  - (f)      “ **Business Day** ” means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open in Denver, Colorado and Toronto, Ontario for the transaction of banking business;
  - (g)      “ **CBCA** ” means the *Canada Business Corporations Act* R.S.C. 1985 c.C-44, as amended, including the regulations promulgated thereunder;
  - (h)      “ **Certificate of Arrangement** ” means the certificate of arrangement which may be issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement and giving effect to the Arrangement;
  - (i)      “ **Circular** ” means the information circular of NMCCL, together with all schedules and appendices thereto, to be distributed to NMCCL Shareholders in respect of the Meeting;
  - (j)      “ **Court** ” means the Superior Court of Justice of the Province of Ontario;
  - (k)      “ **Director** ” means the director appointed under section 260 of the CBCA;
  - (l)      “ **Effective Date** ” means the date that will appear on the Certificate of Arrangement;
  - (m)      “ **Effective Time** ” means 12:01 a.m. (Eastern Time) on the Effective Date or such other time on the Effective Date as may be specified by NMCCL;
  - (n)      “ **Final Order** ” means the final order of the Court approving the Arrangement pursuant to subsection 192(4) of the CBCA, as such order may be affirmed, amended, modified or supplemented by any court of competent jurisdiction;
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- (o) “ **Interim Order** ” means the interim order of the Court under subsection 192(4) of the CBCA, containing declarations and directions with respect to the Arrangement and the Meeting and issued pursuant to the application of NMCCCL, as such order may be affirmed, amended, modified or supplemented by any court of competent jurisdiction;
  - (p) “ **Meeting** ” means the special meeting of NMCCCL Shareholders, including any adjournment(s) or postponement(s) thereof, to be held for the purpose of, among other things, obtaining approval by NMCCCL Shareholders of the Arrangement Resolution;
  - (q) “ **New Exchangeable Share Provisions** ” means the rights, privileges, restrictions and conditions attaching to the New Exchangeable Shares as set out in Appendix 1 to the Plan of Arrangement.
  - (r) “ **New Exchangeable Shares** ” means the exchangeable shares in the capital of New Exchangeco;
  - (s) “ **New Special Voting Share** ” means the share of preferred stock, par value US\$5.00 in the capital of Newmont to be designated prior to the Effective Time and having substantially the rights, privileges, restrictions and conditions described in the New Voting and Exchange Trust Agreement;
  - (t) “ **New Support Agreement** ” means an agreement to be made among Newmont, NHULC and New Exchangeco in connection with the Plan of Arrangement, to be in substantially the form of the NMCCCL Support Agreement;
  - (u) “ **New Voting and Exchange Trust Agreement** ” means an agreement to be made among Newmont, New Exchangeco and the Trustee (as defined in the New Exchangeable Share Provisions) in connection with the Plan of Arrangement, to be in substantially the form of the NMCCCL Voting and Exchange Trust Agreement;
  - (v) “ **NMCCCL Exchangeable Shares** ” means the exchangeable shares in the capital of NMCCCL;
  - (w) “ **NMCCCL Shareholders** ” means the holders of NMCCCL Exchangeable Shares;
  - (x) “ **NMCCCL Support Agreement** ” means the support agreement dated February 16, 2002 among Newmont, NHULC and NMCCCL;
  - (y) “ **NMCCCL Voting and Exchange Trust Agreement** ” means the voting and exchange trust agreement dated February 16, 2002 among Newmont, NMCCCL and Computershare Trust Company of Canada;
  - (z) “ **NYSE** ” means the New York Stock Exchange;
  - (aa) “ **Parties** ” means, collectively, Newmont, NHULC, NMCCCL, New Exchangeco and New Exchangeco Sub and “ **Party** ” means any one of them;
  - (bb) “ **Person** ” means any individual, corporation, partnership, general partnership, joint stock company, limited liability corporation, joint venture, association, company, trust, bank, trust company, pension fund, business trust or other organization, whether or not legal a entity, and governments, agencies and political subdivisions thereof;
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(cc) “ **Plan of Arrangement** ” means the plan of arrangement attached hereto as Exhibit “A”, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof or thereof;

(dd) “ **TSX** ” means the Toronto Stock Exchange.

## **1.2 Currency**

All sums of money which are referred to in this Agreement are expressed in lawful money of Canada, unless otherwise specified.

## **1.3 Interpretation not Affected by Headings**

The division of this Agreement into articles, sections, schedules and appendices and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **1.4 Certain References**

Unless reference is specifically made to some other document or instrument, all references herein to articles, sections, sections, schedules and appendices are to articles, sections, schedules and appendices of this Agreement.

## **1.5 Number and Gender**

Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa, and words importing any gender shall include all genders.

## **1.6 References to Persons**

A reference to a Person includes any successor to that Person. A reference to any statute includes all regulations made pursuant to such statute and the provisions of any statute or regulation which amends, supplements or supersedes any such statute or regulation.

## **1.7 Entire Agreement**

This Agreement, together with the exhibit attached hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties with respect to the subject matter hereof.

## **1.8 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

## **1.9 Exhibit**

Exhibit A annexed to this Agreement, being the Plan of Arrangement, is incorporated by reference into this Agreement and forms a part hereof.

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**ARTICLE 2  
THE ARRANGEMENT**

**2.1 Arrangement**

As soon as reasonably practicable, NMCCL shall apply to the Court pursuant to subsection 192(3) of the CBCA for an order approving the Arrangement and, in connection with such application, shall:

- (a) forthwith file, proceed with and prosecute an application for an Interim Order under subsection 192(3) of the CBCA, providing for, among other things, the calling and holding of the Meeting for the purpose of considering and, if thought advisable, approving, the Arrangement Resolution;
- (b) subject to obtaining all necessary approvals as contemplated in the Interim Order and in the manner directed by the Court in the Interim Order, take steps necessary to submit the Arrangement to the Court and apply for the Final Order; and
- (c) subject to satisfaction or waiver of the conditions set forth herein, deliver to the Director Articles of Arrangement and such other documents as may be required to give effect to the Arrangement, whereupon the transactions comprising the Arrangement shall occur and shall be deemed to have occurred in the order set out therein, without any further act or formality.

**2.2 Effective Date**

The Arrangement shall become effective at the Effective Time on the Effective Date.

**ARTICLE 3  
COVENANTS**

**3.1 Covenants Regarding the Arrangement**

Each of the Parties (except as otherwise specified below) covenants and agrees that it will:

- (a) take, and cause its Subsidiaries to take, all reasonable necessary actions, and cooperate with the other Parties, to give effect to the Arrangement and the other transactions contemplated by this Agreement;
  - (b) use all reasonable efforts to obtain all consents, exemptions, approvals, assignments, waivers and amendments to or terminations of any instruments considered necessary or desirable by the parties hereto and take such measures as may be appropriate to fulfill its obligations hereunder and to carry out the transactions contemplated hereby;
  - (c) in the case of NMCCL, solicit proxies to be voted at the Meeting in favour of the Arrangement Resolution and prepare the Circular and other proxy-related materials, and any amendments, modifications or supplements thereto as required by, and in compliance with, the Interim Order and applicable corporate and securities laws, and file and distribute the same to NMCCL Shareholders in a timely and expeditious manner in all jurisdictions where the same are required to be filed and distributed;
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- (d) in the case of NMCCL, convene the Meeting as contemplated by the Interim Order and conduct such Meeting in accordance with the Interim Order and as otherwise required by law;
- (e) use all reasonable efforts to cause each of the conditions precedent set forth in Article 5 hereof which are within its control to be satisfied on or before the Effective Date;
- (f) in the case of NMCCL, subject to the approval of the Arrangement Resolution by the NMCCL Shareholders, as required by the Interim Order, submit the Arrangement to the Court and apply, together with each of the other Parties hereto, for the Final Order;
- (g) to the extent applicable to it, carry out the terms of the Final Order;
- (h) in the case of NMCCL, following issuance of the Final Order, and subject to the satisfaction or waiver (where permitted) of the conditions precedent in Article 5 hereof, proceed to file the Articles of Arrangement, the Final Order and all related documents with the Director pursuant to subsection 192(6) of the CBCA;
- (i) reserve and authorize for issuance the securities issuable by it, if any, as contemplated in the Plan of Arrangement;
- (j) in the case of the New Exchangeco, prior to the Effective Date, make or cause to be made an application for approval from the TSX of the listing on the TSX of the New Exchangeable Shares; and
- (k) in the case of Newmont, prior to the Effective Date, make or cause to be made an application for approval from the NYSE of the listing of the shares of Newmont Common Stock to be issued pursuant to the Arrangement as well as the shares of Newmont Common Stock to be issued upon the exchange of New Exchangeable Shares for shares of Newmont Common Stock in accordance with the New Exchangeable Share Provisions.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

##### **4.1 Representations and Warranties of Newmont**

Newmont represents and warrants to and in favour of the other Parties as follows, and acknowledges that the other Parties are relying upon such representations and warranties:

- (a) Newmont is a corporation validly existing under the laws of the State of Delaware, and has the power and capacity to enter into this Agreement and to perform its obligations hereunder;
  - (b) the execution and delivery of this Agreement and all documents to be delivered pursuant hereto and the completion of the transactions contemplated hereby and thereby do not and will not result in the breach of, or violate any term or provision of, the articles of incorporation or by-laws of Newmont;
  - (c) the execution and delivery of this Agreement and the completion of the transactions contemplated hereby have been duly approved by the directors of Newmont and this
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Agreement constitutes a valid and binding obligation of Newmont enforceable against it in accordance with its terms; and

- (d) as at the date hereof, Newmont's share capital consists of (i) 750,000,000 shares of Newmont Common Stock, par value US\$1.60 per share, of which 488,216,911 are outstanding and 6,600,075 of which were issuable upon conversion of NMCCCL Exchangeable Shares, and (ii) 5,000,000 shares of preferred stock, par value US\$5.00 per share, of which one share of special voting stock is outstanding. As of the Effective Time, Newmont's authorized share capital will include the New Special Voting Share, which shall be issued in accordance with the Plan of Arrangement.

#### **4.2 Representations and Warranties of NMCCCL**

NMCCCL represents and warrants to and in favour of the other Parties as follows, and acknowledges that the other Parties are relying upon such representations and warranties:

- (a) NMCCCL is a corporation validly existing under the federal laws of Canada and has the power and capacity to enter into this Agreement, and to perform its obligations hereunder;
- (b) the execution and delivery of this Agreement and all documents to be delivered pursuant hereto and, subject to the approval of the Arrangement Resolution, the completion of the transactions contemplated hereby and thereby do not and will not result in the breach of, or violate any term or provision of, the articles or by-laws of NMCCCL;
- (c) the execution and delivery of this Agreement and the completion of the transactions contemplated hereby have been duly approved by the directors of NMCCCL and this Agreement constitutes a valid and binding obligation of NMCCCL enforceable against it in accordance with its terms; and
- (d) as at the date hereof, NMCCCL's share capital consists of (i) an unlimited number of common shares, of which 650,000,000 are outstanding, (ii) an unlimited number of Class 1 shares, of which 2,876,428.5 are outstanding, and (iii) an unlimited number of NMCCCL Exchangeable Shares, of which 55,873,669 are outstanding. Except as may be contemplated by this Agreement and the Plan of Arrangement, there is no obligation, contractual or otherwise, of NMCCCL to issue any other securities.

#### **4.3 Representations and Warranties of NHULC**

NHULC represents and warrants to and in favour of the other Parties as follows, and acknowledges that the other Parties are relying upon such representations and warranties:

- (a) NHULC is an unlimited liability company validly existing under the laws of the Province of Nova Scotia and has the power and capacity to enter into this Agreement, and to perform its obligations hereunder;
  - (b) the execution and delivery of this Agreement and all documents to be delivered pursuant hereto and the completion of the transactions contemplated hereby and thereby do not and will not result in the breach of, or violate any term or provision of, the articles or by-laws of NHULC;
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- (c) the execution and delivery of this Agreement and the completion of the transactions contemplated hereby have been duly approved by the directors of NHULC and this Agreement constitutes a valid and binding obligation of NHULC enforceable against it in accordance with its terms;
- (d) prior to the Effective Time, NHULC will cause each of New Exchangeco and New Exchangeco Sub to adopt this Agreement in accordance with Section 14(2) of the CBCA; and
- (e) as at the date hereof, NHULC's share capital consists of (i) 1,000,000,000 common shares, of which 1,026,948 are outstanding, and (ii) 5,000,000,000 Class A shares, of which 3,008,734,472 are outstanding.

#### **4.4 Representations and Warranties of New Exchangeco**

New Exchangeco represents and warrants to and in favour of the other Parties as follows, and acknowledges that the other Parties are relying upon such representations and warranties:

- (a) New Exchangeco is a corporation validly existing under the laws of the Province of British Columbia and has the power and capacity to enter into this Agreement, and to perform its obligations hereunder;
- (b) the execution and delivery of this Agreement and all documents to be delivered pursuant hereto and the completion of the transactions contemplated hereby and thereby do not and will not result in the breach of, or violate any term or provision of, the articles or by-laws of New Exchangeco;
- (c) the execution and delivery of this Agreement and the completion of the transactions contemplated hereby have been duly approved by the directors of New Exchangeco and this Agreement constitutes a valid and binding obligation of New Exchangeco enforceable against it in accordance with its terms; and
- (d) immediately prior to the Effective Time, New Exchangeco's share capital will consist of (i) an unlimited number of common shares, of which one will be outstanding, and (ii) an unlimited number of New Exchangeable Shares, of which none will be outstanding. Except as may be contemplated by this Agreement and the Plan of Arrangement, there is no obligation, contractual or otherwise, of New Exchangeco to issue any other securities.

#### **4.5 Representations and Warranties of New Exchangeco Sub**

New Exchangeco Sub represents and warrants to and in favour of the other Parties as follows, and acknowledges that the other Parties are relying upon such representations and warranties:

- (a) New Exchangeco Sub is a corporation validly existing under the laws of the Province of British Columbia and has the power and capacity to enter into this Agreement, and to perform its obligations hereunder;
  - (b) the execution and delivery of this Agreement and all documents to be delivered pursuant hereto and the completion of the transactions contemplated hereby and thereby do not and will not result in the breach of, or violate any term or provision of, the articles or by-laws of New Exchangeco Sub;
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- (c) the execution and delivery of this Agreement and the completion of the transactions contemplated hereby have been duly approved by the directors of New Exchangeco Sub and this Agreement constitutes a valid and binding obligation of New Exchangeco Sub enforceable against it in accordance with its terms; and
- (d) immediately prior to the Effective Time, New Exchangeco Sub's share capital will consist of (i) an unlimited number of Class A voting shares, of which one will be outstanding, (ii) an unlimited number of Class B non-voting shares, of which none will be outstanding. Except as may be contemplated by this Agreement and the Plan of Arrangement, there is no obligation, contractual or otherwise, of New Exchangeco Sub to issue any other securities.

## **ARTICLE 5 CONDITIONS PRECEDENT**

### **5.1        Conditions**

The obligation of each Party to complete the Arrangement and the other transactions contemplated by this Agreement shall be subject to the fulfillment or satisfaction, on or before the Effective Time or such other time or date as is specified below, of each of the following conditions, any of which (other than those specified in paragraphs (c), (d), (e), (f), (j) and (k)) may be waived by the Parties collectively without prejudice to any Party's right to rely on any other condition:

- (a) each of the representations and warranties made by the other Parties hereto set forth in this Agreement shall be true and correct in all material respects;
  - (b) each of the covenants, acts and undertakings of the other Parties to be performed or complied with on or before the Effective Date pursuant to the terms of this Agreement shall have been duly performed or complied with in all material respects;
  - (c) the Interim Order shall have been granted in form and substance satisfactory to the Parties not later than November 16, 2011 or such later date as the Parties may agree and shall not have been set aside or modified in a manner unacceptable to such parties on appeal or otherwise;
  - (d) the Arrangement Resolution shall have been approved by the requisite number of votes cast by NMCCL Shareholders (other than Newmont and its Affiliates) at the Meeting in accordance with the provisions of the NMCCL Exchangeable Shares, the Voting and Exchange Trust Agreement, the Interim Order and any applicable regulatory requirements;
  - (e) the Final Order shall have been granted in form and substance satisfactory to the Parties not later than December 27, 2011 or such later date as the Parties may agree;
  - (f) the Articles of Arrangement and all necessary related documents, in form and substance satisfactory to the Parties, shall have been accepted for filing by the Director together with the Final Order in accordance with subsection 192(6) of the CBCA not later than December 27, 2011 or such later date as the Parties may agree;
  - (g) no material action or proceeding shall be pending or threatened by any Person and there shall be no action taken under any existing applicable law or regulation, nor any statute, rule, regulation or order which is enacted, enforced, promulgated or issued by any court,
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department, commission, board, regulatory body, government or governmental authority or similar agency, domestic or foreign, that: (i) makes illegal or otherwise directly or indirectly restrains, enjoins or prohibits the Arrangement or any other transactions contemplated herein; or (ii) results in a judgment or assessment of material damages directly or indirectly relating to the Arrangement or any of the other transactions contemplated herein;

- (h) all material third party and regulatory consents, exemptions (including, without limitation, all applications for exemptive relief submitted to the Canadian securities regulators in connection with the Arrangement) and approvals considered necessary or desirable by the Parties with respect to the Arrangement and the other transactions contemplated by this Agreement shall have been completed or obtained including, without limitation, necessary consents, exemptions and approvals from applicable securities regulatory authorities and under the rules or policies of the TSX and NYSE;
- (i) there shall not, as of the Effective Date, be holders of NMCCL Exchangeable Shares that hold, in aggregate, in excess of 2% of all outstanding NMCCL Exchangeable Shares (other than those held by Newmont and its Affiliates), that have validly exercised and not withdrawn their rights of dissent under the CBCA and the Interim Order;
- (j) the New Support Agreement and the New Voting and Exchange Trust Agreement shall have been executed by the parties thereto;
- (k) Newmont shall have created and authorized the issuance of the New Special Voting Share;
- (l) the TSX shall have conditionally approved the listing of the New Exchangeable Shares to be issued pursuant to the Arrangement, subject only to the filing of required documents which cannot be filed prior to the Effective Date; and
- (m) the NYSE shall have conditionally approved the listing of the shares of Newmont Common Stock to be issued pursuant to the Arrangement and upon the exchange of New Exchangeable Shares, in each case subject only to the filing of required documents which cannot be filed prior to the Effective Date.

## **5.2 Failure to Comply with Conditions**

If any of the conditions precedent set forth in Section 5.1 hereof shall not be satisfied or waived by the Parties on or before the date required for the satisfaction thereof, then any Party may, in addition to any other remedies they may have at law or equity, rescind and terminate this Agreement.

## **5.3 Satisfaction of Conditions**

The conditions set out in this Article 5 are conclusively deemed to have been satisfied or waived when, with the agreement of the Parties hereto, the Articles of Arrangement are filed under the CBCA to give effect to the Arrangement.

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**ARTICLE 6  
AMENDMENT AND TERMINATION**

**6.1        Amendments**

This Agreement may, at any time and from time to time before or after the Meeting, be amended in any respect whatsoever by written agreement of the Parties without further notice to or authorization on the part of their respective security holders; provided that any such amendment that changes the consideration to be received by the holders of NMCCL Exchangeable Shares pursuant to the Arrangement is brought to the attention of the Court and is subject to such requirements as may be ordered by the Court.

**6.2        Termination**

This Agreement shall be terminated in each of the following circumstances:

- (a)        the mutual agreement of each of the Parties;
- (b)        the Arrangement shall not have become effective on or before December 29, 2011 or such later date as may be agreed to by the Parties; and
- (c)        termination of this Agreement under Section 5.2 hereof.

In the event of the termination of this Agreement in the circumstances set out in Sections 6.2(a) through 6.2(c) hereof, this Agreement shall forthwith become void and none of the Parties shall have any liability or further obligation to any other Parties hereunder.

**ARTICLE 7  
GENERAL**

**7.1        Binding Effect**

This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**7.2        No Assignment**

No Party may assign its rights or obligations under this Agreement without the consent of each of the other Parties.

**7.3        Severability**

If any one or more of the provisions or parts thereof contained in this Agreement should be or become invalid, illegal or unenforceable in any respect in any jurisdiction, the remaining provisions or parts thereof contained herein shall be and shall be conclusively deemed to be, as to such jurisdiction, severable therefrom and:

- (a)        the validity, legality or enforceability of such remaining provisions or parts thereof shall not in any way be affected or impaired by the severance of the provisions or parts thereof severed; and
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- (b) the invalidity, illegality or unenforceability of any provision or part thereof contained in this Agreement in any jurisdiction shall not affect or impair such provision or part thereof or any other provisions of this Agreement in any other jurisdiction.

**7.4 Further Assurances**

Each Party hereto shall, from time to time and at all times hereafter, at the request of another Party hereto, but without further consideration, do all such further acts, and execute and deliver all such further documents and instruments as may be reasonably required in order to fully perform and carry out the terms and intent hereof.

**7.5 Time of Essence**

Time shall be of the essence in and of this Agreement.

**7.6 Counterparts**

This Agreement may be executed in counterparts, in original, facsimile or electronic form, each of which shall be deemed an original, and all of which together constitute one and the same instrument.

[Signature pages follow]

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**IN WITNESS WHEREOF** this Agreement has been executed and delivered by the Parties effective as of the date first above written.

**NEWMONT MINING  
CORPORATION**

Per: /s/ Russell Ball  
\_\_\_\_\_  
Authorized Signatory

**NEWMONT MINING  
CORPORATION OF  
CANADA LIMITED**

Per: /s/ Russell Ball  
\_\_\_\_\_  
Authorized Signatory

**NEWMONT HOLDINGS ULC, on  
its own  
behalf and on behalf of New  
Exchangeco and  
New Exchangeco Sub**

Per: /s/ Russell Ball  
\_\_\_\_\_  
Authorized Signatory

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## EXHIBIT "A"

### PLAN OF ARRANGEMENT UNDER SECTION 192 OF THE CANADA BUSINESS CORPORATIONS ACT

#### ARTICLE 1 INTERPRETATION

##### 1.1 Definitions

In this Plan of Arrangement, the following terms have the following meanings:

- (a) “ **Affiliate** ” has the meaning ascribed thereto in National Instrument 45-106 – *Prospectus and Registration Exemptions* , as it exists on the date hereof;
  - (b) “ **Ancillary Rights** ” means the voting rights and any other rights of the holders of New Exchangeable Shares under the New Voting and Exchange Trust Agreement and the New Support Agreement.
  - (c) “ **Arrangement** ”, “ **herein** ”, “ **hereof** ”, “ **hereto** ”, “ **hereunder** ” and similar expressions mean and refer to the arrangement under the provisions of section 192 of the CBCA set forth in this Plan of Arrangement as amended, modified or supplemented, and not to any particular article, section or other portion hereof;
  - (d) “ **Arrangement Agreement** ” means the arrangement agreement made as of October 31, 2011 among Newmont, NHULC, NMCCCL, New Exchangeco and New Exchangeco Sub with respect to the Arrangement, and all amendments thereto;
  - (e) “ **Arrangement Resolution** ” means the special resolution of NMCCCL Shareholders approving the Arrangement;
  - (f) “ **Articles of Arrangement** ” means the articles of arrangement in respect of the Arrangement required under subsection 192 (6) of the CBCA to be filed with the Director after the Final Order has been granted;
  - (g) “ **Business Day** ” means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open in Denver, Colorado and Toronto, Ontario for the transaction of banking business;
  - (h) “ **Canadian NMCCCL Shareholder** ” means a NMCCCL Shareholder who is resident in Canada for the purposes of the Tax Act and includes a partnership that is a “Canadian partnership” for the purposes of the Tax Act but does not include any other partnership;
  - (i) “ **CBCA** ” means the *Canada Business Corporations Act* R.S.C. 1985 c.C-44, as amended, including the regulations promulgated thereunder;
  - (j) “ **Certificate of Arrangement** ” means the certificate of arrangement which may be issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement and giving effect to the Arrangement;
-

- (k) “ **Circular** ” means the information circular of NMCCL, together with all schedules and appendices thereto, to be distributed to NMCCL Shareholders in respect of the Meeting;
  - (l) “ **Class A Shares** ” means the Class A voting shares in the capital of New Exchangeco Sub;
  - (m) “ **Class B Shares** ” means the Class B non-voting shares in the capital of New Exchangeco Sub;
  - (n) “ **Court** ” means the Superior Court of Justice of the Province of Ontario;
  - (o) “ **Current Market Price** ” has the meaning set out in the New Exchangeable Share Provisions;
  - (p) “ **Depository** ” means Computershare Trust Company of Canada, in its capacity as depository for the NMCCL Exchangeable Shares under the Arrangement;
  - (q) “ **Director** ” means the director appointed under section 260 of the CBCA;
  - (r) “ **Dissent Rights** ” has the meaning set out in Section 6.1;
  - (s) “ **Dissenting NMCCL Shareholder** ” means a NMCCL Shareholder who exercises a right of dissent with respect to the Arrangement in strict compliance with the Dissent Rights;
  - (t) “ **Effective Date** ” means the date that will appear on the Certificate of Arrangement;
  - (u) “ **Effective Time** ” means 12:01 a.m. (Eastern Time) on the Effective Date or such other time on the Effective Date as may be specified by NMCCL;
  - (v) “ **Election Deadline** ” means 5:00 p.m. (Eastern time) on December 12, 2011 or such later date before the Effective Date as may be specified by NMCCL, which later date shall be notified by NMCCL to NMCCL Shareholders by press release or other means of general dissemination;
  - (w) “ **Final Order** ” means the final order of the Court approving the Arrangement pursuant to subsection 192(4) of the CBCA, as such order may be affirmed, amended, modified or supplemented by any court of competent jurisdiction;
  - (x) “ **Interim Order** ” means the interim order of the Court under subsection 192(4) of the CBCA, containing declarations and directions with respect to the Arrangement and the Meeting and issued pursuant to the application of NMCCL as such order may be affirmed, amended, modified or supplemented by any court of competent jurisdiction;
  - (y) “ **Letter of Transmittal and Election Form** ” means the letter of transmittal and election form in the form accompanying the Circular;
  - (z) “ **Lien** ” means any hypothec, mortgage, pledge, assignment, lien, charge, security interest, encumbrance or adverse right or claim, other third Person interest or encumbrance of any kind, whether contingent or absolute, and any agreement, option, right or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing;
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- (aa) “ **Meeting** ” means the special meeting of NMCCCL Shareholders, including any adjournment(s) or postponement(s) thereof, to be held for the purpose of, among other things, obtaining approval by NMCCCL Shareholders of the Arrangement Resolution;
  - (bb) “ **New Exchangeable Share Provisions** ” means the rights, privileges, restrictions and conditions attaching to the New Exchangeable Shares as set out in Appendix 1 hereto.
  - (cc) “ **New Exchangeable Shares** ” means the exchangeable shares in the capital of New Exchangeco;
  - (dd) “ **New Exchangeco** ” has the meaning given to it in Section 3.1(a);
  - (ee) “ **New Exchangeco Sub** ” has the meaning given to it in Section 3.1(b);
  - (ff) “ **New Special Voting Share** ” means the share of preferred stock, par value US\$5.00 in the capital of Newmont designated prior to the Effective time and having substantially the rights, privileges, restrictions and conditions described in the New Voting and Exchange Trust Agreement;
  - (gg) “ **New Support Agreement** ” means an agreement to be made among Newmont, NHULC and New Exchangeco in connection with this Plan of Arrangement to be in substantially the form of the NMCCCL Support Agreement;
  - (hh) “ **New Voting and Exchange Trust Agreement** ” means an agreement to be made among Newmont, New Exchangeco Sub and the Trustee (as defined in the New Exchangeable Share Provisions) in connection with this Plan of Arrangement to be substantially the form of the NMCCCL Voting and Exchange Trust Agreement;
  - (ii) “ **Newmont** ” means Newmont Mining Corporation or such other person that is the issuer of the shares of Newmont Common Stock from time to time;
  - (jj) “ **Newmont Entities** ” means, collectively, Newmont, NMCCCL, NHULC, New Exchangeco and New Exchangeco Sub and their respective successors;
  - (kk) “ **Newmont Share Price** ” means the weighted average closing price of the shares of Newmont Common Stock for the last five consecutive trading days ending on the last trading day prior to the Effective Date, expressed in Canadian dollars based on the bank of Canada noon rate of exchange on the Effective Date;
  - (ll) “ **Newmont Common Stock** ” means common stock in the capital of Newmont or such other securities into which all or substantially all of the Newmont Common Stock may be changed, converted or exchanged from time to time;
  - (mm) “ **NHULC** ” means Newmont Holdings ULC, a Nova Scotia unlimited liability company;
  - (nn) “ **NMCCCL** ” means Newmont Mining Corporation of Canada Limited, a Canadian federal corporation;
  - (oo) “ **NMCCCL Exchangeable Shares** ” means the exchangeable shares in the capital of NMCCCL;
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- (pp) “ **NMCCL Shareholder** ” means a registered holder of NMCCL Exchangeable Shares;
- (qq) “ **NMCCL Support Agreement** ” means the support agreement dated February 16, 2002 among Newmont, NHULC and NMCCL;
- (rr) “ **NMCCL Voting and Exchange Trust Agreement** ” means the exchange and voting trust agreement dated February 16, 2002 among Newmont, NMCCL and Computershare Trust Company of Canada;
- (ss) “ **Person** ” means any individual, corporation, partnership, general partnership, joint stock company, limited liability corporation, joint venture, association, company, trust, bank, trust company, pension fund, business trust or other organization, whether or not legal a entity, and governments, agencies and political subdivisions thereof;
- (tt) “ **Tax Act** ” means the *Income Tax Act* (Canada);
- (uu) “ **Tax Election Package** ” means (i) in respect of the disposition of NMCCL Exchangeable Shares for Class B Shares, two copies of Form T-2057 under the Tax Act, or, if the NMCCL Shareholder is a partnership, two copies of Form T-2058 under the Tax Act, and two copies of any applicable equivalent provincial or territorial election form, and (ii) in respect of the disposition of Class B Shares for New Exchangeable Shares (and the Ancillary Rights granted in connection therewith), two copies of Form T-2057 under the Tax Act, or if the NMCCL Shareholder is a partnership, two copies of T-2058 under the Tax Act, and two copies of any applicable provincial or territorial election form, in each case which forms have been duly and properly completed and executed by the NMCCL Shareholder, in accordance with the rules contained in the Tax Act or the relevant provincial legislation.

## **1.2 Interpretation Not Affected by Headings**

The division of this Plan of Arrangement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan of Arrangement. Unless reference is specifically made to another document or instrument, all references herein to articles and sections are to articles and sections of this Plan of Arrangement.

## **1.3 Date for any Action**

If the date on which any action is required to be taken hereunder is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

## **1.4 Number and Gender**

Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa, and words importing any gender shall include all genders.

## **1.5 Reference to Persons**

A reference to a Person includes any successor to that Person. A reference to any statute includes all regulations made pursuant to such statute and the provisions of any statute or regulation which amends, supplements or supersedes any such statute or regulation.

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## **1.6 Currency**

Unless otherwise stated in this Plan of Arrangement, all references herein to amounts of money are expressed in lawful money of Canada.

## **ARTICLE 2 EFFECT OF THE ARRANGEMENT**

### **2.1 Binding Effect**

Subject to the Arrangement Agreement, this Plan of Arrangement, upon the filing of the Articles of Arrangement and the issue of the Certificate of Arrangement, if any, shall become effective on, and be binding on and after, the Effective Time on:

- (i) each of the NMCCL Shareholders;
- (ii) the Depositary;
- (iii) Newmont;
- (iv) NMCCL;
- (v) NHULC;
- (vi) New Exchangeco; and
- (vii) New Exchangeco Sub.

### **2.2 Certificate of Arrangement**

The Articles of Arrangement and the Certificate of Arrangement shall be filed and issued, respectively, with respect to this Arrangement in its entirety. The Certificate of Arrangement shall be conclusive evidence that the Arrangement has become effective and that each of the provisions of Article 4 hereof has become effective in the sequence and at the times set out therein.

### **2.3 Implementation of the Arrangement**

Other than as expressly provided for herein, no portion of this Plan of Arrangement shall take effect with respect to any Person until the Effective Time. Furthermore, each of the events listed in Article 4 hereof shall be, without affecting the timing set out in Article 4, mutually conditional, such that no event described in said Article 4 may occur without all steps occurring, and those events shall effect the integrated transaction which constitutes the Arrangement.

## **ARTICLE 3 PRE-ARRANGEMENT TRANSACTIONS**

### **3.1 Pre-Arrangement Transactions**

Subject to such amendments, deletions, modifications or additions as NMCCL deems necessary or advisable, the following transactions (among others) shall occur prior to the Effective Time but in connection with the Arrangement:

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- (a) a corporation (“ **New Exchangeco** ”) shall be incorporated as a subsidiary of NHULC; and
- (b) a corporation (“ **New Exchangeco Sub** ”) shall be incorporated as a subsidiary of New Exchangeco.

**ARTICLE 4  
ARRANGEMENT**

**4.1 The Arrangement**

Commencing at the Effective Time, each of the events set out below shall occur and shall be deemed to occur in the following order (in five minutes intervals), without any further act or formality except as otherwise provided herein:

- (a) The articles of NMCCCL will be amended in the manner set forth in Appendix 2 hereto.
  - (b) Newmont will contribute to NHULC an amount of cash that is equal to the product obtained by multiplying (i) the number of shares of Newmont Common Stock to be transferred pursuant to Section 4.1(g)(ii), by (ii) the Newmont Share Price, in consideration of the issuance by NHULC of a number of Class A shares in the capital of NHULC that is equal to such product;
  - (c) NHULC will contribute all of the cash received by it in the preceding step to New Exchangeco in consideration of the issuance by New Exchangeco to NHULC of a number of common shares in the capital of New Exchangeco that is equal to the number of shares of Newmont Common Stock to be transferred pursuant to Section 4.1(g)(ii);
  - (d) New Exchangeco will contribute all of the cash received by it in the preceding step to New Exchangeco Sub in consideration of the issuance by New Exchangeco Sub to New Exchangeco of a number of Class A Shares that is equal to the number of shares of Newmont Common Stock to be transferred pursuant to Section 4.1(g)(ii);
  - (e) New Exchangeco Sub will contribute all of the cash received by it in the preceding step to Newmont in consideration of the issuance by Newmont to New Exchangeco Sub of a number of shares of Newmont Common Stock that is equal to the number of shares of Newmont Common Stock to be transferred pursuant to Section 4.1(g)(ii);
  - (f) the NMCCCL Exchangeable Shares held by Dissenting NMCCCL Shareholders shall be deemed to have been transferred (free and clear of any Liens) to New Exchangeco Sub and such Dissenting NMCCCL Shareholders shall cease to have any rights as NMCCCL Shareholders other than the right to be paid the fair value of their NMCCCL Exchangeable Shares in accordance with the Dissent Rights;
  - (g) New Exchangeco Sub will acquire (free and clear of any Liens) all of the issued and outstanding NMCCCL Exchangeable Shares (other than NMCCCL Exchangeable Shares held by Newmont and its Affiliates and by Dissenting NMCCCL Shareholders) in consideration of:
    - (i) the issuance by New Exchangeco Sub of one Class B Share for each NMCCCL Exchangeable Share held by a NMCCCL Shareholder who has elected to receive New Exchangeable Shares in accordance with Section 5.1; and
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- (ii) the transfer by New Exchangeco Sub of one share of Newmont Common Stock for each other outstanding NMCCCL Exchangeable Share,
- (h) New Exchangeco will acquire all of the outstanding Class B Shares in consideration of the issuance by New Exchangeco to the holders thereof of one New Exchangeable Share (plus the Ancillary Rights granted in connection therewith) for each such Class B Share; and
- (i) Newmont shall issue to and deposit with the Voting and Exchange Trustee the New Special Voting Share, in consideration of the payment to Newmont by New Exchangeco, on behalf of the holders of New Exchangeable Shares, of one dollar (\$1.00), to be thereafter held of record by the Voting and Exchange Trustee as trustee for and on behalf of, and for the use and benefit of, the holders of the New Exchangeable Shares in accordance with the New Voting and Exchange Trust Agreement.

#### **4.2 Effect of Arrangement**

Every person from whom a NMCCCL Exchangeable Share or a Class B Share is acquired pursuant to the Arrangement shall be removed from the register of holders of NMCCCL Exchangeable Shares and Class B Shares, respectively, at the time of that acquisition pursuant to the Arrangement and shall cease to have any rights in respect of such NMCCCL Exchangeable Shares and Class B Shares, as applicable, and the person that acquires those shares pursuant to the Arrangement will be added to the applicable register at that time and shall be entitled as of the Effective Time to all of the rights and privileges attached to the NMCCCL Exchangeable Shares and the Class B Shares, as applicable. Every person who acquires New Exchangeable Shares or shares of Newmont Common Stock pursuant to the Arrangement shall be added to the register of holders of New Exchangeable Shares and shares of Newmont Common Stock, respectively, and shall be entitled as of the Effective Time to all of the rights and privileges attached to the New Exchangeable Shares (including the Ancillary Rights granted in connection therewith) or shares of Newmont Common Stock, as the case may be.

### **ARTICLE 5 ELECTIONS**

#### **5.1 Share Election**

Each NMCCCL Shareholder may elect to receive New Exchangeable Shares (and the Ancillary Rights granted in connection therewith) under the Arrangement in exchange for such NMCCCL Shareholder's NMCCCL Exchangeable Shares by delivering or causing to be delivered to the Depository, at or prior to the Election Deadline, a validly completed and duly executed Letter of Transmittal and Election Form specifying such election, together with the certificate(s) representing such NMCCCL Exchangeable Shares, and such other documents and instruments as the Depository may reasonably require. NMCCCL Shareholders who do not elect to receive New Exchangeable Shares in respect of their NMCCCL Exchangeable Shares in the manner specific in this Section 5.1 will receive shares of Newmont Common Stock in exchange for such NMCCCL Exchangeable Shares in accordance with Section 4.1(g)(ii).

#### **5.2 Tax Election**

Canadian NMCCCL Shareholders who are entitled to receive Class B Shares and New Exchangeable Shares under the Arrangement shall be entitled to make income tax elections pursuant to subsection 85(1) of the Tax Act or, if the person is a partnership, subsection 85(2) of the Tax Act (and in each case, where applicable, the analogous provisions of provincial income tax law) with respect to (a) the exchange of

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their NMCCCL Exchangeable Shares for Class B Shares, and (b) the exchange of their Class B Shares for New Exchangeable Shares (and the Ancillary Rights granted in connection therewith), in each case by providing a Tax Election Package (for greater certainty, one Tax Election Package for each exchange described in (a) and (b)) with respect to such exchange to New Exchangeco within 90 days following the Effective Date, each duly completed with the details of the number of NMCCCL Exchangeable Shares and Class B Shares transferred and the applicable elected amounts. Thereafter, subject to each Tax Election Package being correct and complete and complying with the provisions of the Tax Act (or applicable provincial income or corporate tax law), the relevant forms will be signed by New Exchangeco Sub or New Exchangeco, as applicable, and returned to such persons within 30 days after the receipt thereof by New Exchangeco for filing with the Canada Revenue Agency (or the applicable provincial taxing authority). None of New Exchangeco, New Exchangeco Sub or their Affiliates will be responsible for the proper completion of any Tax Election Package and, except for New Exchangeco's obligation to return duly completed Tax Election Packages which are received by New Exchangeco within 90 days of the Effective Date, within 30 days after the receipt thereof by New Exchangeco, none of New Exchangeco, New Exchangeco Sub or any of their Affiliates will be responsible for any taxes, interest or penalties resulting from the failure by a Canadian NMCCCL Shareholder to properly complete or file the necessary election forms in the form and manner and within the time prescribed by the Tax Act (or any applicable provincial income tax law). In its sole discretion, New Exchangeco and New Exchangeco Sub may choose to sign and return Tax Election Packages received more than 90 days following the Effective Date, but will have no obligation to do so.

## **ARTICLE 6 DISSENT RIGHTS**

### **6.1 Dissent Rights**

Each NMCCCL Shareholder shall have the right to dissent (the “**Dissent Rights**”) with respect to the Arrangement in accordance with Section 190 of the CBCA; provided that, notwithstanding Section 190(5) of the CBCA, the written objection to the resolution approving the Arrangement referred to in Section 190(5) of the CBCA must be received by NMCCCL not later than 5:00 p.m. (Toronto time) on the business day before the Meeting. NMCCCL Shareholders who duly exercise Dissent Rights and who are ultimately determined to be entitled to be paid fair value for their NMCCCL Exchangeable Shares will be deemed to have transferred such NMCCCL Exchangeable Shares to New Exchangeco Sub and the fair value thereof will be paid by New Exchangeco Sub. NMCCCL Shareholders who attempt to exercise Dissent Rights and are ultimately not entitled, for any reason, to be paid fair value for their NMCCCL Exchangeable Shares will be deemed to have participated in the Arrangement and they will receive shares of Newmont Common Stock in exchange for their NMCCCL Exchangeable Shares in accordance with Section 4.1. The fair value of the NMCCCL Exchangeable Shares shall be determined as of the close of business on the last Business Day before the day on which the Arrangement is approved by the holders of NMCCCL Exchangeable Shares at the Meeting. In no event shall any of the Newmont Entities or any other Person be required to recognize any NMCCCL Shareholder who attempts to exercise Dissent Rights as a holder of NMCCCL Exchangeable Shares after the Effective Time, and the names of such NMCCCL Shareholders shall be removed from the register of holders of NMCCCL Exchangeable Shares at the Effective Time. In addition to any other restrictions in section 190 of the CBCA, no Person who has voted in favour of the Arrangement shall be entitled to exercise Dissent Rights.

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**ARTICLE 7**  
**EXCHANGE PROCEDURES**

**7.1 Exchange of Certificates for New Exchangeable Shares**

At or promptly after the Effective Time, New Exchangeco shall deposit or cause to be deposited with the Depositary, for the benefit of the NMCCCL Shareholders who received New Exchangeable Shares under the Arrangement, certificates representing that number of New Exchangeable Shares issuable under the Arrangement. Upon surrender (on or prior to the Election Deadline) to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented NMCCCL Exchangeable Shares that were indirectly exchanged for New Exchangeable Shares under the Arrangement, together with a duly completed Letter of Transmittal and Election Form and such other documents and instruments as the Depositary may reasonably require, the holder of such surrendered certificate shall be entitled to receive, and after the Effective Time the Depositary shall deliver to such person, certificates registered in the name of such person representing that number of New Exchangeable Shares which such person is entitled to receive (together with any dividends or distributions with respect thereto pursuant to Section 7.4, less any amounts withheld pursuant to 7.7), and any certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of such NMCCCL Exchangeable Shares which was not registered in the transfer records of NMCCCL, certificates representing the number of New Exchangeable Shares issuable in exchange for such NMCCCL Exchangeable Shares (together with any dividends or distributions with respect thereto pursuant to Section 7.4, less any amounts withheld pursuant to 7.7) may be registered in the name of and issued to the transferee if the certificate representing such NMCCCL Exchangeable Shares is presented (on or prior to the Election Deadline) to the Depositary, accompanied by a duly completed Letter of Transmittal and Election Form, all documents required to evidence and effect such transfer and such other documents and instruments as the Depositary may reasonably require.

**7.2 Exchange of Certificates for Shares of Newmont Common Stock**

At or promptly after the Effective Time, New Exchangeco Sub shall deposit or cause to be deposited with the Depositary, for the benefit of NMCCCL Shareholders who received shares of Newmont Common Stock under the Arrangement, certificates representing that number of shares of Newmont Common Stock issuable under the Arrangement. Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding NMCCCL Exchangeable Shares that were exchanged for shares of Newmont Common Stock under the Arrangement, together with a duly completed Letter of Transmittal and Election Form and such other documents and instruments as the Depositary may reasonably require, the NMCCCL Shareholder shall be entitled to receive, and after the Effective Time the Depositary shall deliver to such person, a certificate representing that number of shares of Newmont Common Stock which such person is entitled to receive (together with any dividends or distributions with respect thereto pursuant to Section 7.4, less any amounts withheld pursuant to 7.7), and any certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of such NMCCCL Exchangeable Shares which was not registered in the transfer records of NMCCCL, the certificates representing the number of shares of Newmont Common Stock issuable in exchange for such NMCCCL Exchangeable Shares (together with any dividends or distributions with respect thereto pursuant to Section 7.4, less any amounts withheld pursuant to 7.7) may be registered in the name of and issued to the transferee if the certificate representing such NMCCCL Exchangeable Shares is presented to the Depositary, accompanied by a duly completed Letter of Transmittal and Election Form, all documents required to evidence and effect such transfer and such other documents and instruments as the Depositary may reasonably require. Without limiting the provisions of Sections 4.2 and 7.6, until surrendered as contemplated by this Section 7.2, each certificate, which immediately prior to the Effective Time represented one or more outstanding NMCCCL Exchangeable Shares that were exchanged for shares of Newmont Common Stock pursuant to Section 4.1, shall be deemed at all times after the Effective Time to

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represent only the right to receive upon such surrender, a certificate representing the shares of Newmont Common Stock issuable in exchange for such NMCCCL Exchangeable Shares (together with any dividends or distributions with respect thereto pursuant to Section 7.4, less any amounts withheld pursuant to 7.7).

### **7.3 No Certificates for Class B Shares**

In no event will any NMCCCL Shareholder be entitled to receive a certificate for any Class B Shares that such NMCCCL Shareholder received under the Arrangement.

### **7.4 Distributions with Respect to Unsurrendered Certificates**

No dividends or other distributions paid, declared or made with respect to either New Exchangeable Shares or shares of Newmont Common Stock, in each case with a record date after the Effective Time, shall be paid to the holder of any unsurrendered certificate which immediately prior to the Effective Time represented outstanding NMCCCL Exchangeable Shares unless and until such person shall have complied with the provisions of Section 7.1 or 7.2, as applicable. Subject to applicable law, and to the provisions of Section 7.6, at the time such person shall have complied with the provisions of such sections (or, in the case of clause (b) below, at the appropriate payment date), there shall be paid to such person, without interest (a) the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to the NMCCCL Exchangeable Share or the share of Newmont Common Stock, as the case may be, to which such person is entitled pursuant hereto, and (b) on the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to the date of compliance by such person with the provisions of Section 7.1 or 7.2, as applicable, and a payment date subsequent to the date of such compliance and payable with respect to such NMCCCL Exchangeable Shares or shares of Newmont Common Stock, as the case may be.

### **7.5 Lost Certificates**

In the event any certificate which, immediately prior to the Effective Time, represented one or more outstanding NMCCCL Exchangeable Shares that were exchanged pursuant to Section 4.1 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such certificate to be lost, stolen or destroyed, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, the certificates representing New Exchangeable Shares or shares of Newmont Common Stock (together with any dividends or distributions with respect thereto pursuant to Section 7.4, less any amounts withheld pursuant to 7.7) deliverable in accordance with Section 7.1 or 7.2, as applicable. When authorizing any such payment or the issuance of any such certificate, the person to whom such certificate is to be issued or payment is to be made shall, as a condition precedent to such issuance and/or payment, give a bond satisfactory to Newmont, New Exchangeco and their respective transfer agents in such amount as Newmont or New Exchangeco may direct or otherwise indemnify Newmont and New Exchangeco in a manner satisfactory to each of them against any claim that may be made against either of them with respect to the certificate alleged to have been lost, stolen or destroyed.

### **7.6 Extinction of Rights**

Any certificate which, immediately prior to the Effective Time, represented outstanding NMCCCL Exchangeable Shares that were exchanged pursuant to Section 4.1 that is not deposited with all other instruments required by Section 7.1 or 7.2, as applicable, on or prior to the sixth anniversary of the Effective Date shall cease to represent a claim or interest of any kind or nature against any of the Newmont Entities or the Depositary. On such date, the New Exchangeable Shares and/or shares of Newmont Common Stock (and any dividends or distributions with respect thereto) to which the former

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holder of the certificate referred to in the preceding sentence was ultimately entitled shall be deemed to have been surrendered for no consideration to New Exchangeco. None of the Newmont Entities or the Depositary shall be liable to any person in respect of any cash delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

**7.7 Withholding Rights**

Newmont, NMCCCL, New Exchangeco, New Exchangeco Sub, NHULC and the Depositary shall be entitled to deduct and withhold from any dividend or consideration otherwise payable to any holder of NMCCCL Exchangeable Shares, shares of Newmont Common Stock or New Exchangeable Shares such amounts as any of them is required or permitted to deduct and withhold with respect to such payment under the Tax Act, United States tax laws or any other applicable law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the securities in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate authority.

**ARTICLE 8  
AMENDMENTS**

**8.1 Amendments Prior to the Meeting**

Subject to Section 9.2 and to the provisions of the Interim Order, the Newmont Entities may amend this Plan of Arrangement at any time and from time to time prior to the Meeting. If such amendment, if disclosed, would reasonably be expected to affect a NMCCCL Shareholder's decision to vote for or against the Arrangement Resolution, notice of such amendment shall be given to the NMCCCL Shareholders by press release, newspaper, advertisement, prepaid ordinary mail, or by the method most reasonably practicable in the circumstances, as determined by NMCCCL. Any amendment so proposed shall become part of this Plan of Arrangement for all purposes and the Plan of Arrangement, as amended, shall be the subject of the Arrangement Resolution.

**8.2 Amendments Following the Meeting**

Subject to the provisions of the Interim Order and the Final Order, the Parties may amend this Plan of Arrangement at any time and from time to time following the Meeting and prior to or following the Effective Time, provided that each such amendment must be: (a) set out in writing; (b) approved by the Court, and (c) communicated to the NMCCCL Shareholders (or former NMCCCL Shareholders following the Effective Time) as may be directed by the Court. Notwithstanding the foregoing, if such amendment concerns a matter which, in the reasonable opinion of the Parties, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement or is not adverse to the financial or economic interests of a NMCCCL Shareholder, then no Court approval or communication to the NMCCCL Shareholders shall be required.

**ARTICLE 9  
GENERAL**

**9.1 Further Assurances**

Notwithstanding that the transactions and events set out herein shall occur and be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such

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further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them in order to further document or evidence any of the transactions or events set out herein.

**9.2 Severability**

If, prior to the Effective Date, any term or provision of this Plan of Arrangement is held by the Court to be invalid, void or unenforceable, the Court, at the request of any of the parties to the Arrangement Agreement, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan of Arrangement shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

**9.3 Governing Law**

This Plan of Arrangement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any questions as to the interpretation or application of this Plan of Arrangement and all proceedings taken in connection with this Plan of Arrangement and its provisions shall be subject to the exclusive jurisdiction of the Court.

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**APPENDIX 1**  
**TO THE PLAN OF ARRANGEMENT**  
**NEW EXCHANGEABLE SHARE PROVISIONS**

**EXCHANGEABLE SHARES**

The Exchangeable Shares shall have the following rights, privileges, restrictions and conditions:

**1. INTERPRETATION**

(1) For the purposes of these share provisions:

“ **affiliate** ” has the meaning ascribed thereto in National Instrument 45-106 – *Prospectus and Registration Exemptions* , as amended.

“ **Agency** ” means any domestic or foreign court, tribunal, federal, state, provincial or local government or governmental agency or authority or other regulatory authority (including the TSX and the NYSE) or administrative agency or commission (including the Ontario Securities Commission and the SEC) or any elected or appointed public official.

“ **Agent** ” means any chartered bank or trust company in Canada selected by the Corporation for the purposes of holding some or all of the Liquidation Amount or Redemption Price in accordance with Section 5 or Section 7, respectively.

“ **Arrangement** ” means the arrangement under section 192 of the CBCA on the terms and subject to the conditions set out in the Plan of Arrangement.

“ **Arrangement Agreement** ” means the arrangement agreement dated October 31, 2011 between Newmont, Callco, Newmont Mining Corporation of Canada Limited, New Exchangeco Sub (as defined in the Plan of Arrangement) and the Corporation, as amended.

“ **BCBCA** ” means the *Business Corporations Act* (British Columbia).

“ **Board of Directors** ” means the board of directors of the Corporation.

“ **business day** ” means any day other than a Saturday, Sunday, a public holiday or a day on which commercial banks are not open for business in Toronto, Ontario or Denver, Colorado under applicable law.

“ **Callco** ” means (i) NHULC, or (ii) in Newmont’s sole discretion, such other company which exercises the Liquidation Call Right, Retraction Call Right or Redemption Call Right, including Newmont or NHULC.

“ **Callco Call Notice** ” has the meaning ascribed thereto in Section 6(3) of these share provisions.

“ **Canadian Dollar Equivalent** ” means in respect of an amount expressed in a currency other than Canadian dollars (the “ **Foreign Currency Amount** ”) at any date the product obtained by multiplying:

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- (a) the Foreign Currency Amount; by
- (b) the noon spot exchange rate on such date for such foreign currency expressed in Canadian dollars as reported by the Bank of Canada or, in the event such spot exchange rate is not available, such spot exchange rate on such date for such foreign currency expressed in Canadian dollars as may be deemed by the Board of Directors to be appropriate for such purpose, which determination shall be conclusive and binding.

“ **CBCA** ” means the *Canada Business Corporations Act* , as amended.

“ **Common Shares** ” means the common shares in the capital of the Corporation.

“**Corporation**” mean the corporation governed by the laws of the Province of British Columbia to whose articles these share provisions attach.

“ **Current Market Price** ” means, in respect of a Newmont Share on any date, the quotient obtained by dividing (a) the aggregate of the Daily Value of Trades for each day during the period of 20 consecutive trading days ending not more than three trading days before such date; by (b) the aggregate volume of Newmont Shares used to calculate such Daily Value of Trades.

“ **Daily Value of Trades** ” means, in respect of the Newmont Shares on any trading day, the Canadian Dollar Equivalent of the product of (a) the volume weighted average price of Newmont Shares on the NYSE (or, if the Newmont Shares are not listed on the NYSE, on such other stock exchange or automated quotation system on which the Newmont Shares are listed or quoted, as the case may be, as may be selected by the board of directors of Newmont for such purpose) on such date, as determined by Bloomberg L.P. or other reputable, third party information source selected by the board of directors of Newmont; and (b) the aggregate volume of Newmont Shares traded on such day on the NYSE or such other stock exchange or automated quotation system and used to calculate such volume weighted average price; provided that any such selections by the board of directors of Newmont shall be conclusive and binding.

“ **Dividend Amount** ” means an amount equal to, and in full satisfaction of, all declared and unpaid dividends on an Exchangeable Share (together with any interest accrued on such dividends pursuant to Section 3.1(4)) held by a holder on any dividend record date which occurred prior to the date of purchase, redemption or other payment in respect of such share as contemplated by Section 5, Section 6 or Section 7; provided that, for greater certainty, the Dividend Amount in respect of an Exchangeable Share will not include the amount of any dividend that was not declared in respect of such Exchangeable Share as a result of a waiver of such dividend in respect of such Exchangeable Share in accordance with Section 3(1).

“ **Exchangeable Share Voting Event** ” means any matter in respect of which holders of Exchangeable Shares are entitled to vote as shareholders of the Corporation and in respect of which the Board of Directors determines in good faith that after giving effect to such matter the economic equivalence of the Exchangeable Shares and the Newmont Shares is maintained for the holders of Exchangeable Shares (other than Newmont and its affiliates).

“ **Exchangeable Shares** ” means the non-voting, exchangeable shares in the capital of the Corporation, having the rights, privileges, restrictions and conditions set forth herein.

“ **Exempt Exchangeable Share Voting Event** ” means an Exchangeable Share Voting Event in order to approve or disapprove, as applicable, any change to, or in the rights of the holders of, the

Exchangeable Shares, where the approval or disapproval, as applicable, of such change would be required to maintain the economic equivalence of the Exchangeable Shares and the Newmont Shares.

“ **holder** ” means, when used with reference to the Exchangeable Shares, a holder of Exchangeable Shares shown from time to time in the register maintained by or on behalf of the Corporation in respect of the Exchangeable Shares.

“ **including** ” means “including without limitation” and “ **includes** ” means “includes without limitation”.

“ **Liquidation Amount** ” has the meaning ascribed thereto in Section 5(1) of these share provisions.

“ **Liquidation Call Right** ” has the meaning ascribed thereto in the Section 5(4)(a) of these share provisions.

“ **Liquidation Date** ” has the meaning ascribed thereto in Section 5(1) of these share provisions.

“ **Newmont** ” means Newmont Mining Corporation, a corporation existing under the laws of Delaware or such other corporation that at the time is the issuer of the Newmont Shares.

“ **Newmont Control Transaction** ” means any merger, amalgamation, arrangement, take-over bid or tender offer, material sale of shares or rights or interests therein or thereto or similar transactions involving Newmont, or any proposal to do so.

“ **Newmont Dividend Declaration Date** ” means the date on which the board of directors of Newmont declares any dividend or other distribution on the Newmont Shares that would require a corresponding payment to be made in respect of the Exchangeable Shares.

“ **Newmont Shares** ” means the common stock, par value U.S. \$1.60 per share, in the capital of Newmont.

“ **NHULC** ” means Newmont Holdings ULC, an unlimited liability company governed by the laws of the Province of Nova Scotia.

“ **NYSE** ” means the New York Stock Exchange or its successor.

“ **person** ” includes any individual, firm, partnership, limited partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, unincorporated association or organization, Agency, syndicate or other entity, whether or not having legal status.

“ **Plan of Arrangement** ” means the plan of arrangement substantially in the form of Exhibit A to the Arrangement Agreement, as amended, modified or supplemented from time to time in accordance with the Arrangement Agreement and Plan of Arrangement or made at the direction of the Ontario Superior Court of Justice.

“ **Purchase Price** ” has the meaning ascribed thereto in Section 6(3) of these share provisions.

“ **Redemption Call Purchase Price** ” has the meaning ascribed thereto in Section 7(4)(a) of these share provisions.

“ **Redemption Call Right** ” has the meaning ascribed thereto in Section 7(4)(a) of these share provisions; provided that, notwithstanding anything to the contrary in these share provisions, the Redemption Call Right shall cease to apply in respect of any Redemption Date not occurring prior to February 16, 2024.

“ **Redemption Date** ” means the earlier of

- (a) February 16, 2024; and
- (b) the date, if any, established by the Board of Directors for the redemption by the Corporation of all but not less than all of the outstanding Exchangeable Shares pursuant to Section 7 of these share provisions, which date shall be no earlier than February 16, 2014, unless:
  - (i) there are fewer than 1,000,000 Exchangeable Shares outstanding (other than Exchangeable Shares held by Newmont and its affiliates, and as such number of shares may be adjusted as deemed appropriate by the Board of Directors to give effect to any subdivision or consolidation of or stock dividend on the Exchangeable Shares, any issue or distribution of rights to acquire Exchangeable Shares or securities exchangeable for or convertible into Exchangeable Shares, any issue or distribution of other securities or rights or evidences of indebtedness or assets, or any other capital reorganization or other transaction affecting the Exchangeable Shares), in which case the Board of Directors may accelerate such redemption date to such date prior to February 16, 2014 as they may determine, upon at least 60 days’ prior written notice to the holders of the Exchangeable Shares and the Trustee;
  - (ii) a Newmont Control Transaction occurs, in which case, provided that the Board of Directors determines, in good faith and in its sole discretion, that it is not reasonably practicable to substantially replicate the terms and conditions of the Exchangeable Shares in connection with such Newmont Control Transaction and that the redemption of all but not less than all of the outstanding Exchangeable Shares is necessary to enable the completion of such Newmont Control Transaction in accordance with its terms, the Board of Directors may accelerate such redemption date to such date prior to February 16, 2004 as it may determine, upon such number of days’ prior written notice to the holders of the Exchangeable Shares and the Trustee as the Board of Directors may determine to be reasonably practicable in such circumstances;
  - (iii) an Exchangeable Share Voting Event that is not an Exempt Exchangeable Share Voting Event is proposed and (x) the holders of the Exchangeable Shares fail to take the necessary action, at a meeting or other vote of holders of Exchangeable Shares, to approve or disapprove, as applicable, the Exchangeable Share Voting Event or the holders of the Exchangeable Shares do take the necessary action but, in connection therewith, the holders of more than 2% of the outstanding Exchangeable Shares (other than those held by Newmont and its affiliates) exercise rights of dissent under the BCBCA, and (y) the Board of Directors determines in good faith that it is not reasonably practicable to accomplish the

business purpose (which business purpose must be bona fide and not for the primary purpose of causing the occurrence of the Redemption Date) intended by the Exchangeable Share Voting Event in a commercially reasonable manner that does not result in an Exchangeable Share Voting Event, in which case the Redemption Date shall be the business day following the day on which the later of the events described in (x) and (y) above occur;

- (iv) an Exempt Exchangeable Share Voting Event is proposed and holders of the Exchangeable Shares fail to take the necessary action at a meeting or other vote of holders of Exchangeable Shares to approve or disapprove, as applicable, the Exempt Exchangeable Share Voting Event in which case the Redemption Date shall be the business day following the day on which the holders of the Exchangeable Shares failed to take such action; or
- (v) the Canadian tax legislation is amended and becomes effective such that substantially all Canadian resident holders of Exchangeable Shares may exchange their Exchangeable Shares for Newmont Shares on a tax deferred basis for Canadian income tax purposes, in which case the Board of Directors may accelerate such Redemption Date to such date prior to February 16, 2014 as they may determine, upon at least 60 days' prior written notice to the holders of the Exchangeable Shares and the Trustee,

provided, however, that the accidental failure or omission to give any notice of redemption under clauses (i), (ii), (iii), (iv) or (v) above to any of the holders of Exchangeable Shares shall not affect the validity of any such redemption.

“ **Redemption Price** ” has the meaning ascribed thereto in Section 7(1) of these share provisions.

“ **Retracted Shares** ” has the meaning ascribed thereto in Section 6(1)(a) of these share provisions.

“ **Retraction Call Right** ” has the meaning ascribed thereto in Section 6(1)I of these share provisions.

“ **Retraction Date** ” has the meaning ascribed thereto in Section 6(1)(b) of these share provisions.

“ **Retraction Price** ” has the meaning ascribed thereto in Section 6(1) of these share provisions.

“ **Retraction Request** ” has the meaning ascribed thereto in Section 6(1) of these share provisions.

“ **SEC** ” means the U.S. Securities and Exchange Commission.

“ **Securities Act** ” means the *Securities Act* (Ontario) and the rules, regulations and policies made thereunder, as amended.

“ **Support Agreement** ” means the support agreement dated as of the Effective Date (as defined in the Plan of Arrangement).

“ **Transfer Agent** ” means Computershare Investor Services Inc. or such other person as may from time to time be appointed by the Corporation as the registrar and transfer agent for the Exchangeable Shares.

“ **Trustee** ” means Computershare Trust Company of Canada, the trustee under the Voting and Exchange Trust Agreement and any successor trustee appointed under the Voting and Exchange Trust Agreement.

“ **TSX** ” means The Toronto Stock Exchange or its successor.

“ **Voting and Exchange Trust Agreement** ” means the voting and exchange trust agreement dated as of the Effective Date (as defined in the Plan of Arrangement).

- (2) Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa, and words importing any gender shall include all genders.

## **2. RANKING OF EXCHANGEABLE SHARES**

The Exchangeable Shares shall be entitled to a preference over the Common Shares and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs.

## **3. DIVIDENDS**

- (1) A holder of an Exchangeable Share shall be entitled to receive and the Board of Directors shall, subject to applicable law, on each Newmont Dividend Declaration Date, declare a dividend on each Exchangeable Share (other than those in respect of which such dividend is waived in accordance with this Section 3(1)):
- (a) in the case of a cash dividend declared on the Newmont Shares, in an amount in cash for each Exchangeable Share equal to the Canadian Dollar Equivalent of the cash dividend declared on each Newmont Share on the Newmont Dividend Declaration Date;
  - (b) in the case of a stock dividend declared on the Newmont Shares to be paid in Newmont Shares, by the issue or transfer by the Corporation of such number of Exchangeable Shares for each Exchangeable Share as is equal to the number of Newmont Shares to be paid on each Newmont Share unless in lieu of such stock dividend the Corporation elects to effect a corresponding and contemporaneous and economically equivalent (as determined by the Board of Directors in accordance with Section 3(5) hereof) subdivision of the outstanding Exchangeable Shares; or
  - (c) in the case of a dividend declared on the Newmont Shares in property other than cash or Newmont Shares, in such type and amount of property for each Exchangeable Share as is the same as or economically equivalent (to be determined by the Board of Directors as contemplated by Section 3(5) hereof) to the type and amount of property declared as a dividend on each Newmont Share.

Such dividends shall be paid out of money, assets or property of the Corporation properly applicable to the payment of dividends, or out of authorized but unissued shares of the Corporation, as applicable. The holders of Exchangeable Shares shall not be entitled to any dividends other than or in excess of the dividends referred to in this Section 3(1).

Notwithstanding the foregoing, a dividend declared or to be declared in respect of an Exchangeable Share may be waived by notice in writing to that effect to the Corporation from the holder of such Exchangeable Share in respect of which the waiver is effected, and any such waiver received by the Corporation prior to the date on which a dividend is declared shall result in no such dividend being declared in respect of such Exchangeable Share. Any such waiver shall cease to be effective in respect of any dividend declared after the date on which an Exchangeable Share to which such waiver applies is transferred by the holder of such Exchangeable Share.

- (2) Cheques of the Corporation payable at par at any branch of the bankers of the Corporation shall be issued in respect of any cash dividends contemplated by Section 3(1)(a) hereof and the sending of such cheque to each holder of an Exchangeable Share (other than any holder who has waived such dividends with respect to all of such holder's Exchangeable Shares in accordance with Section 3(1)) shall satisfy the cash dividend represented thereby unless the cheque is not paid on presentation. Certificates registered in the name of the registered holder of Exchangeable Shares shall be issued or transferred in respect of any stock dividends contemplated by Section 3(1)(b) hereof and the sending of such a certificate to each holder of an Exchangeable Share (other than any holder who has waived such dividends with respect to all of such holder's Exchangeable Shares in accordance with Section 3(1)) shall satisfy the stock dividend represented thereby. Such other type and amount of property in respect of any dividends contemplated by Section 3(1)(c) hereof shall be issued, distributed or transferred by the Corporation in such manner as it shall determine and the issuance, distribution or transfer thereof by the Corporation to each holder of an Exchangeable Share (other than any holder who has waived such dividends with respect to all of such holder's Exchangeable Shares in accordance with Section 3(1)) shall satisfy the dividend represented thereby. No holder of an Exchangeable Share shall be entitled to recover by action or other legal process against the Corporation any dividend that is represented by a cheque that has not been duly presented to the Corporation's bankers for payment or that otherwise remains unclaimed for a period of six years from the date on which such dividend was payable.
- (3) The record date for the determination of the holders of Exchangeable Shares entitled to receive payment of, and the payment date for, any dividend declared on the Exchangeable Shares under Section 3(1) hereof shall be the same dates as the record date and payment date, respectively, for the corresponding dividend declared on the Newmont Shares. The record date for the determination of the holders of Exchangeable Shares entitled to receive Exchangeable Shares in connection with any subdivision, redivision or change of the Exchangeable Shares under Section 3(1)(b) hereof and the effective date of such subdivision shall be the same dates as the record and payment date, respectively, for the corresponding stock dividend declared on the Newmont Shares.
- (4) If on any payment date for any dividends declared on the Newmont Shares, the corresponding dividends contemplated by Section 3(1) hereof are not paid in full on all of the Exchangeable Shares then outstanding (other than Exchangeable Shares in respect of which such dividend has been waived in accordance with Section 3(1)), (a) any such dividends that remain unpaid shall be paid on a subsequent date or dates determined by the Board of Directors on which the Corporation shall have sufficient moneys, assets or property properly applicable to the payment of such dividends, and (b) interest shall accrue on any such dividends that remain unpaid at a rate of 6%, compounded annually, from the applicable payment date up to and including the date on which such dividends are paid.
- (5) The Board of Directors shall determine, in good faith and in its sole discretion, economic equivalence for the purposes of these share provisions, including Section 3(1) hereof, and each such determination shall be conclusive and binding on the Corporation and its shareholders. In

making each such determination, the following factors shall, without excluding other factors determined by the Board of Directors to be relevant, be considered by the Board of Directors:

- (a) in the case of any stock dividend or other distribution payable in Newmont Shares, the number of such shares issued in proportion to the number of Newmont Shares previously outstanding;
- (b) in the case of the issuance or distribution of any rights, options or warrants to subscribe for or purchase Newmont Shares (or securities exchangeable for or convertible into or carrying rights to acquire Newmont Shares), the relationship between the exercise price of each such right, option or warrant and the Current Market Price;
- (c) in the case of the issuance or distribution of any other form of property (including any shares or securities of Newmont of any class other than Newmont Shares, any rights, options or warrants other than those referred to in Section 3(5)(b) hereof, any evidences of indebtedness of Newmont or any assets of Newmont), the relationship between the fair market value (as determined by the Board of Directors in the manner above contemplated) of such property to be issued or distributed with respect to each outstanding Newmont Share and the Current Market Price of a Newmont Share; and
- (d) in all such cases, the general taxation consequences of the relevant event to holders of Exchangeable Shares to the extent that such consequences may differ from the taxation consequences to holders of Newmont Shares as a result of differences between taxation laws of Canada and the United States (except for any differing consequences arising as a result of differing marginal taxation rates and without regard to the individual circumstances of holders of Exchangeable Shares).

#### **4. CERTAIN RESTRICTIONS**

So long as any of the Exchangeable Shares are outstanding, the Corporation shall not at any time without, but may at any time with, the approval of the holders of the Exchangeable Shares given as specified in Section 10(2) of these share provisions:

- (a) pay any dividends on the Common Shares or any other shares ranking junior to the Exchangeable Shares, other than stock dividends payable in Common Shares or any such other shares ranking junior to the Exchangeable Shares, as the case may be;
- (b) redeem or purchase or make any capital distribution in respect of Common Shares or any other shares ranking junior to the Exchangeable Shares;
- (c) redeem or purchase any other shares of the Corporation ranking equally with the Exchangeable Shares with respect to the payment of dividends or the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs; or
- (d) issue any Exchangeable Shares or any other shares of the Corporation ranking equally with the Exchangeable Shares other than by way of stock dividends to the holders of such Exchangeable Shares; and
- (e) issue any shares of the Corporation ranking superior to the Exchangeable Shares.

The restrictions in Section 4(a), (b), (c) and (d) hereof shall not apply if: (i) all dividends on the outstanding Exchangeable Shares corresponding to dividends declared and paid to date on the Newmont Shares shall have been declared and paid on the Exchangeable Shares (other than those in respect of which such dividend has been waived in accordance with Section 3(1)); and (ii) in the case of an issuance of any Exchangeable Shares as contemplated in Section 4(d), the members of the board of directors of Newmont that vote on the matter shall have unanimously approved the issuance of the additional Exchangeable Shares.

## 5. DISTRIBUTION ON LIQUIDATION

- (1) In the event of the liquidation, dissolution or winding-up of the Corporation or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, subject to the exercise by Callco of the Liquidation Call Right, a holder of Exchangeable Shares shall be entitled, subject to applicable law, to receive from the assets of the Corporation in respect of each Exchangeable Share held by such holder on the effective date (the “**Liquidation Date**”) of such liquidation, dissolution, winding-up or other distribution, before any distribution of any part of the assets of the Corporation among the holders of the Common Shares or any other shares ranking junior to the Exchangeable Shares, an amount per Exchangeable Share (the “**Liquidation Amount**”) equal to the Current Market Price of a Newmont Share on the last business day prior to the Liquidation Date, which shall be satisfied in full by the Corporation delivering or causing to be delivered to such holder one Newmont Share, plus an amount equal the Dividend Amount in respect of such Exchangeable Share (if any).
- (2) On or promptly after the Liquidation Date, and provided the Liquidation Call Right has not been exercised by Callco, the Corporation shall pay or cause to be paid to the holders of the Exchangeable Shares the Liquidation Amount for each such Exchangeable Share upon presentation and surrender of the certificates representing such Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the BCBCA and the Articles of the Corporation and such additional documents, instruments and payments as the Transfer Agent and the Corporation may reasonably require, at the registered office of the Corporation or at any office of the Transfer Agent as may be specified by the Corporation by notice to the holders of the Exchangeable Shares. Payment of the Liquidation Amount for such Exchangeable Shares shall be made by transferring or causing to be transferred to each holder the Newmont Shares to which such holder is entitled and by delivering to such holder, at the address of such holder recorded in the register of shareholders of the Corporation for the Exchangeable Shares or by holding for pick-up by such holder at the registered office of the Corporation or at any office of the Transfer Agent as may be specified by the Corporation by notice to the holders of Exchangeable Shares, on behalf of the Corporation certificates representing Newmont Shares (which shares shall be fully paid and shall be free and clear of any lien, claim or encumbrance) and a cheque of the Corporation payable at par at any branch of the bankers of the Corporation in respect of the Dividend Amount (if any), in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom. On and after the Liquidation Date, the holders of the Exchangeable Shares shall cease to be holders of such Exchangeable Shares and shall not be entitled to exercise any of the rights of holders in respect thereof (including any rights under the Voting and Exchange Trust Agreement), other than the right to receive the Liquidation Amount, unless payment of the total Liquidation Amount for such Exchangeable Shares shall not be made upon presentation and surrender of share certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected until the Liquidation Amount has been paid in the manner hereinbefore provided. The Corporation shall have the right at any time after the Liquidation Date to transfer or cause to be issued or transferred to, and deposited with, the Agent the Liquidation Amount in

respect of the Exchangeable Shares represented by certificates that have not at the Liquidation Date been surrendered by the holders thereof, such Liquidation Amount to be held by the Agent as trustee for and on behalf of, and for the use and benefit of, such holders. Upon such deposit being made, the rights of a holder of Exchangeable Shares after such deposit shall be limited to receiving its proportionate part of the Liquidation Amount for such Exchangeable Shares so deposited, without interest, and when received by the Agent, all dividends and other distributions with respect to the Newmont Shares to which such holder is entitled with a record date after the Liquidation Date and before the date of transfer of such Newmont Shares to such holder (in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom) against presentation and surrender of the certificates for the Exchangeable Shares held by them in accordance with the foregoing provisions.

- (3) After the Corporation has satisfied its obligations to pay the holders of the Exchangeable Shares the Liquidation Amount per Exchangeable Share pursuant to Section 5(1) of these share provisions, such holders shall not be entitled to share in any further distribution of the assets of the Corporation.
- (4) Callco shall have the following rights in respect of the Exchangeable Shares:
  - (a) Callco shall have the overriding right (the “ **Liquidation Call Right** ”), in the event of and notwithstanding the proposed liquidation, dissolution or winding-up of the Corporation or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, to purchase from all but not less than all of the holders of Exchangeable Shares (other than any holder of Exchangeable Shares which is Newmont or an affiliate of Newmont) on the Liquidation Date all but not less than all of the Exchangeable Shares held by each such holder on payment by Callco of an amount per Exchangeable Share equal to the Current Market Price of a Newmont Share on the last business day prior to the Liquidation Date, which shall be satisfied in full by Callco delivering or causing to be delivered to such holder one Newmont Share, plus any Dividend Amount in respect of such Exchangeable Share, if any (collectively, the “ **Liquidation Call Purchase Price** ”). In the event of the exercise of the Liquidation Call Right by Callco, each holder of Exchangeable Shares shall be obligated to sell all the Exchangeable Shares held by such holder to Callco on the Liquidation Date on payment by Callco to such holder of the applicable Liquidation Call Purchase Price for each such Exchangeable Share, and the Corporation shall have no obligation to pay any portion of the Liquidation Amount (including the Dividend Amount) to the holders of such Exchangeable Shares so purchased by Callco.
  - (b) To exercise the Liquidation Call Right, Callco must notify the Transfer Agent, as agent for the holders of Exchangeable Shares and the Corporation, of Callco’s intention to exercise such right at least 45 days before the Liquidation Date in the case of a voluntary liquidation, dissolution or winding-up of the Corporation or any other voluntary distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, and at least five business days before the Liquidation Date in the case of an involuntary liquidation, dissolution or winding-up of the Corporation or any other involuntary distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs. The Transfer Agent will notify the holders of Exchangeable Shares as to whether or not Callco has exercised the Liquidation Call Right forthwith after the expiry of the period during which the same may be exercised by Callco. If Callco exercises the Liquidation Call Right, then on the Liquidation Date, Callco will purchase and the holders of Exchangeable Shares will sell all of the

Exchangeable Shares then outstanding for a price per Exchangeable Share equal to the applicable Liquidation Call Purchase Price for such Exchangeable Share.

(c) For the purposes of completing the purchase of the Exchangeable Shares pursuant to the Liquidation Call Right, Callco shall deposit or cause to be deposited with the Transfer Agent, on or before the Liquidation Date, certificates representing the aggregate number of Newmont Shares required to be delivered pursuant to Section 5(4)(a) and a cheque or cheques of Callco payable at par at any branch of the bankers of Callco representing the aggregate Dividend Amount, if any, in payment of the total Liquidation Call Purchase Price (in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom). Provided that Callco has complied with the immediately preceding sentence, on and after the Liquidation Date the holders of Exchangeable Shares shall cease to be holders of Exchangeable Shares and shall not be entitled to exercise any of the rights of holders in respect thereof (including any rights under the Voting and Exchange Trust Agreement), other than the right to receive their proportionate part of the aggregate Liquidation Call Purchase Price, unless payment of the aggregate Liquidation Call Purchase Price for the Exchangeable Shares shall not be made upon presentation and surrender of share certificates in accordance with the following provisions of this Section 5(4)(c), in which case the rights of the holders shall remain unaffected until the aggregate Liquidation Call Purchase Price has been paid in the manner herein provided. Upon surrender to the Transfer Agent of a certificate or certificates representing Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the BCBCA and Articles of the Corporation and such additional documents, instruments and payments as the Transfer Agent may reasonably require, the holder of such surrendered certificate or certificates shall be entitled to receive in exchange hereof, and the Transfer Agent on behalf of Callco shall transfer to such holder, the Newmont Shares to which such holder is entitled and as soon as reasonably practicable thereafter the Transfer Agent shall deliver to such holder certificates representing the Newmont Shares to which the holder is entitled and a cheque or cheques of Callco payable at par at any branch of the bankers of Callco representing the Dividend Amount, if any, and when received by the Transfer Agent, all dividends and other distributions with respect to such Newmont Shares with a record date after the Liquidation Date and before the date of the transfer of such Newmont Shares to such holder (in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom). If Callco does not exercise the Liquidation Call Right in the manner described above, on the Liquidation Date, the holders of the Exchangeable Shares will be entitled to receive in exchange hereof the Liquidation Amount otherwise payable by the Corporation in connection with the liquidation, dissolution or winding-up of the Corporation or any distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs pursuant to this Section 5.

(5) Notwithstanding anything to the contrary contained in these share provisions, the Voting and Exchange Trust Agreement or the Support Agreement, the Liquidation Call Right may be exercised by, and the related obligations thereunder performed by, Newmont or an affiliate of Newmont, either alone or together with Callco.

#### **6. RETRACTION OF EXCHANGEABLE SHARES BY HOLDER**

(1) A holder of Exchangeable Shares shall be entitled at any time, subject to the exercise by Callco of the Retraction Call Right and otherwise upon compliance with, and subject to, the provisions of this Section 6, to require the Corporation to redeem any or all of the Exchangeable Shares

registered in the name of such holder for an amount per Exchangeable Share equal to the Current Market Price of a Newmont Share on the last business day prior to the Retraction Date (the “ **Retraction Price** ”), which shall be satisfied in full by the Corporation delivering or causing to be delivered to such holder one Newmont Share (which on issue will be admitted to listing and trading by the NYSE (subject to official notice of issuance)) for each Exchangeable Share presented and surrendered by the holder together with, on the designated payment date hereof, the Dividend Amount in respect of such Exchangeable Share (if any). To effect such redemption, the holder shall present and surrender at the registered office of the Corporation or at any office of the Transfer Agent as may be specified by the Corporation by notice to the holders of Exchangeable Shares the certificate or certificates representing the Exchangeable Shares which the holder desires to have the Corporation redeem, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the BCBCA and the Articles of the Corporation and such additional documents, instruments and payments as the Transfer Agent and the Corporation may reasonably require, and together with a duly executed statement (the “ **Retraction Request** ”) in the form of Exhibit 1 hereto or in such other form as may be acceptable to the Corporation:

- (a) specifying that the holder desires to have all or any number specified therein of the Exchangeable Shares represented by such certificate or certificates (the “ **Retracted Shares** ”) redeemed by the Corporation;
  - (b) stating the business day on which the holder desires to have the Corporation redeem the Retracted Shares (the “ **Retraction Date** ”), provided that the Retraction Date shall be not less than 10 business days nor more than 15 business days after the date on which the Retraction Request is received by the Corporation and further provided that, in the event that no such business day is specified by the holder in the Retraction Request, the Retraction Date shall be deemed to be the 15th business day after the date on which the Retraction Request is received by the Corporation and subject also to Section 6(8); and
  - (c) acknowledging the overriding right (the “ **Retraction Call Right** ”) of Callco to purchase all but not less than all the Retracted Shares directly from the holder and that the Retraction Request shall be deemed to be a revocable offer by the holder to sell the Retracted Shares to Callco in accordance with the Retraction Call Right on the terms and conditions set out in Section 6(3) hereof.
- (2) Provided that Callco has not exercised the Retraction Call Right, upon receipt by the Corporation or the Transfer Agent in the manner specified in Section 6(1) of a certificate or certificates representing the number of Retracted Shares, together with a Retraction Request, and provided that the Retraction Request is not revoked by the holder in the manner specified in Section 6(7), the Corporation shall redeem the Retracted Shares effective at the close of business on the Retraction Date and shall transfer or cause to be issued or transferred to such holder the Newmont Shares to which such holder is entitled and shall comply with Section 6(4) hereof. If only a part of the Exchangeable Shares represented by any certificate is redeemed (or purchased by Callco pursuant to the Retraction Call Right), a new certificate for the balance of such Exchangeable Shares shall be issued to the holder at the expense of the Corporation.
  - (3) Subject to the provisions of this Section 6, upon receipt by the Corporation of a Retraction Request, the Corporation shall immediately notify Callco thereof and shall provide to Callco a copy of the Retraction Request. In order to exercise the Retraction Call Right, Callco must notify the Corporation of its determination to do so (the “ **Callco Call Notice** ”) within five business days of notification to Callco by the Corporation of the receipt by the Corporation of the Retraction

Request. If Callco does not so notify the Corporation within such five business day period, the Corporation will notify the holder as soon as possible thereafter that Callco will not exercise the Retraction Call Right. If Callco delivers the Callco Call Notice within such five business day period, and provided that the Retraction Request is not revoked by the holder in the manner specified in Section 6(7), the Retraction Request shall thereupon be considered only to be an offer by the holder to sell the Retracted Shares to Callco in accordance with the Retraction Call Right. In such event, the Corporation shall not redeem the Retracted Shares and Callco shall purchase from such holder and such holder shall sell to Callco on the Retraction Date the Retracted Shares for a purchase price (the “**Purchase Price**”) per Retracted Share equal to the Retraction Price per share, plus, on the designated payment date hereof, to the extent not paid by the Corporation on the designated payment date hereof, any Dividend Amount in respect of such Retracted Share. To the extent that Callco pays the applicable Dividend Amount (if any) in respect of the Retracted Shares, the Corporation shall no longer be obligated to pay any declared and unpaid dividends on such Retracted Shares. For the purpose of completing a purchase pursuant to the Retraction Call Right, on the Retraction Date, Callco shall transfer or cause to be issued or transferred to the holder of the Retracted Shares the Newmont Shares to which such holder is entitled. Provided that Callco has complied with the immediately preceding sentence and Section 6(4) hereof, the closing of the purchase and sale of the Retracted Shares pursuant to the Retraction Call Right shall be deemed to have occurred as at the close of business on the Retraction Date and, for greater certainty, no redemption by the Corporation of such Retracted Shares shall take place on the Retraction Date. In the event that Callco does not deliver a Callco Call Notice within such five business day period, and provided that the Retraction Request is not revoked by the holder in the manner specified in Section 6(7), the Corporation shall redeem the Retracted Shares on the Retraction Date and in the manner otherwise contemplated in this Section 6.

- (4) the Corporation or Callco, as the case may be, shall deliver or cause the Transfer Agent to deliver to the relevant holder, at the address of the holder recorded in the register of shareholders of the Corporation for the Exchangeable Shares or at the address specified in the holder’s Retraction Request or by holding for pick-up by the holder at the registered office of the Corporation or at any office of the Transfer Agent as may be specified by the Corporation by notice to the holders of Exchangeable Shares, certificates representing the Newmont Shares (which shares shall be fully paid and shall be free and clear of any lien, claim or encumbrance and which on issue will be admitted to listing and trading by the NYSE (subject to official notice of issuance)) registered in the name of the holder or in such other name as the holder may request, and, if applicable and on or before the payment date hereof, a cheque payable at par at any branch of the bankers of the Corporation or Callco, as applicable, representing the aggregate Dividend Amount, in payment of the Retraction Price or the Purchase Price, as the case may be, in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom, and such delivery of such certificates and cheques on behalf of the Corporation or by Callco, as the case may be, or by the Transfer Agent shall be deemed to be payment of and shall satisfy and discharge all liability for the Retraction Price or Purchase Price, as the case may be, to the extent that the same is represented by such share certificates and cheques (plus any tax deducted and withheld therefrom and remitted to the proper tax authority).
- (5) On and after the close of business on the Retraction Date, the holder of the Retracted Shares shall cease to be a holder of such Retracted Shares and shall not be entitled to exercise any of the rights of a holder in respect thereof (including any rights under the Voting and Exchange Trust Agreement), other than the right to receive the Retraction Price or Purchase Price, as the case may be, unless upon presentation and surrender of certificates in accordance with the foregoing provisions, payment of the Retraction Price or the Purchase Price, as the case may be, shall not be made as provided in Section 6(4) hereof, in which case the rights of such holder shall remain

unaffected until the Retraction Price or the Purchase Price, as the case may be, has been paid in the manner hereinbefore provided. On and after the close of business on the Retraction Date, provided that presentation and surrender of certificates and payment of the Retraction Price or the Purchase Price, as the case may be, has been made in accordance with the foregoing provisions, the holder of the Retracted Shares so redeemed by the Corporation or purchased by Callco shall thereafter be a holder of the Newmont Shares delivered to it.

- (6) Notwithstanding any other provision of this Section 6, the Corporation shall not be obligated to redeem Retracted Shares specified by a holder in a Retraction Request to the extent that such redemption of Retracted Shares would be contrary to solvency requirements or other provisions of applicable law. If the Corporation believes that on any Retraction Date it would not be permitted by any of such provisions to redeem the Retracted Shares tendered for redemption on such date, and provided that Callco shall not have exercised the Retraction Call Right with respect to the Retracted Shares, the Corporation shall only be obligated to redeem Retracted Shares specified by a holder in a Retraction Request to the extent of the maximum number that may be so redeemed (rounded down to a whole number of shares) as would not be contrary to such provisions and shall notify the holder and the Trustee at least two business days prior to the Retraction Date as to the number of Retracted Shares which will not be redeemed by the Corporation. In any case in which the redemption by the Corporation of Retracted Shares would be contrary to solvency requirements or other provisions of applicable law, the Corporation shall redeem Retracted Shares in accordance with Section 6(2) of these share provisions on a pro rata basis and shall issue to each holder of Retracted Shares a new certificate, at the expense of the Corporation, representing the Retracted Shares not redeemed by the Corporation pursuant to Section 6(2) hereof. If the Corporation would otherwise be obligated to redeem the Retracted Shares pursuant to Section 6(2) of these share provisions but is not obligated to do so as a result of solvency requirements or other provisions of applicable law, Newmont shall, subject to applicable law, purchase such Retracted Shares from such holder on the Retraction Date or as soon as practicable thereafter on payment by Newmont to such holder of the Purchase Price for each such Retracted Share, all as more specifically provided for in the Voting and Exchange Trust Agreement.
- (7) A holder of Retracted Shares may, by notice in writing given by the holder to the Corporation before the close of business on the business day immediately preceding the Retraction Date, withdraw its Retraction Request, in which event such Retraction Request shall be null and void and, for greater certainty, the revocable offer constituted by the Retraction Request to sell the Retracted Shares to Callco shall be deemed to have been revoked.
- (8) Notwithstanding any other provision of this Section 6, if:
  - (a) exercise of the rights of the holders of the Exchangeable Shares, or any of them, to require the Corporation to redeem any Exchangeable Shares pursuant to this Section 6 on any Retraction Date would require listing particulars or any similar document to be issued in order to obtain the approval of NYSE to the listing and trading (subject to official notice of issuance) of, the Newmont Shares that would be required to be delivered to such holders of Exchangeable Shares in connection with the exercise of such rights; and
  - (b) as a result of (a) above, it would not be practicable (notwithstanding the reasonable endeavours of Newmont) to obtain such approvals in time to enable all or any of such Newmont Shares to be admitted to listing and trading by NYSE (subject to official notice of issuance) when so delivered,

that Retraction Date shall, notwithstanding any other date specified or otherwise deemed to be specified in any relevant Retraction Request, be deemed for all purposes to be the earlier of (i) the second business day immediately following the date the approvals referred to in Section 6(8)(a) are obtained, and (ii) the date which is 30 business days after the date on which the relevant Retraction Request is received by the Corporation, and references in these share provisions to such Retraction Date shall be construed accordingly.

- (9) Notwithstanding anything to the contrary contained in these share provisions, the Voting and Exchange Trust Agreement or the Support Agreement, the Retraction Call Right may be exercised by, and the related obligations thereunder performed by, Newmont or an affiliate of Newmont, either alone or together with Callco.

## 7. REDEMPTION OF EXCHANGEABLE SHARES BY THE CORPORATION

- (1) Subject to applicable law, and provided Callco has not exercised the Redemption Call Right (if applicable), the Corporation shall on the Redemption Date redeem all but not less than all of the then outstanding Exchangeable Shares for an amount per Exchangeable Share (the “ **Redemption Price** ”) equal to the Current Market Price of a Newmont Share on the last business day prior to the Redemption Date, which shall be satisfied in full by the Corporation causing to be delivered to each holder of Exchangeable Shares one Newmont Share for each Exchangeable Share held by such holder, together with an amount equal to the Dividend Amount in respect of such Exchangeable Share (if any).
- (2) In any case of a redemption of Exchangeable Shares under this Section 7, the Corporation shall, at least 60 days before the Redemption Date (other than a Redemption Date established in connection with a Newmont Control Transaction or an Exchangeable Share Voting Event), send or cause to be sent to each holder of Exchangeable Shares a notice in writing of the redemption by the Corporation or the purchase by Callco under the Redemption Call Right, as the case may be, of the Exchangeable Shares held by such holder. In the case of a Redemption Date established in connection with a Newmont Control Transaction or an Exchangeable Share Voting Event, the written notice of the redemption by the Corporation or the purchase by Callco under the Redemption Call Right will be sent on or before the Redemption Date, on as many days prior written notice as may be determined by the Board of Directors to be reasonably practicable in the circumstances. In any such case, such notice shall set out the formula for determining the Redemption Price or the Redemption Call Purchase Price, as the case may be, the Redemption Date and, if applicable, particulars of the Redemption Call Right.
- (3) On or after the Redemption Date and provided that the Redemption Call Right has not been exercised by Callco, the Corporation shall pay or cause to be paid to the holders of the Exchangeable Shares to be redeemed the Redemption Price for each such Exchangeable Share, upon presentation and surrender at the registered office of the Corporation or at any office of the Transfer Agent as may be specified by the Corporation in such notice of the certificates representing such Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the BCBCA and the Articles of the Corporation and such additional documents, instruments and payments as the Transfer Agent and the Corporation may reasonably require. Payment of the Redemption Price for such Exchangeable Shares shall be made by transferring or causing to be issued or transferred to each holder the Newmont Shares to which such holder is entitled and by delivering to such holder, at the address of such holder recorded in the register of shareholders of the Corporation for the Exchangeable Shares or by holding for pick-up by such holder at the registered office of the Corporation or at any office of the Transfer Agent as may be specified by the Corporation in such

notice, on behalf of the Corporation certificates representing Newmont Shares (which shares shall be fully paid and shall be free and clear of any lien, claim or encumbrance), and, if applicable, a cheque of the Corporation payable at par at any branch of the bankers of the Corporation in payment of the Dividend Amount, in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom. On and after the Redemption Date, the holders of the Exchangeable Shares called for redemption shall cease to be holders of such Exchangeable Shares and shall not be entitled to exercise any of the rights of holders in respect thereof (including any rights under the Voting and Exchange Trust Agreement), other than the right to receive the Redemption Price, unless payment of the Redemption Price for such Exchangeable Shares shall not be made upon presentation and surrender of certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected until the Redemption Price has been paid in the manner hereinbefore provided. The Corporation shall have the right at any time after the sending of notice of its intention to redeem the Exchangeable Shares as aforesaid to transfer or cause to be issued or transferred to, and deposited with, the Agent named in such notice the Redemption Price for the Exchangeable Shares (except as otherwise provided in this Section 7(3) so called for redemption, or of such of the said Exchangeable Shares represented by certificates that have not at the date of such deposit been surrendered by the holders thereof in connection with such redemption, less any amounts withheld on account of tax required to be deducted and withheld therefrom, such aggregate Redemption Price to be held by the Agent as trustee for and on behalf of, and for the use and benefit of, such holders. Upon the later of such deposit being made and the Redemption Date, the Exchangeable Shares in respect whereof such deposit shall have been made shall be redeemed and the rights of the holders thereof after such deposit or Redemption Date, as the case may be, shall be limited to receiving their proportionate part of the aggregate Redemption Price for such Exchangeable Shares, without interest, and when received by the Agent, all dividends and other distributions with respect to the Newmont Shares to which such holder is entitled with a record date after the Redemption Date and before the date of transfer of such Newmont Shares to such holder (in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom), against presentation and surrender of the certificates for the Exchangeable Shares held by them in accordance with the foregoing provisions.

- (4) Callco shall have the following rights in respect of the Exchangeable Shares:
- (a) Callco shall have the overriding right (the “ **Redemption Call Right** ”), notwithstanding the proposed redemption of the Exchangeable Shares by the Corporation, to purchase from all but not less than all of the holders of Exchangeable Shares (other than any holder of Exchangeable Shares which is Newmont or an affiliate of Newmont) on the Redemption Date all but not less than all of the Exchangeable Shares held by each such holder on payment by Callco to each such holder of an amount per Exchangeable Share equal to the Current Market Price of a Newmont Share on the last business day prior to the Redemption Date, which shall be satisfied in full by Callco delivering or causing to be delivered to such holder one Newmont Share, plus any Dividend Amount in respect of such Exchangeable Share, if any (collectively, the “ **Redemption Call Purchase Price** ”). In the event of the exercise of the Redemption Call Right by Callco, each holder of Exchangeable Shares shall be obligated to sell all the Exchangeable Shares held by such holder to Callco on the Redemption Date on payment by Callco to such holder of the applicable Redemption Call Purchase Price for each such Exchangeable Share, and the Corporation shall have no obligation to redeem, or to pay any Dividend Amount in respect of, such Exchangeable Shares so purchased by Callco.

- (b) To exercise the Redemption Call Right, Callco must notify the Transfer Agent, as agent for the holders of Exchangeable Shares and the Corporation, of Callco's intention to exercise such right at least 60 days before the Redemption Date, except in the case of a redemption occurring as a result of a Newmont Control Transaction or an Exchangeable Share Voting Event, in which case Callco shall so notify the Transfer Agent and the Corporation on or before the Redemption Date. The Transfer Agent will notify the holders of the Exchangeable Shares as to whether or not Callco has exercised the Redemption Call Right forthwith after the expiry of the period during which the same may be exercised by Callco. If Callco exercises the Redemption Call Right, on the Redemption Date, Callco will purchase and the holders of Exchangeable Shares will sell all of the Exchangeable Shares then outstanding for a price per Exchangeable Share equal to the Redemption Call Purchase Price for such Exchangeable Share.
- (c) For the purposes of completing the purchase of the Exchangeable Shares pursuant to the Redemption Call Right, Callco shall deposit or cause to be deposited with the Transfer Agent, on or before the Redemption Date, certificates representing the aggregate number of Newmont Shares required to be delivered pursuant to Section 7(4)(a) and a cheque or cheques of Callco payable at par at any branch of the bankers of Callco representing the aggregate Dividend Amount, if any, in payment of the aggregate Redemption Call Purchase Price (in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom). Provided that Callco has complied with the immediately preceding sentence, on and after the Redemption Date the holders of Exchangeable Shares shall cease to be holders of Exchangeable Shares and shall not be entitled to exercise any of the rights of holders in respect thereof (including any rights under the Voting and Exchange Trust Agreement), other than the right to receive their proportionate part of the aggregate Redemption Call Purchase Price, unless payment of the aggregate Redemption Call Purchase Price for the Exchangeable Shares shall not be made upon presentation and surrender of share certificates in accordance with the following provisions of this Section 5(4)(c), in which case the rights of the holders shall remain unaffected until the aggregate Redemption Call Purchase Price has been paid in the manner herein provided. Upon surrender to the Transfer Agent of a certificate or certificates representing Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the BCBCA and Articles of the Corporation and such additional documents, instruments and payments as the Transfer Agent may reasonably require, the holder of such surrendered certificate or certificates shall be entitled to receive in exchange hereof, and the Transfer Agent on behalf of Callco shall transfer to such holder, the Newmont Shares to which such holder is entitled and as soon as reasonably practicable thereafter the Transfer Agent shall deliver to such holder certificates representing the Newmont Shares to which the holder is entitled and a cheque or cheques of Callco payable at par at any branch of the bankers of Callco representing the Dividend Amount, if any, and when received by the Transfer Agent, all dividends and other distributions with respect to such Newmont Shares with a record date after the Redemption Date and before the date of the transfer of such Newmont Shares to such holder (in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom). If Callco does not exercise the Redemption Call Right in the manner described above, on the Redemption Date the holders of the Exchangeable Shares will be entitled to receive in exchange hereof the redemption price otherwise payable by the Corporation in connection with the redemption of the Exchangeable Shares pursuant to this Section 7.

- (5) Notwithstanding anything to the contrary contained in these share provisions, the Voting and Exchange Trust Agreement or the Support Agreement, the Redemption Call Right may be exercised by, and the related obligations thereunder performed by, Newmont or an affiliate of Newmont, either alone or together with Calco.

## **8. PURCHASE FOR CANCELLATION**

Subject to applicable law, the Corporation may at any time and from time to time purchase for cancellation all or any part of the Exchangeable Shares.

## **9. VOTING RIGHTS**

Except as required by applicable law and by Section 10 hereof, the holders of the Exchangeable Shares shall not be entitled as such to receive notice of or to attend any meeting of the shareholders of the Corporation or to vote at any such meeting. Without limiting the generality of the foregoing, the holders of the Exchangeable Shares shall not have class votes except as required by applicable law.

## **10. AMENDMENT AND APPROVAL**

- (1) The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares may be added to, changed or removed only with the approval of the holders of the Exchangeable Shares given as hereinafter specified.
- (2) Any approval given by the holders of the Exchangeable Shares to add to, change or remove any right, privilege, restriction or condition attaching to the Exchangeable Shares or any other matter requiring the approval or consent of the holders of the Exchangeable Shares in accordance with applicable law shall be deemed to have been sufficiently given if it shall have been given in accordance with applicable law, subject to a minimum requirement that such approval be evidenced by resolution passed by not less than two-thirds of the votes cast on such resolution at a meeting of holders of Exchangeable Shares duly called and held at which the holders of at least 10% of the outstanding Exchangeable Shares at that time are present or represented by proxy; provided that if at any such meeting the holders of at least 10% of the outstanding Exchangeable Shares at that time are not present or represented by proxy within one-half hour after the time appointed for such meeting, then the meeting shall be adjourned to such date not less than five days thereafter and to such time and place as may be designated by the Chairman of such meeting. At such adjourned meeting the holders of Exchangeable Shares present or represented by proxy thereat may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of not less than two-thirds of the votes cast on such resolution at such meeting shall constitute the approval or consent of the holders of the Exchangeable Shares.

## **11. RECIPROCAL CHANGES, ETC. IN RESPECT OF NEWMONT SHARES**

- (1) Each holder of an Exchangeable Share acknowledges that the Support Agreement provides, in part, that so long as any Exchangeable Shares not owned by Newmont or its affiliates are outstanding, Newmont will not without the prior approval of the Corporation and the prior approval of the holders of the Exchangeable Shares given in accordance with Section 10(2) of these share provisions:
- (a) issue or distribute Newmont Shares (or securities exchangeable for or convertible into Newmont Shares) to the holders of all or substantially all of the then outstanding

Newmont Shares by way of stock dividend or other distribution, other than an issue of Newmont Shares (or securities exchangeable for or convertible into Newmont Shares) to holders of Newmont Shares (i) who exercise an option to receive dividends in Newmont Shares (or securities exchangeable for or convertible into Newmont Shares) in lieu of receiving cash dividends, or (ii) pursuant to any dividend reinvestment plan or similar arrangement;

- (b) issue or distribute rights, options or warrants to the holders of all or substantially all of the then outstanding Newmont Shares entitling them to subscribe for or to purchase Newmont Shares (or securities exchangeable for or convertible into Newmont Shares); or
- (c) issue or distribute to the holders of all or substantially all of the then outstanding Newmont Shares:
  - (i) shares or securities of Newmont of any class other than Newmont Shares (other than shares convertible into or exchangeable for Newmont Shares);
  - (ii) rights, options or warrants other than those referred to in Section 11(1)(b) above;
  - (iii) evidence of indebtedness of Newmont; or
  - (iv) assets of Newmont,

unless the economic equivalent on a per share basis of such rights, options, securities, shares, evidences of indebtedness or other assets is issued or distributed simultaneously to holders of the Exchangeable Shares and at least 7 days prior written notice thereof is given to the holders of Exchangeable Shares; provided that, for greater certainty, the above restrictions shall not apply to any securities issued or distributed by Newmont in order to give effect to and consummate the transactions contemplated by, and in accordance with, the Plan of Arrangement.

- (2) Each holder of an Exchangeable Share acknowledges that the Support Agreement further provides, in part, that so long as any Exchangeable Shares not owned by Newmont or its affiliates are outstanding, Newmont will not without the prior approval of the Corporation and the prior approval of the holders of the Exchangeable Shares given in accordance with Section 10(2) of these share provisions:
  - (a) subdivide, redivide or change the then outstanding Newmont Shares into a greater number of Newmont Shares;
  - (b) reduce, combine, consolidate or change the then outstanding Newmont Shares into a lesser number of Newmont Shares; or
  - (c) reclassify or otherwise change the Newmont Shares or effect an amalgamation, merger, reorganization or other transaction affecting the Newmont Shares,

unless the same or an economically equivalent change shall simultaneously be made to, or in, the rights of the holders of the Exchangeable Shares and at least 7 days prior written notice is given to the holders of Exchangeable Shares. The Support Agreement further provides, in part, that the aforesaid provisions of the Support Agreement shall not be changed without the approval of the holders of the Exchangeable Shares given in accordance with Section 10(2) of these share provisions.

## 12. ACTIONS BY THE CORPORATION UNDER SUPPORT AGREEMENT

- (1) The Corporation will take all such actions and do all such things as shall be necessary to perform and comply with and to ensure performance and compliance by Newmont, Callco and the Corporation with all provisions of the Support Agreement applicable to Newmont, Callco and the Corporation, respectively, in accordance with the terms thereof including taking all such actions and doing all such things as shall be necessary to enforce for the direct benefit of the Corporation all rights and benefits in favour of the Corporation under or pursuant to such agreement.
- (2) The Corporation shall not propose, agree to or otherwise give effect to any amendment to, or waiver or forgiveness of its rights or obligations under, the Support Agreement without the approval of the holders of the Exchangeable Shares given in accordance with Section 10(2) of these share provisions other than such amendments, waivers and/or forgiveness as may be necessary or advisable for the purposes of:
  - (a) adding to the covenants of the other parties to such agreement for the protection of the Corporation or the holders of the Exchangeable Shares thereunder;
  - (b) making such provisions or modifications not inconsistent with such agreement as may be necessary or desirable with respect to matters or questions arising thereunder which, in the good faith opinion of the Board of Directors, it may be expedient to make, provided that the Board of Directors shall be of the good faith opinion, after consultation with counsel, that such provisions and modifications will not be prejudicial to the interests of the holders of the Exchangeable Shares; or
  - (c) making such changes in or corrections to such agreement which, on the advice of counsel to the Corporation, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained therein.

## 13. LEGEND; CALL RIGHTS; WITHHOLDING RIGHTS

- (1) The certificates evidencing the Exchangeable Shares shall contain or have affixed thereto a legend in form and on terms approved by the Board of Directors, with respect to the Support Agreement, the Voting and Exchange Trust Agreement (including the provisions with respect to the voting rights and automatic exchange thereunder) and the Liquidation Call Right, the Redemption Call Right and the Retraction Call Right.
- (2) Each holder of an Exchangeable Share, whether of record or beneficial, by virtue of becoming and being such a holder shall be deemed to acknowledge each of the Liquidation Call Right, the Retraction Call Right and the Redemption Call Right, in each case, in favour of Callco, and the overriding nature thereof in connection with the liquidation, dissolution or winding-up of the Corporation or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, or the retraction or redemption of Exchangeable Shares, as the case may be, and to be bound thereby in favour of Callco as therein provided.
- (3) The Corporation, Callco, Newmont and the Transfer Agent shall be entitled to deduct and withhold from any dividend or consideration otherwise payable to any holder of Exchangeable Shares such amounts as the Corporation, Callco, Newmont or the Transfer Agent is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or United States tax laws or any provision of provincial, territorial, state, local or foreign tax law, in each

case, as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the Exchangeable Shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing Agency. To the extent that the amount so required to be deducted or withheld from any payment to a holder exceeds the cash portion of the consideration otherwise payable to the holder, the Corporation, Callco, Newmont and the Transfer Agent are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to the Corporation, Callco, Newmont or the Transfer Agent, as the case may be, to enable it to comply with such deduction or withholding requirement and the Corporation, Callco, Newmont or the Transfer Agent shall notify the holder thereof and remit any unapplied balance of the net proceeds of such sale.

#### 14. NOTICES

- (1) Any notice, request or other communication to be given to the Corporation by a holder of Exchangeable Shares shall be in writing and shall be valid and effective if given by first class mail (postage prepaid) or by facsimile or by delivery to the registered office of the Corporation and addressed to the attention of the Secretary of the Corporation. Any such notice, request or other communication, if given by mail, facsimile or delivery, shall only be deemed to have been given and received upon actual receipt thereof by the Corporation.
- (2) Any presentation and surrender by a holder of Exchangeable Shares to the Corporation or the Transfer Agent of certificates representing Exchangeable Shares in connection with the liquidation, dissolution or winding-up of the Corporation or the retraction or redemption of Exchangeable Shares shall be made by first class mail (postage prepaid) or by delivery to the registered office of the Corporation or to such office of the Transfer Agent as may be specified by the Corporation, in each case, addressed to the attention of the Secretary of the Corporation. Any such presentation and surrender of certificates shall only be deemed to have been made and to be effective upon actual receipt thereof by the Corporation or the Transfer Agent, as the case may be. Any such presentation and surrender of certificates made by first class mail (postage prepaid) shall be at the sole risk of the holder mailing the same.
- (3) Any notice, request or other communication to be given to a holder of Exchangeable Shares by or on behalf of the Corporation shall be in writing and shall be valid and effective if given by first class mail (postage prepaid) or by delivery to the address of the holder recorded in the register of shareholders of the Corporation or, in the event of the address of any such holder not being so recorded, then at the last known address of such holder. Any such notice, request or other communication, if given by mail, shall be deemed to have been given and received on the third business day following the date of mailing and, if given by delivery, shall be deemed to have been given and received on the date of delivery. Accidental failure or omission to give any notice, request or other communication to one or more holders of Exchangeable Shares shall not invalidate or otherwise alter or affect any action or proceeding to be taken by the Corporation pursuant thereto.
- (4) In the event of any interruption of mail service immediately prior to a scheduled mailing or in the period following a mailing during which delivery normally would be expected to occur, Newmont intends to make reasonable efforts to disseminate any notice by other means, such as publication. Except as otherwise required or permitted by law, if post offices in Canada or the United States are not open for the deposit of mail, any notice which Newmont or the Transfer Agent may give or cause to be given under the Arrangement will be deemed to have been properly given and to have been received by holders of Exchangeable Shares if (i) it is given to

the TSX for dissemination or (ii) it is published once in the National Edition of The Globe and Mail and in the daily newspapers of general circulation in each of the French and English languages in the City of Montreal, provided that if the National Edition of The Globe and Mail is not being generally circulated, publication thereof will be made in any other daily newspaper of general circulation published in the City of Toronto.

Notwithstanding any other provisions of these share provisions, notices, other communications and deliveries need not be mailed if Newmont determines that delivery thereof by mail may be delayed. Persons entitled to any deliveries (including certificates and cheques) which are not mailed for the foregoing reason may take delivery thereof at the office of the Transfer Agent to which the deliveries were made, upon application to the Transfer Agent, until such time as Newmont has determined that delivery by mail will no longer be delayed. Newmont will provide notice of any such determination not to mail made hereunder as soon as reasonably practicable after the making of such determination and in accordance with this Section 14(4). Such deliveries in such circumstances will constitute delivery to the persons entitled thereto.

#### **15. DISCLOSURE OF INTERESTS IN EXCHANGEABLE SHARES**

The Corporation shall be entitled to require any holder of an Exchangeable Share or any person who the Corporation knows or has reasonable cause to believe holds any interest whatsoever in an Exchangeable Share to confirm that fact or to give such details as to whom has an interest in such Exchangeable Share as would be required (if the Exchangeable Shares were a class of “equity securities” of the Corporation) under section 102.1 of the Securities Act or as would be required under the Articles of Newmont or any laws or regulations, or pursuant to the rules or regulations of any regulatory Agency if the Exchangeable Shares were Newmont Shares.

**EXHIBIT 1 TO THE NEW EXCHANGEABLE SHARE PROVISIONS**  
**RETRACTION REQUEST**

To: • (the “ **Corporation** ”) and Newmont Holdings ULC (“ **Callco** ”) and Newmont Mining Corporation (“ **Newmont** ”)

This notice is given pursuant to section 6 of the provisions (the “ **Share Provisions** ”) attaching to the Exchangeable Shares of the Corporation represented by this certificate and all capitalized words and expressions used in this notice that are defined in the Share Provisions have the meanings ascribed to such words and expressions in such Share Provisions.

The undersigned hereby notifies the Corporation that, provided that the Retraction Call Right referred to below has not been exercised, the undersigned desires to have the Corporation redeem in accordance with section 6 of the Share Provisions:

- all share(s) represented by this certificate; or
- \_\_\_\_\_ share(s) only represented by this certificate.

The undersigned hereby notifies the Corporation that the Retraction Date shall be \_\_\_\_\_.

NOTE: The Retraction Date must be a business day and must not be less than 10 business days nor more than 15 business days after the date upon which this notice is received by the Corporation. If no such business day is specified above, the Retraction Date shall be deemed to be the 15th business day after the date on which this notice is received by the Corporation.

The undersigned acknowledges the overriding Retraction Call Right of Callco or Newmont to purchase all but not less than all the Retracted Shares from the undersigned and that this notice is and shall be deemed to be a revocable offer by the undersigned to sell the Retracted Shares to Callco or Newmont in accordance with the Retraction Call Right on the Retraction Date for the Purchase Price and on the other terms and conditions set out in section 6(3) of the Share Provisions. This Retraction Request, and this offer to sell the Retracted Shares to Callco, may be revoked and withdrawn by the undersigned only by notice in writing given to the Corporation at any time before the close of business on the business day immediately preceding the Retraction Date.

The undersigned acknowledges that if, as a result of solvency provisions of applicable law, the Corporation is unable to redeem all Retracted Shares, the Retracted Shares will be automatically exchanged pursuant to the Voting and Exchange Trust Agreement so as to require Newmont to purchase the unredeemed Retracted Shares.

The undersigned hereby represents and warrants to Callco, Newmont and the Corporation that the undersigned:

- is \_\_\_\_\_  
( select one)
- is \_\_\_\_\_  
not \_\_\_\_\_

a non-resident of Canada for purposes of the *Income Tax Act* (Canada). **The undersigned acknowledges that in the absence of an indication that the undersigned is not a non-resident of Canada, withholding on account of Canadian tax may be made from amounts payable to the undersigned on the redemption or purchase of the Retracted Shares and any Newmont Shares otherwise receivable by the undersigned may be sold by Newmont, the Corporation, the Transfer Agent of the Corporation or Callco and, upon such sale, the rights of the undersigned shall be limited to receiving the net proceeds of sale (net of applicable taxes) .**

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The undersigned hereby represents and warrants to Callco, Newmont and the Corporation that the undersigned has good title to, and owns, the share(s) represented by this certificate to be acquired by Callco, Newmont or the Corporation, as the case may be, free and clear of all liens, claims and encumbrances.

\_\_\_\_\_ (Date)

\_\_\_\_\_ (Signature of Shareholder)

\_\_\_\_\_ (Guarantee of Signature)

Please check box if the certificates for Newmont Shares and any cheque(s) resulting from the retraction or purchase of the Retracted Shares are to be held for pick-up by the shareholder from the Transfer Agent, failing which such certificates and cheque(s) will be mailed to the last address of the shareholder as it appears on the register.

NOTE: This panel must be completed and this certificate, together with such additional documents and payments (including, without limitation, any applicable Stamp Taxes) as the Transfer Agent may require, must be deposited with the Transfer Agent. The securities and any cheque(s) resulting from the retraction or purchase of the Retracted Shares will be issued and registered in, and made payable to, respectively, the name of the shareholder as it appears on the register of the Corporation and the certificates for Newmont Shares and any cheque(s) resulting from such retraction or purchase will be delivered to such shareholder as indicated above, unless the form appearing immediately below is duly completed.

Date: \_\_\_\_\_

Name of Person in Whose Name Securities or Cheque(s) Are to be Registered,  
Issued or Delivered (please print): \_\_\_\_\_

Street Address or P.O. Box: \_\_\_\_\_

Signature of Shareholder: \_\_\_\_\_

City, Province and Postal Code: \_\_\_\_\_

Signature Guaranteed by: \_\_\_\_\_

NOTE: If this Retraction Request is for less than all of the shares represented by this certificate, a certificate representing the remaining share(s) of the Corporation represented by this certificate will be issued and registered in the name of the shareholder as it appears on the register of the Corporation, unless the Share Transfer Power on the share certificate is duly completed in respect of such share(s).

\_\_\_\_\_

## APPENDIX 2

### TO THE PLAN OF ARRANGEMENT

#### AMENDMENTS TO NMCCL ARTICLES

The provisions attaching to the exchangeable shares in the capital of Newmont Mining Corporation of Canada Limited will be amended as follows:

1. The definition of “Dividend Amount” under section 1 is deleted and replaced with the following:

“ **Dividend Amount** ” means an amount equal to, and in full satisfaction of, all declared and unpaid dividends on an Exchangeable Share held (together with any interest accrued on such dividends pursuant to §3.1(4)) by a holder on any dividend record date which occurred prior to the date of purchase, redemption or other acquisition of such share by Calco or Newmont from such holder pursuant to §5.1, §6.1 or §7.1.

2. The definition of “Redemption Call Right” under section 1 is deleted and replaced with the following:

“ **Redemption Call Right** ” has the meaning ascribed thereto in the Plan of Arrangement; provided that, notwithstanding anything to the contrary in the Plan of Arrangement or these share provisions, the Redemption Call Right shall cease to apply in respect of any Redemption Date not occurring prior to February 16, 2024.

3. The definition of “Redemption Date” under section 1 is deleted and replaced with the following:

“ **Redemption Date** ” means the earlier of:

- (a) February 16, 2024; and
- (b) the date, if any, established by the Board of Directors for the redemption by the Corporation of all but not less than all of the outstanding Exchangeable Shares pursuant to §7 of these share provisions, which date shall be no earlier than the seventh anniversary of the date on which Exchangeable Shares first are issued, unless:
  - (i) there are fewer than 1,000,000 Exchangeable Shares outstanding (other than Exchangeable Shares held by Newmont and its affiliates, and as such number of shares may be adjusted as deemed appropriate by the Board of Directors to give effect to any subdivision or consolidation of or stock dividend on the Exchangeable Shares, any issue or distribution of rights to acquire Exchangeable Shares or securities exchangeable for or convertible into Exchangeable Shares, any issue or distribution of other securities or rights or evidences of indebtedness or assets, or any other capital reorganization or other transaction affecting the Exchangeable Shares), in which case the Board of Directors may accelerate such redemption date to such date prior to the seventh anniversary of the date on which Exchangeable Shares first are issued as they may determine, upon at least 60 days’ prior written notice to the holders of the Exchangeable Shares and the Trustee;

- (ii) a Newmont Control Transaction occurs, in which case, provided that the Board of Directors determines, in good faith and in its sole discretion, that it is not reasonably practicable to substantially replicate the terms and conditions of the Exchangeable Shares in connection with such Newmont Control Transaction and that the redemption of all but not less than all of the outstanding Exchangeable Shares is necessary to enable the completion of such Newmont Control Transaction in accordance with its terms, the Board of Directors may accelerate such redemption date to such date prior to the seventh anniversary of the date on which Exchangeable Shares first are issued as it may determine, upon such number of days' prior written notice to the holders of the Exchangeable Shares and the Trustee as the Board of Directors may determine to be reasonably practicable in such circumstances;
- (iii) an Exchangeable Share Voting Event that is not an Exempt Exchangeable Share Voting Event is proposed and (x) the holders of the Exchangeable Shares fail to take the necessary action, at a meeting or other vote of holders of Exchangeable Shares, to approve or disapprove, as applicable, the Exchangeable Share Voting Event or the holders of the Exchangeable Shares do take the necessary action but, in connection therewith, the holders of more than 2% of the outstanding Exchangeable Shares (other than those held by Newmont and its affiliates) exercise rights of dissent under the CBCA, and (y) the Board of Directors determines in good faith that it is not reasonably practicable to accomplish the business purpose (which business purpose must be bona fide and not for the primary purpose of causing the occurrence of the Redemption Date) intended by the Exchangeable Share Voting Event in a commercially reasonable manner that does not result in an Exchangeable Share Voting Event, in which case the Redemption Date shall be the business day following the day on which the later of the events described in (x) and (y) above occur;
- (iv) an Exempt Exchangeable Share Voting Event is proposed and holders of the Exchangeable Shares fail to take the necessary action at a meeting or other vote of holders of Exchangeable Shares to approve or disapprove, as applicable, the Exempt Exchangeable Share Voting Event in which case the Redemption Date shall be the business day following the day on which the holders of the Exchangeable Shares failed to take such action; or
- (v) the Canadian tax legislation is amended and becomes effective such that substantially all Canadian resident holders of Exchangeable Shares may exchange their Exchangeable Shares for Newmont Shares on a tax deferred basis for Canadian income tax purposes, in which case the Board of Directors may accelerate such Redemption Date to such date prior to the seventh anniversary of the date on which Exchangeable Shares are issued as they may determine, upon at least 60 days' prior written notice to the holders of the Exchangeable Shares and the Trustee,

provided, however, that the accidental failure or omission to give any notice of redemption under clauses (i), (ii), (iii), (iv) or (v) above to any of the holders of Exchangeable Shares shall not affect the validity of any such redemption.

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4. Section 3(4) is deleted and replaced with the following:

If on any payment date for any dividends declared on the Newmont Shares, the corresponding dividends contemplated by §3 (1) hereof are not paid in full on all of the Exchangeable Shares then outstanding, (a) any such dividends that remain unpaid shall be paid on a subsequent date or dates determined by the Board of Directors on which the Corporation shall have sufficient moneys, assets or property properly applicable to the payment of such dividends, and (b) interest shall accrue on any such dividends that remain unpaid at a rate of 6%, compounded annually, from the applicable payment date up to and including the date on which such dividends are paid.

5. Section 7(1) is deleted and replaced with the following:

Subject to applicable law, and provided Callco has not exercised the Redemption Call Right (if applicable), the Corporation shall on the Redemption Date redeem all but not less than all of the then outstanding Exchangeable Shares for an amount per share (the “ **Redemption Price** ”) equal to the Current Market Price of a Newmont Share on the last business day prior to the Redemption Date, which shall be satisfied in full by the Corporation causing to be delivered to each holder of Exchangeable Shares one Newmont Share for each Exchangeable Share held by such holder, together with an amount equal to the Dividend Amount.

**CERTIFICATE OF DESIGNATIONS**

**of**

**NEW SPECIAL VOTING STOCK**

**of**

**NEWMONT MINING CORPORATION**

(Pursuant to Section 151 of the  
Delaware General Corporation Law)

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Newmont Mining Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies that pursuant to authority conferred upon the Board of Directors by the provisions of the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"), the following resolution was duly adopted by the Board of Directors of the Corporation (the "Board of Directors") on November 30, 2011:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation in accordance with the provisions of the Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of Preferred Stock, par value \$5.00 per share (the "Preferred Stock") of the Corporation and hereby states the designation and number of shares and fixes the relative rights, preferences, and limitations thereof (in addition to the provisions set forth in the Certificate of Incorporation of the Corporation, which are applicable to the Preferred Stock of all classes and series), as follows:

Section 1 Authorized Number and Designation. There is hereby created out of the authorized and unissued shares of Preferred Stock of the Corporation a series of Preferred Stock designated as "New Special Voting Stock" (the "New Special Voting Stock"). The number of shares constituting the New Special Voting Stock shall be one (the "New Special Voting Share").

Section 2 Dividends and Distributions. The holder of the New Special Voting Share shall not be entitled to receive Corporation dividends.

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Section 3 Voting Rights. (a) The holder of record of the New Special Voting Share shall vote together with the holders of the Common Stock, par value \$1.60 per share, of the Corporation (the "Common Stock"), as a single class on all matters on which the holders of the Common Stock are entitled to vote.

(b) As contemplated by that certain Voting and Exchange Trust Agreement to be entered into by the Corporation, Newmont Mining Corporation of Canada Limited, a corporation incorporated under the laws of the Province of British Columbia, and Computershare Trust Company of Canada (the "Trustee"), as such agreement may be amended, modified or supplemented from time to time (the "Trust Agreement"), a copy of which will be provided to any stockholder of the Corporation without charge upon written request therefor delivered to the Corporation:

(i) Without the consent of the holder of the New Special Voting Share, during the term of the Trust Agreement, the Corporation shall not, without the consent of the holders at the relevant time of the Exchangeable Shares (as defined in the Trust Agreement) given in accordance with the provisions attaching to the Exchangeable Shares, attached as Schedule 1 to Exhibit A to the Arrangement Agreement, dated as of October 31, 2011 by and between the Corporation and its affiliates parties thereto, (a copy of which will be provided to any stockholder of the Corporation without charge upon written request therefor delivered to the Corporation), issue any shares of its New Special Voting Stock in addition to the New Special Voting Share;

(ii) The New Special Voting Share entitles the holder of record to a number of votes equal to the lesser of:

(1) one vote per outstanding Exchangeable Share from time to time not owned by the Corporation and its affiliates, and

(2) one vote for every ten votes attaching to the outstanding shares of Common Stock;

and for which the Trustee has received voting instructions from the Beneficiaries (as defined in the Trust Agreement).

Section 4 Liquidation Preference. Upon any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the holder of the New Special Voting Share shall be entitled to receive out of the assets of the Corporation available for distribution to the stockholders, an amount equal to \$0.001 before any distribution is made on the Common Stock or any other stock ranking junior to the New Special Voting Share as to distribution of assets upon liquidation, dissolution or winding-up.

Section 5 Ranking. The New Special Voting Share shall, with respect to rights on liquidation, winding up and dissolution, rank (i) senior to the Common Stock of the Corporation, (ii) on parity with the other series of Preferred Stock, and (iii) junior to any other class or series of capital stock of the Corporation.

Section 6 Redemption. The New Special Voting Share shall not be subject to redemption, except that at such time as no New Exchangeable Shares (other than New Exchangeable Shares owned by the Corporation and its affiliates) shall be outstanding, and no shares of stock, debt, options or other agreements which could give rise to the issuance of any New Exchangeable Shares to any person (other than the Corporation and its affiliates) shall exist, the New Special Voting Share shall automatically be redeemed, out of funds legally available therefor, for an amount equal to \$0.001 due and payable upon such redemption. Upon any such redemption of the New Special Voting Share by the Corporation, the New Special Voting Share shall be cancelled and retired, and from and after the retirement of the New Special Voting Share in accordance with Section 243 of the Delaware General Corporation Law, the New Special Voting Share shall not be reissued.

**IN WITNESS WHEREOF** , the Corporation has caused this certificate to be signed by a duly authorized officer this 13th day of December, 2011.

NEWMONT MINING CORPORATION

By: /s/ Logan Hennessey

Name: Logan Hennessey

Title: Assistant Secretary and Associate General Counsel

[Letterhead of White & Case LLP]

December 14, 2011

Newmont Mining Corporation  
6363 South Fiddlers Green Circle  
Greenwood Village, Colorado 80111

Re: Newmont Mining Corporation Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as special counsel to Newmont Mining Corporation, a Delaware corporation (the "Company"), in connection with the preparation of the Registration Statement on Form S-3 (the "Registration Statement") to be filed on the date hereof by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), relating to the registration of 4,915,685 shares of the Company's common stock, par value \$1.60 per share, which shares (the "Company Shares") may be issued from time to time pursuant to Rule 415 under the Act upon the redemption, retraction or purchase of the exchangeable shares (the "Exchangeable Shares") of Newmont Mining Corporation of Canada Limited (formerly Newmont NE Holdings Limited) ("New NMCCCL"), or upon the liquidation, dissolution or winding up of New NMCCCL, as described in the Registration Statement.

In furnishing this opinion, we have examined and relied upon (i) the Registration Statement, (ii) the Company's Certificate of Incorporation and Bylaws, each as currently in effect, (iii) certain resolutions adopted by the Board of Directors of the Company relating to the registration and issuance of the Company Shares, (iv) the Arrangement Agreement dated as of October 31, 2011, among the Company, New NMCCCL and their affiliates parties thereto, including the Plan of Arrangement and Exchangeable Share Provisions attached as exhibits thereto (the "Arrangement Agreement"), the form of Exchange and Voting Trust Agreement, to be entered into on or about December 15, 2011 by the Company, New NMCCCL and Computershare Trust Company of Canada (the "Trust Agreement"), and the form of Support Agreement to be entered into on or about December 15, 2011 by the Company, New NMCCCL and Newmont Holdings ULC (the "Support Agreement" and together with the Arrangement Agreement and the Trust Agreement, the "Exchangeable Share Documents"), each as included as an exhibit to the Registration Statement, and (v) such corporate records, documents, certificates and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below.

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Newmont Mining Corporation

December 14, 2011

As to any facts material to our opinion expressed below, we have relied upon the representations and warranties in the records, documents, certificates and instruments we have reviewed. In rendering the opinion expressed below, we have assumed without independent investigation: (i) the genuineness of all signatures, the authenticity of all documents submitted to us as original documents and conformity to original documents of all documents submitted to us as certified, conformed, facsimile or photostatic copies; and (ii) the correctness and completeness of all documents and certificates of all public officials.

Based upon the foregoing, and subject to the qualifications and limitations stated herein, we are of the opinion that the shares of Company Shares to be issued by the Company to the holders of Exchangeable Shares have been duly authorized and when issued and delivered in accordance with the terms and conditions of the Exchangeable Share Documents, will be legally issued, fully paid and nonassessable.

We do not express or purport to express any opinion with respect to laws other than the General Corporation Law of the State of Delaware (including applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing) and the federal securities laws of the United States.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement and to the reference to us under the heading "Legal Matters" in the prospectus which is a part of the Registration Statement. In giving this consent, we do not admit that we come within the category of persons whose consent is required under Section 7 of the Act or rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ White & Case LLP

White & Case LLP

LS:DJ:BS

[Letterhead of Goodmans LLP]

December 14, 2011

Newmont Mining Corporation  
6363 South Fiddlers Green Circle  
Greenwood Village, Colorado 80111

Re: Canadian Federal Income Tax Opinion for Registration Form S-3

Ladies and Gentlemen:

In connection with the registration statement on Form S-3 (the "Registration Statement") filed by Newmont Mining Corporation (the "Company") on December 14, 2011 with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), in connection with the possible issuance of up to 4,915,685 shares of the Company's common stock in exchange for exchangeable shares of Newmont Mining Corporation of Canada Limited (formerly Newmont NE Holdings Limited), you have requested our opinion concerning the statements in the Registration Statement under the caption "Material Canadian Federal Income Tax Considerations."

This opinion is based on various facts and assumptions. In addition, this opinion is based upon the factual representations of the Company concerning its business, properties and governing documents as set forth in the Registration Statement.

In our capacity as counsel to the Company, we have made such legal and factual examinations and inquiries, including an examination of originals or copies certified or otherwise identified to our satisfaction of such documents, corporate records and other instruments, as we have deemed necessary or appropriate for purposes of this opinion. In our examination, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures thereon, the legal capacity of natural persons executing such documents and the conformity to authentic original documents of all documents submitted to us as copies. For the purpose of our opinion, we have not made an independent investigation or audit of the facts set forth in the above-referenced documents. In addition, in rendering this opinion we have assumed the truth and accuracy of all representations and statements made to us which are qualified as to knowledge or belief, without regard to such qualification.

We are opining herein as to the effect on the subject transaction only of the federal income tax laws of Canada and we express no opinion with respect to the applicability thereto, or the effect thereon, of other federal laws, the laws of any state, province or any other jurisdiction or as to any matters of municipal law or the laws of any other local agencies within any state.

Based on such facts, assumptions and representations and subject to the limitations set forth herein and in the Registration Statement, it is our opinion that the statements in the Registration Statement under the caption "Material Canadian Federal Income Tax Considerations," insofar as such statements purport to constitute summaries of Canadian federal income tax law and regulations or legal conclusions with respect thereto, constitute the opinion of Goodmans LLP as to the material Canadian federal income tax consequences of the matters described therein.

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No opinion is expressed as to any matter not discussed herein.

This opinion is rendered to you as of the date of this letter, and we undertake no obligation to update this opinion subsequent to the date hereof. This opinion is based the current provisions of the *Income Tax Act* (Canada) and the regulations thereunder, the administrative and assessing policies of the Canada Revenue Agency prior to the date of this letter and specific proposals to amend the *Income Tax Act* (Canada) and regulations thereunder publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date of this letter. Also, any variation or difference in the facts from those set forth in the representations described above, including in the Registration Statement may affect the conclusions stated herein.

This opinion is furnished to you, and is for your use in connection with the transaction described herein. This opinion may not be relied upon by you for any other purpose, or furnished to, assigned to, quoted to, or relied upon by any other person, firm or other entity, for any purpose, without our prior written consent, except that this opinion may be relied upon by persons entitled to rely on it pursuant to applicable provisions of federal securities law.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Registration Statement. In giving such consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act, or the rules or regulations of the Commission promulgated thereunder.

Very truly yours,  
/s/ Goodmans LLP  
Goodmans LLP

[Letterhead of White & Case LLP]

December 14, 2011

Newmont Mining Corporation  
6363 South Fiddlers Green Circle  
Greenwood Village, Colorado 80111

Ladies and Gentlemen:

In connection with the registration statement on Form S-3 (the "Registration Statement") filed by Newmont Mining Corporation (the "Company") on December 14, 2011 with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), in connection with the possible issuance of up to 4,915,685 shares of the Company's common stock in exchange for exchangeable shares of Newmont Mining Corporation of Canada Limited (formerly Newmont NE Holdings Limited), you have requested our opinion concerning the statements in the Registration Statement under the caption "Material United States Federal Income Tax Considerations."

This opinion is based upon various facts and assumptions, including factual representations of the Company concerning its business, properties and governing documents as set forth in the Registration Statement.

In our capacity as counsel to the Company, we have made such legal and factual examinations and inquiries, including an examination of originals or copies certified or otherwise identified to our satisfaction of such documents, corporate records and other instruments, as we have deemed necessary or appropriate for purposes of this opinion. In our examination, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures thereon, the legal capacity of natural persons executing such documents and the conformity to authentic original documents of all documents submitted to us as copies. For the purpose of our opinion, we have not made an independent investigation or audit of the facts set forth in the above-referenced documents. In addition, in rendering this opinion we have assumed the truth and accuracy of all representations and statements made to us which are qualified as to knowledge or belief, without regard to such qualification.

We are opining herein as to the effect on the subject transaction only of the federal income tax laws of the United States and we express no opinion with respect to the applicability thereto, or the effect thereon, of other federal laws, the laws of any state or any other jurisdiction or as to any matters of municipal law or the laws of any other local agencies within any state.

Based on such facts, assumptions and representations and subject to the limitations set forth herein and in the Registration Statement, it is our opinion that the statements in the Registration Statement under the caption "Material United States Federal Income Tax Considerations," insofar as such statements purport to constitute summaries of United States federal income tax law and regulations or legal conclusions with respect thereto, constitute the opinion of White & Case LLP as to the material U.S. federal income tax consequences of the matters described therein.

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No opinion is expressed as to any matter not discussed herein.

This opinion is rendered to you as of the date of this letter, and we undertake no obligation to update this opinion subsequent to the date hereof. This opinion is based on various statutory provisions, regulations promulgated thereunder and interpretations thereof by the Internal Revenue Service and the courts having jurisdiction over such matters, all of which are subject to change either prospectively or retroactively. Also, any variation or difference in the facts from those set forth in the representations described above, including in the Registration Statement, may affect the conclusions stated herein.

This opinion is furnished to you, and is for your use in connection with the transaction described herein. This opinion may not be relied upon by you for any other purpose, or furnished to, assigned to, quoted to, or relied upon by any other person, firm or other entity, for any purpose, without our prior written consent, except that this opinion may be relied upon by persons entitled to rely on it pursuant to applicable provisions of federal securities law.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Registration Statement. In giving such consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act, or the rules or regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ White & Case LLP

White & Case LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated February 23, 2011 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in Newmont Mining Corporation's Annual Report on Form 10-K for the year ended December 31, 2010. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP  
PricewaterhouseCoopers LLP  
Denver, CO  
December 14, 2011

## POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Russell Ball, Stephen Gottesfeld and Logan Hennessey and each of them, each with full power to act without the other, his or her true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign the Registration Statement on Form S-3 of Newmont Mining Corporation, and any and all amendments (including post-effective amendments and additions to such Registration Statement that are filed pursuant to Rules 413 and 462 of the Securities Act of 1933, as amended), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and hereby grants to such attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned have subscribed these presents as of the 14<sup>th</sup> day of December, 2011.

<u>Signature</u>	<u>Title</u>
<u>/s/ Vincent A. Calarco</u> Vincent A. Calarco	Chairman of the Board and Director
<u>/s/ Glen A. Barton</u> Glen A. Barton	Director
<u>/s/ Bruce R. Brook</u> Bruce R. Brook	Director
<u>/s/ Joseph A. Carrabba</u> Joseph A. Carrabba	Director
<u>/s/ Noreen Doyle</u> Noreen Doyle	Director
<u>/s/ Veronica M. Hagen</u> Veronica M. Hagen	Director

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/s/ Michael S. Hamson Director  
Michael S. Hamson

/s/ Jane Nelson Director  
Jane Nelson

/s/ Richard T. O'Brien Director, President & Chief Executive Officer  
Richard T. O'Brien

/s/ John B. Prescott Director  
John B. Prescott

/s/ Donald C. Roth Director  
Donald C. Roth

/s/ Simon R. Thompson Director  
Simon R. Thompson

**VOTING AND EXCHANGE TRUST AGREEMENT**

**THIS AGREEMENT** made as of December 15, 2011, between Newmont Mining Corporation, a corporation existing under the laws of the State of Delaware (“**Newmont**”), Newmont Mining Corporation of Canada Limited, a corporation existing under the laws of the Province of British Columbia (“**New Exchangeco**”) and Computershare Trust Company of Canada, a trust company incorporated under the laws of Canada (hereinafter referred to as “**Trustee**”).

**RECITALS :**

- A. In connection with an arrangement agreement (as further amended, supplemented and/or restated, the “**Arrangement Agreement**”) made as of October 31, 2011 between Newmont, Newmont Holdings ULC, Newmont Canada FN Holdings Limited (“**Old NMCCCL**”), New Exchangeco and Newmont NE Holdings Subco Limited, exchangeable shares of New Exchangeco (the “**Exchangeable Shares**”) are to be issued to certain holders of exchangeable shares of Old NMCCCL pursuant to the Plan of Arrangement contemplated in the Arrangement Agreement;
- B. Pursuant to the Arrangement Agreement, Newmont and New Exchangeco are required to execute a voting and exchange trust agreement substantially in the form of this agreement.
- C. The foregoing recitals are made as representations and statements of fact by Newmont and New Exchangeco and not by the Trustee.

In consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are acknowledged), the parties agree as follows:

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this agreement, each initially capitalized term and the terms “affiliate”, “business day”, “holder” and “person” used and not otherwise defined herein shall have the meaning ascribed thereto in the rights, privileges, restrictions and conditions (collectively, the “**Share Provisions**”) attaching to the Exchangeable Shares as set out in the articles of New Exchangeco and the following terms shall have the following meanings:

“**Authorized Investments**” means short term interest bearing or discount debt obligations issued or guaranteed by the Government of Canada or any province thereof or a Canadian chartered bank (which may include an affiliate or related party of the Trustee), maturing not more than one year from the date of investment, provided that each such obligation is rated at least R1 (middle) by DBRS Inc. or any equivalent rating by Canadian Bond Rating Service.

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“ **Automatic Exchange Right** ” means the benefit of the obligation of Newmont under Section 5.1 pursuant to which Newmont is required to purchase all or any part of the Exchangeable Shares from the holders thereof in exchange for Newmont Shares upon the occurrence and during the continuance of an Insolvency Event.

“ **Automatic Exchange Rights on Liquidation** ” means the benefit of the obligation of Newmont to effect the automatic exchange of Exchangeable Shares for Newmont Shares pursuant to Section 5.8.

“ **Beneficiaries** ” means the registered holders from time to time of Exchangeable Shares, other than Newmont and its affiliates.

“ **Beneficiary Votes** ” has the meaning ascribed thereto in Section 4.2.

“ **Board of Directors** ” means the Board of Directors of New Exchangeco.

“ **business day** ” means any day other than a Saturday, Sunday, a public holiday or a day on which commercial banks are not open for business in Toronto, Ontario or New York, New York under applicable law.

“ **Exchangeable Shares** ” means the exchangeable shares in the capital of New Exchangeco.

“ **including** ” means “including without limitation” and “ **includes** ” means “includes without limitation”.

“ **Indemnified Parties** ” has the meaning ascribed thereto in Section 9.1.

“ **Insolvency Event** ” means (i) the institution by New Exchangeco of any proceeding to be adjudicated a bankrupt or insolvent or to be wound up, or the consent of New Exchangeco to the institution of bankruptcy, insolvency or winding-up proceedings against it, or (ii) the filing of a petition, answer or consent seeking dissolution or winding-up under any bankruptcy, insolvency or analogous laws, including the *Companies Creditors' Arrangement Act* (Canada) and the *Bankruptcy and Insolvency Act* (Canada), and the failure by New Exchangeco to contest in good faith any such proceedings commenced in respect of New Exchangeco within 30 days of becoming aware thereof, or the consent by New Exchangeco to the filing of any such petition or to the appointment of a receiver, or (iii) the making by New Exchangeco of a general assignment for the benefit of creditors, or the admission in writing by New Exchangeco of its inability to pay its debts generally as they become due, or (iv) New Exchangeco not being permitted, pursuant to solvency requirements of applicable law, to redeem any Retracted Shares pursuant to section 6(6) of the Share Provisions.

“ **Liquidation Event** ” has the meaning ascribed thereto in Section 5.8(2).

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“ **Liquidation Event Effective Date** ” has the meaning ascribed thereto in Section 5.8(3).

“ **List** ” has the meaning ascribed thereto in Section 4.6.

“ **Newmont Meeting** ” has the meaning ascribed thereto in Section 4.2.

“ **Newmont Special Voting Share** ” means the new special voting stock in the capital of Newmont which entitles the holder of record to a number of votes at meetings of holders of Newmont Shares equal to the number of Exchangeable Shares outstanding from time to time (other than Exchangeable Shares held by Newmont and affiliates of Newmont), subject to a maximum aggregate number of votes equal to 10% of the aggregate number of votes attached to the Newmont Shares that are issued and outstanding at the relevant time, which share is to be issued to and voted by, the Trustee as described herein.

“ **Newmont Successor** ” has the meaning ascribed thereto in Section 11.1(a).

“ **Officer’s Certificate** ” means, with respect to Newmont or New Exchangeco, as the case may be, a certificate signed by any officer or director of Newmont or New Exchangeco, as the case may be.

“ **Support Agreement** ” means that certain support agreement of even date between New Exchangeco, Callco and Newmont in the form of Appendix A to this Agreement.

“ **Trust** ” means the trust created by this agreement.

“ **Trust Estate** ” means the Newmont Special Voting Share, any other securities, the Automatic Exchange Right, the Automatic Exchange Rights on Liquidation and any money or other property which may be held by the Trustee from time to time pursuant to this agreement.

“ **Trustee** ” means Computershare Trust Company of Canada and, subject to the provisions of Article 10, includes any successor trustee.

“ **Voting Rights** ” means the voting rights attached to the Newmont Special Voting Share.

## **1.2 Interpretation Not Affected by Headings, etc.**

The division of this agreement into Articles, Sections and other portions and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this agreement. Unless otherwise specified, references to an “Article” or “Section” refer to the specified Article or Section of this agreement. The terms “this agreement”, “hereof”, “herein”, and “hereunder” and similar expressions refer to this agreement and not to any particular Article, Section or other portion hereof.

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**1.3 Number, Gender, etc.**

Words importing the singular number only shall include the plural and *vice versa* . Words importing any gender shall include all genders.

**1.4 Date for any Action**

If any date on which any action is required to be taken under this agreement is not a business day, such action shall be required to be taken on the next succeeding business day.

**1.5 Certificate of Incumbency**

Each of the other parties to this Agreement shall file with the Trustee a certificate of incumbency setting forth the names and titles of the individuals authorized to give instructions, directions or other instruments (including Officer's Certificates) to the Trustee (" **Authorized Persons** "), together with specimen signatures of such persons, and the Trustee shall be entitled to rely on the latest certificate of incumbency filed with it unless it receives notice, in accordance with this agreement, of a change in Authorized Persons with updated specimen signatures.

**ARTICLE 2  
PURPOSE OF AGREEMENT**

**2.1 Establishment of Trust**

The purpose of this agreement is to create the Trust for the benefit of the Beneficiaries, as herein provided. The Trustee will hold the Newmont Special Voting Share in order to enable the Trustee to exercise the Voting Rights and will hold the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation in order to enable the Trustee to exercise or enforce such rights, in each case as trustee for and on behalf of the Beneficiaries as provided in this agreement.

**ARTICLE 3  
NEWMONT SPECIAL VOTING SHARE**

**3.1 Issue and Ownership of the Newmont Special Voting Share**

Immediately following execution of this agreement, Newmont shall issue to the Trustee the Newmont Special Voting Share (and shall deliver the certificate representing such share to the Trustee) to be hereafter held of record by the Trustee as trustee for and on behalf of, and for the use and benefit of, the Beneficiaries and in accordance with the provisions of this agreement. Newmont hereby acknowledges receipt from the Trustee as trustee for and on behalf of the Beneficiaries of good and valuable consideration (and the adequacy thereof) for the issuance of the Newmont Special Voting Share by Newmont to the Trustee. During the term of the Trust and subject to the terms and conditions of this agreement, the Trustee shall possess and be vested with full legal ownership of the Newmont Special Voting Share and shall be entitled to exercise all of the rights and powers of an owner with respect to the Newmont Special Voting Share provided that the Trustee shall:

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(a) hold the Newmont Special Voting Share and the legal title thereto as trustee solely for the use and benefit of the Beneficiaries in accordance with the provisions of this agreement; and

(b) except as specifically authorized by this agreement, have no power or authority to sell, transfer, vote or otherwise deal in or with the Newmont Special Voting Share and the Newmont Special Voting Share shall not be used or disposed of by the Trustee for any purpose other than the purposes for which this Trust is created pursuant to this agreement.

### **3.2 Legended Share Certificates**

New Exchangeco will cause each certificate representing Exchangeable Shares to bear an appropriate legend notifying the Beneficiaries of their right to instruct the Trustee with respect to the exercise of the Voting Rights in respect of the Exchangeable Shares of the Beneficiaries. The Trustee shall have no duty under this agreement to monitor or enforce compliance by New Exchangeco with the aforesaid legending requirements.

### **3.3 Safe Keeping of Certificate**

The certificate representing the Newmont Special Voting Share shall at all times be held in safe keeping by the Trustee or its duly authorized agent.

## **ARTICLE 4 EXERCISE OF VOTING RIGHTS**

### **4.1 Voting Rights**

The Trustee, as the holder of record of the Newmont Special Voting Share, shall be entitled to all of the Voting Rights, including the right to vote in person or by proxy attaching to the Newmont Special Voting Share on any matters, questions, proposals or propositions whatsoever that may properly come before the shareholders of Newmont at a Newmont Meeting. The Voting Rights shall be and remain vested in and exercised by the Trustee subject to the terms of this agreement. Subject to Section 7.15:

- (a) the Trustee shall exercise the Voting Rights only on the basis of instructions received pursuant to this Article 4 from Beneficiaries on the record date established by Newmont or by applicable law for such Newmont Meeting who are entitled to instruct the Trustee as to the voting thereof; and
- (b) to the extent that no instructions are received from a Beneficiary with respect to the Voting Rights to which such Beneficiary is entitled, the Trustee shall not exercise or permit the exercise of such Voting Rights.

### **4.2 Number of Votes**

- (1) With respect to all meetings of shareholders of Newmont at which holders of Newmont Shares are entitled to vote (each, a “**Newmont Meeting**”), each
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Beneficiary shall be entitled to instruct the Trustee to cast and exercise for each Exchangeable Share owned of record by a Beneficiary on the record date established by Newmont or by applicable law for such Newmont Meeting (the “ **Beneficiary Votes** ”), in respect of each matter, question, proposal or proposition to be voted on at such Newmont Meeting, a pro rata number of Voting Rights determined by reference to the total number of outstanding Exchangeable Shares not owned by Newmont and its affiliates. Newmont shall provide the Trustee notice by the close of business on the third business day prior to a Newmont Meeting that neither Newmont or its affiliates have exercised any votes in respect of the Exchangeable Shares.

- (2) The aggregate Voting Rights on a poll at a Newmont Meeting shall consist of a number of votes equal to the lesser of:
- (a) one vote per outstanding Exchangeable Share from time to time not owned by Newmont and its affiliates, and
  - (b) one vote for every 10 votes attaching to outstanding Newmont Shares,

and for which the Trustee has received voting instructions from the Beneficiaries. Pursuant to the terms of the Newmont Special Voting Share, the Trustee or its proxy is entitled on a vote on a show of hands to one vote in addition to any votes which may be cast by a Beneficiary (or its nominee) on a show of hands as proxy for the Trustee. Any Beneficiary who chooses to attend a Newmont Meeting in person, and who is entitled to vote in accordance with Section 4.8(2) shall be entitled to one vote on a show of hands.

- (3) The Trustee shall have no duty under this Agreement to determine or ascertain the aggregate number of Voting Rights attached to the Exchangeable Shares that are issued and outstanding at any relevant time and the aggregate Voting Rights shall be determined by Newmont at or prior to a Newmont Meeting.

#### 4.3

#### **Mailings to Shareholders**

- (1) With respect to each Newmont Meeting, the Trustee will use its reasonable efforts promptly to mail or cause to be mailed (or otherwise communicate in the same manner as Newmont utilizes in communications to holders of Newmont Shares subject to applicable regulatory requirements and the Trustee being advised in writing of such manner and provided that such manner of communications is reasonably available to the Trustee) to each of the Beneficiaries named in the List at the Beneficiaries’ respective addresses as set forth in the List, such mailing or communication to commence wherever practicable on the same day as the mailing or notice (or other communication) with respect thereto is commenced by Newmont to its shareholders:
- (a) a copy of such notice, together with any related materials, including any circular or information statement or listing particulars, to be provided to shareholders of Newmont but excluding proxies to vote Newmont Shares;
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- (b) a statement that such Beneficiary is entitled to instruct the Trustee as to the exercise of the Beneficiary Votes with respect to such Newmont Meeting or, pursuant and subject to Section 4.7, to attend such Newmont Meeting and to exercise personally the Beneficiary Votes thereat;
  - (c) a statement as to the manner in which such instructions may be given to the Trustee, including an express indication that instructions may be given to the Trustee to give:
    - (i) a proxy to such Beneficiary or his, her or its designee to exercise personally the Beneficiary Votes; or
    - (ii) a proxy to a designated agent or other representative of Newmont to exercise such Beneficiary Votes;
  - (d) a statement that if no such instructions are received from the Beneficiary, the Beneficiary Votes to which such Beneficiary is entitled will not be exercised;
  - (e) a form of direction whereby the Beneficiary may so direct and instruct the Trustee as contemplated herein; and
  - (f) a statement of the time and date by which such instructions must be received by the Trustee in order to be binding upon it, which in the case of a Newmont Meeting shall not be earlier than the close of business on the fourth business day prior to such meeting, and of the method for revoking or amending such instructions.
- (2) The materials referred to in this Section 4.2 are to be provided to the Trustee by Newmont, and the materials referred to in Section 4.3(1)(c), 4.3(1)(e) and 4.3(1)(f) shall (if reasonably practicable to do so) be subject to reasonable comment by the Trustee in a timely manner; provided, however, that the Trustee shall have no obligation to review such materials. Subject to the foregoing, Newmont shall ensure that the materials to be provided to the Trustee are provided in sufficient time to permit the Trustee to comment as aforesaid and to send all materials to each Beneficiary at the same time as such materials are first sent to holders of Newmont Shares. Newmont agrees not to communicate with holders of Newmont Shares with respect to the materials referred to in this Section 4.3 otherwise than by mail unless such method of communication is also reasonably available to the Trustee for communication with the Beneficiaries.
- (3) For the purpose of determining Beneficiary Votes to which a Beneficiary is entitled in respect of any Newmont Meeting, the number of Exchangeable Shares owned of record by the Beneficiary shall be determined at the close of business on the record date established by Newmont or by applicable law for purposes of determining shareholders entitled to vote at such Newmont Meeting. Newmont will notify the Trustee of any decision of the board of directors of Newmont with respect to the calling of any Newmont Meeting and shall provide all necessary
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information and materials to the Trustee in each case promptly and in any event in sufficient time to enable the Trustee to perform its obligations contemplated by this Section 4.3.

#### **4.4 Copies of Shareholder Information**

Newmont will deliver to the Trustee copies of all proxy materials (including notices of Newmont Meetings but excluding proxies to vote Newmont Shares), information statements, reports (including all interim and annual financial statements) and other written communications that, in each case, are to be distributed by Newmont from time to time to holders of Newmont Shares in sufficient quantities and in sufficient time so as to enable the Trustee to send or cause to be sent those materials to each Beneficiary at the same time as such materials are first sent to holders of Newmont Shares. The Trustee will mail or otherwise send, or cause to be mailed or otherwise sent, to each Beneficiary, at the expense of Newmont, copies of all such materials (and all materials specifically directed to the Beneficiaries or to the Trustee for the benefit of the Beneficiaries by Newmont) received by the Trustee from Newmont contemporaneously with the sending of such materials to holders of Newmont Shares. The Trustee will also make available for inspection by any Beneficiary at the Trustee's principal office in Toronto all proxy materials, information statements, reports and other written communications that are:

- (a) received by the Trustee as the registered holder of the Newmont Special Voting Share and made available by Newmont generally to the holders of Newmont Shares; or
- (b) specifically directed to the Beneficiaries or to the Trustee for the benefit of the Beneficiaries by Newmont.

#### **4.5 Other Materials**

As soon as reasonably practicable after receipt by Newmont or shareholders of Newmont (if such receipt is known by Newmont) of any material sent or given by or on behalf of a third party to holders of Newmont Shares generally, including dissident proxy and information circulars (and related information and material) and take-over bid and securities exchange take-over bid circulars (and related information and material), provided such material has not been sent to the Beneficiaries by or on behalf of such third party, Newmont shall use its reasonable efforts to obtain and deliver to the Trustee copies thereof in sufficient quantities so as to enable the Trustee to forward or cause to be forwarded such material (unless the same has been provided directly to Beneficiaries by such third party) to each Beneficiary as soon as possible thereafter. As soon as reasonably practicable after receipt thereof, the Trustee will mail or otherwise send, or cause to be mailed or otherwise sent, to each Beneficiary, at the expense of Newmont, copies of all such materials received by the Trustee from Newmont. The Trustee will also make available for inspection by any Beneficiary at the Trustee's principal office in Toronto copies of all such materials.

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#### **4.6 List of Persons Entitled to Vote**

New Exchangeco shall, (a) prior to each annual, general and extraordinary Newmont Meeting and (b) forthwith upon each request made at any time by the Trustee in writing, prepare or cause to be prepared a list (a “ **List** ”) of the names and addresses of the Beneficiaries arranged in alphabetical order and showing the number of Exchangeable Shares held of record by each such Beneficiary, in each case at the close of business on the date specified by the Trustee in such request or, in the case of a List prepared in connection with a Newmont Meeting, at the close of business on the record date established by Newmont or pursuant to applicable law for determining the holders of Newmont Shares entitled to receive notice of and/or to vote at such Newmont Meeting. Each such List shall be delivered to the Trustee promptly after receipt by New Exchangeco of such request or the record date for such meeting and in any event within sufficient time as to permit the Trustee to perform its obligations under this agreement. Newmont agrees to give New Exchangeco notice (with a copy to the Trustee) of the calling of any Newmont Meeting, together with the record date therefor, sufficiently prior to the date of the calling of such meeting so as to enable New Exchangeco to perform its obligations under this Section 4.6.

#### **4.7 Entitlement to Direct Votes**

Subject to Section 4.8 and Section 4.11, any Beneficiary named in a List prepared in connection with any Newmont Meeting will be entitled (a) to instruct the Trustee in the manner described in Section 4.3 with respect to the exercise of the Beneficiary Votes to which such Beneficiary is entitled or (b) to attend such meeting and personally exercise thereat, as the proxy of the Trustee, the Beneficiary Votes to which such Beneficiary is entitled.

#### **4.8 Voting by Trustee and Attendance of Trustee Representative at Meeting**

- (1) In connection with each Newmont Meeting, the Trustee shall exercise, either in person or by proxy, in accordance with the instructions received from a Beneficiary pursuant to Section 4.3, the Beneficiary Votes as to which such Beneficiary is entitled to direct the vote (or any lesser number thereof as may be set forth in the instructions) other than any Beneficiary Votes that are the subject of Section 4.8(2); provided, however, that such written instructions are received by the Trustee from the Beneficiary prior to the time and date fixed by the Trustee for receipt of such instruction in the notice sent or caused to be sent by the Trustee to the Beneficiary pursuant to Section 4.3.
  - (2) The Trustee shall cause a representative who is empowered by it to sign and deliver, on behalf of the Trustee, proxies for Voting Rights to attend each Newmont Meeting. Upon submission by a Beneficiary (or its designee) named in the List prepared in connection with the relevant meeting of identification satisfactory to the Trustee’s representative, and at the Beneficiary’s request, such representative shall sign and deliver to such Beneficiary (or its designee) a proxy to exercise personally the Beneficiary Votes as to which such Beneficiary is otherwise entitled hereunder to direct the vote, if such Beneficiary either (i) has not previously given the Trustee instructions pursuant to Section 4.3 in respect of such meeting or (ii) submits to such representative written revocation of any such
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previous instructions. At such meeting, the Beneficiary (or its designee) exercising such Beneficiary Votes in accordance with such proxy shall have the same rights in respect of such Beneficiary Votes as the Trustee to speak at the meeting in respect of any matter, question, proposal or proposition, to vote by way of ballot at the meeting in respect of any matter, question, proposal or proposition, and to vote at such meeting by way of a show of hands in respect of any matter, question or proposition.

#### **4.9 Distribution of Written Materials**

Any written materials distributed by the Trustee pursuant to this agreement shall be sent by mail (or otherwise communicated in the same manner as Newmont utilizes in communications to holders of Newmont Shares subject to applicable regulatory requirements and the Trustee being advised in writing of such manner and provided such manner of communications is reasonably available to the Trustee) to each Beneficiary at its address as shown on the register of holders of Exchangeable Shares maintained by the registrar of the Exchangeable Shares. Newmont agrees not to communicate with holders of Newmont Shares with respect to such written materials otherwise than by mail unless such method of communication is also reasonably available to the Trustee for communication with the Beneficiaries. New Exchangeco shall provide or cause to be provided to the Trustee for purposes of communication, on a timely basis and without charge or other expense:

- (a) a current List; and
- (b) upon the request of the Trustee, mailing labels to enable the Trustee to carry out its duties under this agreement.

#### **4.10 Termination of Voting Rights**

All of the rights of a Beneficiary with respect to the Beneficiary Votes exercisable in respect of the Exchangeable Shares held by such Beneficiary, including the right to instruct the Trustee as to the voting of or to vote personally such Beneficiary Votes, shall be deemed to be surrendered by the Beneficiary to Newmont or Callco, as the case may be, and such Beneficiary Votes and the Voting Rights represented thereby shall cease immediately upon (i) the delivery by such holder to the Trustee of the certificates representing such Exchangeable Shares in connection with the occurrence of the automatic exchange of Exchangeable Shares for Newmont Shares, as specified in Article 5 (unless Newmont shall not have delivered the requisite Newmont Shares issuable in exchange therefor to the Trustee pending delivery to the Beneficiaries), or (ii) the retraction or redemption of Exchangeable Shares pursuant to section 6 or 7 of the Share Provisions, or (iii) the effective date of the liquidation, dissolution or winding-up of New Exchangeco pursuant to section 5 of the Share Provisions, or (iv) the purchase of Exchangeable Shares from the holder thereof by Callco or Newmont pursuant to the exercise by Callco or Newmont of the Retraction Call Right, the Redemption Call Right or the Liquidation Call Right (unless Newmont shall not have delivered the requisite Newmont Shares issuable in exchange therefor to the Trustee pending delivery to the Beneficiaries).

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#### **4.11 Disclosure of Interest in Exchangeable Shares**

The Trustee and/or New Exchangeco shall be entitled (shall not be required) to require any Beneficiary or any person who the Trustee and/or New Exchangeco know or have reasonable cause to believe to hold any interest whatsoever in a Exchangeable Share to confirm that fact or to give such details as to whom has an interest in such Exchangeable Share as would be required (if the Exchangeable Shares were a class of "equity securities" of New Exchangeco) under section 102.1 of the *Securities Act* (Ontario), as amended from time to time, or as would be required under the articles of Newmont or any laws or regulations, or pursuant to the rules or regulations of any Agency, if the Exchangeable Shares were Newmont Shares. If a Beneficiary does not provide the information required to be provided by such Beneficiary pursuant to this Section 4.11, the board of directors of Newmont may take any action permitted under the articles of Newmont or any laws or regulations, or pursuant to the rules or regulations of any Agency, with respect to the Voting Rights relating to the Exchangeable Shares held by such Beneficiary.

### **ARTICLE 5 AUTOMATIC EXCHANGE**

#### **5.1 Automatic Exchange**

- (1) Newmont hereby agrees with the Trustee as trustee for and on behalf of, and for the use and benefit of, the Beneficiaries that the Trustee shall have (i) the Automatic Exchange Right, and (ii) the Automatic Exchange Rights on Liquidation, all in accordance with the provisions of this agreement. The Automatic Exchange Right shall represent an agreement on the terms set out herein between Newmont and the Trustee (acting on behalf of the Beneficiaries) that upon the occurrence of an Insolvency Event, Newmont will purchase from each and every Beneficiary all of the Exchangeable Shares held by such Beneficiary. The Automatic Exchange Rights on Liquidation shall represent an agreement on the terms set out herein between Newmont and the Trustee (acting on behalf of the Beneficiaries) that Newmont will purchase from each and every Beneficiary all of the outstanding Exchangeable Shares held by such Beneficiary on the fifth business day prior to the Liquidation Event Effective Date. Newmont hereby acknowledges receipt from the Trustee as trustee for and on behalf of the Beneficiaries of good and valuable consideration (and the adequacy thereof) for agreeing with the Trustee (acting on behalf of the Beneficiaries) to be bound by the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation.
  - (2) During the term of the Trust and subject to the terms and conditions of this agreement, the Trustee shall possess and be vested with full legal ownership of the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation and shall be entitled to exercise all of the rights and powers of an owner with respect to the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation, provided that the Trustee shall:
    - (a) hold the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation and the legal title thereto as trustee solely for the use and
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benefit of the Beneficiaries in accordance with the provisions of this agreement; and

- (b) except as specifically authorized by this agreement, have no power or authority to exercise or otherwise deal in or with the Automatic Exchange Right or the Automatic Exchange Rights on Liquidation, and the Trustee shall not exercise any such rights for any purpose other than the purposes for which the Trust is created pursuant to this agreement.
- (3) The obligations of Newmont to issue Newmont Shares pursuant to the Automatic Exchange Right or the Automatic Exchange Rights on Liquidation are subject to all applicable laws and regulatory or stock exchange requirements.

## **5.2 Legended Share Certificates**

New Exchangeco will cause each certificate representing Exchangeable Shares to bear an appropriate legend notifying the Beneficiaries of the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation. The Trustee shall have no duty under this Agreement to monitor or enforce compliance by New Exchangeco with the aforesaid legending requirements.

## **5.3 Automatic Exchange Right**

- (1) The purchase price payable by Newmont for each Exchangeable Share to be purchased by Newmont under the Automatic Exchange Right shall be an amount per share equal to (i) the Current Market Price of a Newmont Share on the last business day prior to the day of closing of the purchase and sale of such Exchangeable Share under the Automatic Exchange Right, which shall be satisfied in full by Newmont causing to be delivered to such holder one Newmont Share, plus (ii) the Dividend Amount, if any, on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the closing of the purchase and sale. In connection with each exercise of the Automatic Exchange Right, Newmont shall provide to the Trustee an Officer's Certificate setting forth the calculation of the purchase price for each Exchangeable Share. The purchase price for each such Exchangeable Share so purchased may be satisfied only by Newmont delivering or causing to be delivered to the Trustee, on behalf of the relevant Beneficiary, one Newmont Share issued to the relevant Beneficiary and on the applicable payment date a cheque payable to the relevant Beneficiary for the balance, if any, of the purchase price, in each case less any amounts withheld pursuant to Section 5.9. Upon payment by Newmont of such purchase price the relevant Beneficiary shall cease to have any right to be paid by New Exchangeco any amount in respect of declared and unpaid dividends on each such Exchangeable Share.
  - (2) Immediately upon the occurrence of an Insolvency Event, the closing of the transaction of purchase and sale contemplated by the Automatic Exchange Right shall be deemed to have occurred, and each Beneficiary shall be deemed to have transferred to Newmont all of the Beneficiary's right, title and interest in and to
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such Beneficiary's Exchangeable Shares free and clear of any lien, claim or encumbrance and the related interest in the Trust Estate, any right of each such Beneficiary to receive declared and unpaid dividends from New Exchangeco shall be deemed to be satisfied and discharged and each such Beneficiary shall cease to be a holder of such Exchangeable Shares and Newmont shall issue to the Beneficiary the Newmont Shares issuable upon the automatic exchange of Exchangeable Shares for Newmont Shares and on the applicable payment date shall deliver to the Trustee for delivery to the Beneficiary a cheque payable to the Beneficiary for the balance, if any, of the purchase price for such Exchangeable Shares, without interest, in each case less any amounts withheld pursuant to Section 5.9. Concurrently with such Beneficiary ceasing to be a holder of Exchangeable Shares, the Beneficiary shall become the holder of the Newmont Shares issued pursuant to the automatic exchange of such Beneficiary's Exchangeable Shares for Newmont Shares and the certificates held by the Beneficiary previously representing the Exchangeable Shares exchanged by the Beneficiary with Newmont pursuant to such automatic exchange shall thereafter be deemed to represent Newmont Shares issued to the Beneficiary by Newmont pursuant to such automatic exchange and such Newmont Shares shall be deemed to have been delivered by Newmont to the Trustee on behalf of the relevant Beneficiaries. Upon the request of a Beneficiary and the surrender to Newmont by the Beneficiary of Exchangeable Share certificates deemed to represent Newmont Shares, duly endorsed in blank and accompanied by such instruments of transfer as Newmont may reasonably require, Newmont shall deliver or cause to be delivered to the Beneficiary certificates representing the Newmont Shares of which the Beneficiary is the holder.

#### **5.4 Failure to Retract**

Upon the occurrence of an event referred to in paragraph (iv) of the definition of Insolvency Event, New Exchangeco hereby agrees with the Trustee and in favour of the Beneficiary promptly to forward or cause to be forwarded to the Trustee all relevant materials delivered by the Beneficiary to New Exchangeco or to the transfer agent of the Exchangeable Shares (including a copy of the retraction request delivered pursuant to section 6(1) of the Share Provisions) in connection with such proposed redemption of the Retracted Shares.

#### **5.5 Notice of Insolvency Event**

As soon as practicable following the occurrence of an Insolvency Event or any event that with the giving of notice or the passage of time or both would be an Insolvency Event, New Exchangeco and Newmont shall give written notice thereof to the Trustee. As soon as practicable following the receipt of notice from New Exchangeco and Newmont of the occurrence of an Insolvency Event, or upon the Trustee becoming aware of an Insolvency Event, the Trustee will mail to each Beneficiary, at the expense of Newmont (such funds to be received in advance), a notice of such Insolvency Event in the form provided by Newmont, which notice shall contain a brief statement of the rights of the Beneficiaries with respect to the Automatic Exchange Right.

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## **5.6 Listing of Newmont Shares**

Newmont covenants that if any Newmont Shares to be issued and delivered pursuant to the Automatic Exchange Right or the Automatic Exchange Rights on Liquidation require registration or qualification with or approval of or the filing of any document, including any prospectus or similar document, or the taking of any proceeding with or the obtaining of any order, ruling or consent from any Agency under any United States or Canadian federal, provincial or territorial law or regulation or pursuant to the rules and regulations of any Agency or the fulfilment of any other United States or Canadian legal requirement before such shares may be issued and delivered by Newmont to the initial holder thereof or in order that such shares may be freely traded thereafter (other than any restrictions of general application on transfer by reason of a holder being a “control person” or the equivalent of Newmont for purposes of Canadian securities Law or any United States equivalent), Newmont will expeditiously and in good faith take all such actions and do all such things as are reasonably necessary or desirable to cause such Newmont Shares to be and remain duly registered, qualified or approved. Newmont will expeditiously and in good faith take all such actions and do all such things as are reasonably necessary or desirable to cause all Newmont Shares to be delivered pursuant to the Automatic Exchange Right or the Automatic Exchange Rights on Liquidation to be listed, quoted or posted for trading on all stock exchanges and quotation systems on which issued Newmont Shares have been listed by Newmont and remain listed and are quoted or posted for trading at such time.

## **5.7 Newmont Shares**

Newmont hereby represents, warrants and covenants that the Newmont Shares issuable as described herein will be duly authorized and validly issued as fully paid and shall be free and clear of any lien, claim or encumbrance.

## **5.8 Automatic Exchange on Liquidation of Newmont**

- (1) Newmont will give the Trustee written notice of each of the following events at the time set forth below:
    - (a) in the event of any determination by the board of directors of Newmont to institute voluntary liquidation, dissolution or winding-up proceedings with respect to Newmont or to effect any other distribution of assets of Newmont among its shareholders for the purpose of winding up its affairs, at least 60 days prior to the proposed effective date of such liquidation, dissolution, winding-up or other distribution; and
    - (b) as soon as practicable following the earlier of (A) receipt by Newmont of notice of, and (B) Newmont otherwise becoming aware of any instituted claim, suit, petition or other proceedings with respect to the involuntary liquidation, dissolution or winding-up of Newmont or to effect any other distribution of assets of Newmont among its shareholders for the purpose of winding up its affairs, in each case where Newmont has failed to contest in good faith any such proceeding commenced in respect of Newmont within 30 days of becoming aware thereof.
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- (2) As soon as practicable following receipt by the Trustee from Newmont of notice of any event (a “ **Liquidation Event** ”) contemplated by Section 5.8(1)(a) or Section 5.8(1)(b), the Trustee will give notice thereof to the Beneficiaries at the expense of Newmont (such funds to be received in advance). Such notice shall be provided to the Trustee by Newmont and shall include a brief description of the automatic exchange of Exchangeable Shares for Newmont Shares provided for in Section 5.8(3).
  - (3) In order that the Beneficiaries will be able to participate on a pro rata basis with the holders of Newmont Shares in the distribution of assets of Newmont in connection with a Liquidation Event, on the fifth business day prior to the effective date (the “ **Liquidation Event Effective Date** ”) of a Liquidation Event, all of the then outstanding Exchangeable Shares shall be automatically exchanged for Newmont Shares. To effect such automatic exchange, Newmont shall purchase on the fifth business day prior to the Liquidation Event Effective Date each Exchangeable Share then outstanding and held by Beneficiaries, and each Beneficiary shall sell the Exchangeable Shares held by it at such time, free and clear of any lien, claim or encumbrance, for a purchase price per share equal to (i) the Current Market Price of a Newmont Share on the fifth business day prior to the Liquidation Event Effective Date, which shall be satisfied in full by Newmont issuing to the Beneficiary one Newmont Share, plus (ii) the Dividend Amount, if any, on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the date of the exchange. Newmont shall provide the Trustee with an Officer’s Certificate in connection with each automatic exchange, whether occurring pursuant to the Automatic Exchange Right or Automatic Exchange Rights on Liquidation, setting forth the calculation of the purchase price for each Exchangeable Share.
  - (4) On the fifth business day prior to the Liquidation Event Effective Date, the closing of the transaction of purchase and sale contemplated by the automatic exchange of Exchangeable Shares for Newmont Shares provided for in this Article 5 shall be deemed to have occurred, and each Beneficiary shall be deemed to have transferred to Newmont all of the Beneficiary’s right, title and interest in and to such Beneficiary’s Exchangeable Shares free and clear of any lien, claim or encumbrance and the related interest in the Trust Estate, any right of each such Beneficiary to receive declared and unpaid dividends from New Exchangeco shall be deemed to be satisfied and discharged, and each such Beneficiary shall cease to be a holder of such Exchangeable Shares and Newmont shall issue to the Beneficiary the Newmont Shares issuable upon the automatic exchange of Exchangeable Shares for Newmont Shares and on the applicable payment date shall deliver to the Trustee for delivery to the Beneficiary a cheque payable to the Beneficiary for the balance, if any, of the purchase price for such Exchangeable Shares, without interest, in each case less any amounts withheld pursuant to Section 5.9. Concurrently with such Beneficiary ceasing to be a holder of Exchangeable Shares, the Beneficiary shall become the holder of the Newmont Shares issued pursuant to the automatic exchange of such Beneficiary’s Exchangeable Shares for Newmont Shares provided for in this Article 5 and the
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certificates held by the Beneficiary previously representing the Exchangeable Shares exchanged by the Beneficiary with Newmont pursuant to such automatic exchange shall thereafter be deemed to represent Newmont Shares issued to the Beneficiary by Newmont pursuant to such automatic exchange. Upon the request of a Beneficiary and the surrender to Newmont by the Beneficiary of Exchangeable Share certificates deemed to represent Newmont Shares, duly endorsed in blank and accompanied by such instruments of transfer as Newmont may reasonably require, Newmont shall deliver or cause to be delivered to the Beneficiary certificates representing the Newmont Shares of which the Beneficiary is the holder.

## 5.9 Withholding Rights

- (1) Newmont, New Exchangeco and the Trustee shall be entitled to deduct and withhold from any consideration otherwise payable under this agreement to any holder of Exchangeable Shares or Newmont Shares such amounts as Newmont, New Exchangeco or the Trustee is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or United States tax laws or any provision of provincial, state, local or foreign tax Law, in each case as amended or succeeded. The Trustee may act and rely on the advice of counsel with respect to such matters. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the holder of the shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing Agency. To the extent that the amount so required to be deducted or withheld from any payment to a holder exceeds the cash portion of the consideration otherwise payable to the holder, Newmont, New Exchangeco and the Trustee are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds, net of expenses, to Newmont, New Exchangeco or the Trustee, as the case may be, to enable it to comply with such deduction or withholding requirement and Newmont, New Exchangeco or the Trustee, as applicable, shall notify the holder thereof and remit to such holder any unapplied balance of the net proceeds of such sale. Newmont represents and warrants that, based upon facts currently known to it, it has no current intention, as at the date of this agreement, to deduct or withhold from any dividend paid to holders of Exchangeable Shares any amounts under the United States tax laws.
  - (2) Any other provision of this agreement notwithstanding, the Trustee shall not be responsible for determining and shall have no duty to determine or verify whether any taxes are payable or, if any taxes are payable, the amount thereof to be deducted and remitted to any taxing authority or Agency in any jurisdiction, in respect of any consideration or the amount otherwise payable under this agreement to any person (including any holder or former holder of Exchangeable Shares or Newmont Shares) at any time. The Trustee shall not be responsible for determining the adequacy of or otherwise examining any evidence of the payment of any taxes which any Beneficiary or other party may at any time submit to the Trustee. The making of such determinations is the responsibility solely of
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Newmont and New Exchangeco and the Trustee shall be entitled to rely and act upon any written instructions which it may receive from either Newmont or New Exchangeco or their respective counsel with regard to the withholding and remittance of tax and/or the retention of sufficient funds by the Trustee to enable it to comply with any applicable withholding taxes. If no written instructions to withhold have been received by the Trustee from Newmont or New Exchangeco or their counsel by the date when the Trustee is required to make or forward payment to a given party, the Trustee may proceed to make or forward such payment without deduction or withholding or retention of funds on account of taxes on the assumption that no deduction or withholding or retention of funds on account of taxes is required. Prior to the making of any distributions to holders or former holders of Exchangeable Shares, Newmont and/or New Exchangeco shall ensure that the Trustee has access to sufficient funds (by directly providing, if necessary, such funds to the Trustee) to enable the Trustee to comply with any applicable withholding taxes in connection with such distribution.

**ARTICLE 6**  
**RESTRICTIONS ON ISSUE OF NEWMONT SPECIAL VOTING SHARES**

**6.1 Issue of Additional Shares**

During the term of this agreement, Newmont will not, without the consent of the holders at the relevant time of Exchangeable Shares, given in accordance with section 10(2) of the Share Provisions, issue any additional Newmont Special Voting Shares. The Trustee shall have no duty under this Agreement to monitor or enforce compliance by Newmont with its obligations under this Article 6.

**ARTICLE 7**  
**CONCERNING THE TRUSTEE**

**7.1 Powers and Duties of the Trustee**

- (1) The rights, powers, duties and authorities of the Trustee under this agreement, in its capacity as trustee of the Trust, shall include:
    - (a) receipt and deposit of the Newmont Special Voting Share from Newmont as trustee for and on behalf of the Beneficiaries in accordance with the provisions of this agreement;
    - (b) granting proxies and distributing materials to Beneficiaries as provided in this agreement;
    - (c) voting the Beneficiary Votes in accordance with the provisions of this agreement;
    - (d) receiving the grant of the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation from Newmont as Trustee for and on
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behalf of the Beneficiaries in accordance with the provisions of this agreement;

- (e) enforcing the benefit of the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation, in each case in accordance with the provisions of this agreement, and in connection therewith receiving from Beneficiaries any requisite documents and distributing to such Beneficiaries Newmont Shares and cheques, if any, to which such Beneficiaries are entitled pursuant to the Automatic Exchange Right or the Automatic Exchange Rights on Liquidation, as the case may be;
  - (f) holding title to the Trust Estate;
  - (g) investing any moneys forming, from time to time, a part of the Trust Estate as provided in this agreement;
  - (h) taking action at the direction of a Beneficiary or Beneficiaries to enforce the obligations of Newmont and New Exchangeco under this agreement; and
  - (i) taking such other actions and doing such other things as are specifically provided in this agreement to be carried out by the Trustee whether alone, jointly or in the alternative.
- (2) In the exercise of such rights, powers, duties and authorities the Trustee shall have (and is granted) such incidental and additional rights, powers and authority not in conflict with any of the provisions of this agreement as the Trustee, acting in good faith and in the reasonable exercise of its discretion, may deem necessary, appropriate or desirable to effect the purpose of the Trust. Any exercise of duties or of discretionary rights, powers and authorities by the Trustee shall be final, conclusive and binding upon all persons. For greater certainty, and anything else herein notwithstanding, the Trustee shall have only those duties as set out specifically in this agreement.
- (3) The Trustee in exercising its rights, powers, duties and authorities hereunder shall act honestly and in good faith and with a view to the best interests of the Beneficiaries and shall exercise the care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.
- (4) The Trustee shall not be bound to give notice or do or take any act, action or proceeding by virtue of the powers, rights, duties or authorities conferred on it hereby unless and until it shall be specifically required to do so under the terms hereof; nor shall the Trustee be required to take any notice of, or be deemed to have actual or constructive notice or knowledge of, any matter under this agreement (including any notice of a Newmont Meeting or any prohibition against New Exchangeco redeeming any Retracted Shares or of any Insolvency Event or any Liquidation Event (collectively, a “ **Notice Event** ”)) or be required to do or to take any act, action or proceeding as a result of any default or breach of
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any provision hereunder or in connection with any Notice Event, unless and until notified in writing of such default or breach or Notice Event in accordance with the provisions of this Agreement, which notices shall distinctly specify the default or breach or Notice Event desired to be brought to the attention of the Trustee, and in the absence of such notice the Trustee may for all purposes of this agreement conclusively assume that no Notice Event has occurred and no default or breach has been made in the observance or performance of any of the representations, warranties, covenants, agreements or conditions contained herein.

**7.2 No Conflict of Interest**

The Trustee represents to Newmont and New Exchangeco that at the date of execution and delivery of this agreement there exists no material conflict of interest in the role of the Trustee as a fiduciary hereunder and the role of the Trustee in any other capacity. The Trustee shall, within 90 days after it becomes aware that such material conflict of interest exists, either eliminate such material conflict of interest or resign in the manner and with the effect specified in Article 10. If, notwithstanding the foregoing provisions of this Section 7.2, the Trustee has such a material conflict of interest, the validity and enforceability of this agreement shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Trustee contravenes the foregoing provisions of this Section 7.2, any interested party may apply to the Superior Court of Justice (Ontario) for an order that the Trustee be replaced as trustee hereunder.

**7.3 Dealings with Transfer Agents, Registrars, etc.**

- (1) Each of Newmont and New Exchangeco irrevocably authorizes the Trustee, from time to time, to:
    - (a) consult, communicate and otherwise deal with the respective registrars and transfer agents, and with any such subsequent registrar or transfer agent, of the Exchangeable Shares and Newmont Shares; and
    - (b) requisition, from time to time, (i) from any such registrar or transfer agent any information readily available from the records maintained by it which the Trustee may reasonably require for the discharge of its duties and responsibilities under this agreement and (ii) from the transfer agent of Newmont Shares, and any subsequent transfer agent of such shares, the share certificates issuable upon the exercise from time to time of the Automatic Exchange Right and pursuant to the Automatic Exchange Rights on Liquidation.
  - (2) Newmont and New Exchangeco shall irrevocably authorize their respective registrars and transfer agents to comply with all such requests. Newmont covenants that it will supply its transfer agent with duly executed share certificates for the purpose of completing the exercise from time to time of the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation, in each case pursuant to Article 5.
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**7.4 Books and Records**

The Trustee shall keep available for inspection by Newmont and New Exchangeco at the Trustee's principal office in Toronto correct and complete books and records of account relating to the Trust created by this agreement, including all relevant data relating to mailings and instructions to and from Beneficiaries and all transactions pursuant to the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation, for the term of this Agreement. On or before February 15, 2012, and on or before February 15<sup>th</sup> in every year thereafter, so long as the Newmont Special Voting Share is registered in the name of the Trustee, the Trustee shall transmit to Newmont and New Exchangeco a brief report, dated as of the preceding December 31st, with respect to:

- (a) the property and funds comprising the Trust Estate as of that date;
- (b) the number of exercises of the Automatic Exchange Right, if any, and the aggregate number of Exchangeable Shares received by the Trustee on behalf of Beneficiaries in consideration of the issuance by Newmont of Newmont Shares in connection with the Automatic Exchange Right, during the calendar year ended on such December 31st; and
- (c) any action taken by the Trustee in the performance of its duties under this agreement which it had not previously reported.

**7.5 Income Tax Returns and Reports**

The Trustee shall, to the extent necessary and as advised by counsel, prepare and file, or cause to be prepared and filed, on behalf of the Trust appropriate United States and Canadian income tax returns and any other returns or reports as may be required by applicable law or pursuant to the rules and regulations of any other Agency, including any securities exchange or other trading system through which the Exchangeable Shares are traded. In connection therewith, the Trustee may obtain the advice and assistance of such experts or advisors as the Trustee considers necessary or advisable (who may be experts or advisors to Newmont or New Exchangeco). If requested by the Trustee, Newmont or New Exchangeco shall retain qualified experts or advisors for the purpose of providing such tax advice or assistance.

**7.6 Indemnification Prior to Certain Actions by Trustee**

- (1) The Trustee shall exercise any or all of the rights, duties, powers or authorities vested in it by this agreement at the request, order or direction of any Beneficiary upon such Beneficiary furnishing to the Trustee reasonable funding, security and indemnity against the costs, expenses and liabilities which may be incurred by the Trustee therein or thereby, provided that no Beneficiary shall be obligated to furnish to the Trustee any such funding, security or indemnity in connection with the exercise by the Trustee of any of its rights, duties, powers and authorities with respect to the Newmont Special Voting Share pursuant to Article 4, subject to Section 7.15, and with respect to the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation pursuant to Article 5.
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- (2) None of the provisions contained in this agreement shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the exercise of any of its rights, powers, duties, or authorities unless funded, given security and indemnified as aforesaid.

#### **7.7 Action of Beneficiaries**

No Beneficiary shall have the right to institute any action, suit or proceeding or to exercise any other remedy authorized by this agreement for the purpose of enforcing any of its rights or for the execution of any trust or power hereunder unless the Beneficiary has requested the Trustee to take or institute such action, suit or proceeding and furnished the Trustee with the funding, security and indemnity referred to in Section 7.6 and the Trustee shall have failed to act within a reasonable time thereafter. In such case, but not otherwise, the Beneficiary shall be entitled to take proceedings in any court of competent jurisdiction such as the Trustee might have taken; it being understood and intended that no one or more Beneficiaries shall have any right in any manner whatsoever to affect, disturb or prejudice the rights hereby created by any such action, or to enforce any right hereunder or the Voting Rights, the Automatic Exchange Right or the Automatic Exchange Rights on Liquidation except subject to the conditions and in the manner herein provided, and that all powers and trusts hereunder shall be exercised and all proceedings at law shall be instituted, had and maintained by the Trustee, except only as herein provided, and in any event for the equal benefit of all Beneficiaries.

#### **7.8 Reliance by Trustee Upon Declarations**

- (1) The Trustee shall not be considered to be in contravention of any of its rights, powers, duties and authorities hereunder if, when required, it acts and relies in good faith upon lists (including any Lists), notices, statutory declarations, certificates, (including share certificate and officers certificates), opinions or reports or other papers or documents furnished pursuant to the provisions hereof or required by the Trustee to be furnished to it in the exercise of its rights, powers, duties and authorities hereunder if such lists (including any Lists), notices, statutory declarations, certificates, opinions or reports comply with the provisions of Section 7.9, if applicable, and with any other applicable provisions of this agreement.
  - (2) Any other provision of this Agreement notwithstanding, the Trustee as trustee under this Agreement shall have no obligation to ensure or verify compliance with any applicable laws or rules or regulatory requirements (including those of any securities commission or securities exchange or other relevant trading system), or articles or by-laws of Newmont or New Exchangeco, on the issuance or delivery of Newmont Shares or the transfer of any Exchangeable Shares, occurring in connection with or upon any exercise of the Automatic Exchange Right or Automatic Exchange Rights on Liquidation. Except to the extent it may be specifically advised in writing to the contrary by legal counsel, the Trustee as trustee under this Agreement shall be entitled to regard all transfers of Exchangeable Shares and the issuance and delivery of all Newmont Shares related to the exercise of the Automatic Exchange Right or Automatic Exchange Rights on Liquidation, upon the presumption that such transfers and issuances and
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deliveries are permissible pursuant to all applicable laws and rules and regulatory requirements (including those of any securities commission or securities exchange or other relevant trading system), and the articles and by-laws of Newmont or New Exchangeco, as applicable, and the terms of this Agreement and the Share Provisions. Except to the extent it may be specifically advised in writing to the contrary by legal counsel or Newmont or New Exchangeco in the case of specifically identified Beneficiaries, the Trustee may assume for all purposes of this Agreement that the address of any Beneficiary as shown on the register of holders of Exchangeable Shares maintained by the registrar or transfer agent of the Exchangeable Shares is the Beneficiary's actual address for the time being and is also determinative of the Beneficiary's residency for the time being. Any other provision of this Agreement notwithstanding, the Trustee shall not be responsible for verifying or determining at any time (a) whether an Insolvency Event or any event which, with the giving of notice or the passage of time or both would be an Insolvency Event, has in fact occurred; (b) whether the solvency requirements of any applicable law will or will not permit New Exchangeco to redeem all Retracted Shares or, if less than all, how many, (and shall be entitled to rely on any notification given by New Exchangeco in this regard); (c) whether applicable law establishes a record date for any Newmont Meeting, or, if applicable law does establish any such record date, what the date so established is, and the Trustee shall be entitled to accept as valid and lawful for all purposes any record date established or stated by Newmont for any Newmont Meeting, unless advised in writing by legal counsel of a different record date established by applicable law.

## **7.9 Evidence and Authority to Trustee**

- (1) Newmont and/or New Exchangeco shall furnish to the Trustee evidence of compliance with the conditions provided for in this agreement relating to any action or step required or permitted to be taken by Newmont and/or New Exchangeco or the Trustee under this agreement or as a result of any obligation imposed under this agreement, including in respect of the Voting Rights or the Automatic Exchange Right or the Automatic Exchange Rights on Liquidation and the taking of any other action to be taken by the Trustee at the request of or on the application of Newmont and/or New Exchangeco promptly if and when:
    - (a) such evidence is required by any other section of this agreement to be furnished to the Trustee in accordance with the terms of this Section 7.9; or
    - (b) the Trustee, in the exercise of its rights, powers, duties and authorities under this agreement, gives Newmont and/or New Exchangeco written notice requiring it to furnish such evidence in relation to any particular action or obligation or matter specified in such notice.
  - (2) Such evidence shall consist of an Officer's Certificate of Newmont and/or New Exchangeco or a statutory declaration or a certificate made by persons entitled to sign an Officer's Certificate stating that any such condition has been complied with in accordance with the terms of this agreement.
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- (3) Whenever such evidence relates to a matter other than the Voting Rights or the Automatic Exchange Right or the Automatic Exchange Rights on Liquidation or the taking of any other action to be taken by the Trustee at the request or on the application of Newmont and/or New Exchangeco, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, attorney, auditor, accountant, appraiser, valuer or other expert or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of Newmont and/or New Exchangeco it shall be in the form of an Officer's Certificate or a statutory declaration.
- (4) Each statutory declaration, Officer's Certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this agreement shall include a statement by the person giving the evidence:
  - (a) declaring that he has read and understands the provisions of this agreement relating to the condition in question;
  - (b) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, statement or opinion; and
  - (c) declaring that he has made such examination or investigation as he believes is necessary to enable him to make the statements or give the opinions contained or expressed therein.

#### **7.10 Experts, Advisers and Agents**

The Trustee may:

- (a) in relation to these presents act and rely on the opinion or advice of or information obtained from any solicitor, attorney, auditor, accountant, appraiser, valuer or other expert, whether retained by the Trustee or by Newmont and/or New Exchangeco or otherwise, and may retain or employ such assistants as in its reasonable opinion may be necessary to the proper discharge of its powers and duties and determination of its rights or duties hereunder and may pay proper and reasonable compensation for all such legal and other advice or assistance as aforesaid;
  - (b) employ such agents and other assistants as it may reasonably require for the proper determination and/or discharge of its powers and duties hereunder; and
  - (c) pay reasonable remuneration for all services performed for it (and shall be entitled to receive reasonable remuneration for all services performed by it) in the discharge of the trusts hereof and compensation for all reasonable disbursements, costs and expenses made or incurred by it in the discharge of its duties hereunder and in the management of the Trust.
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**7.11 Investment of Moneys Held by Trustee**

Unless otherwise provided in this agreement, any moneys held by or on behalf of the Trustee which under the terms of this agreement may or ought to be invested or which may be on deposit with the Trustee or which may be in the hands of the Trustee shall, upon the receipt by the Trustee of the written direction of New Exchangeco, be invested or reinvested in the name or under the control of the Trustee in securities in which, under the laws of the Province of Ontario, trustees are authorized to invest trust moneys, provided that such securities are stated to mature within two years after their purchase by the Trustee, or in Authorized Investments. Any direction of New Exchangeco to the Trustee as to investment or reinvestment of funds shall be in writing and shall be provided to the Trustee no later than 9:00 a.m. (local Toronto time) or if received on a day which is not a business day, shall be deemed to have been given prior to 9:00 a.m. (local time) on the immediately following business day. If no such direction is received, the Trustee shall not have any obligation to invest the monies and pending receipt of such a direction all interest or other income and such moneys may be deposited in the name of the Trustee in any chartered bank in Canada or, with the consent of New Exchangeco, in the deposit department of the Trustee or any other specified loan or trust company authorized to accept deposits under the laws of Canada or any province thereof at the rate of interest then current on similar deposits. The Trustee shall not be held liable for any losses incurred in the investment of any funds as herein provided.

**7.12 Trustee Not Required to Give Security**

The Trustee shall not be required to give any bond or security or otherwise risk its own funds in respect of the execution of the trusts, rights, duties, powers and authorities of this agreement or otherwise in respect of the premises.

**7.13 Trustee Not Bound to Act on Request**

Except as in this agreement otherwise specifically provided, the Trustee shall not be bound to act in accordance with any direction or request of Newmont and/or New Exchangeco or of the respective directors thereof until a duly authenticated copy of the instrument or resolution containing such direction or request shall have been delivered to the Trustee, and the Trustee shall be empowered to act upon any such copy purporting to be authenticated and believed by the Trustee to be genuine.

**7.14 Authority to Carry on Business**

The Trustee represents to Newmont and New Exchangeco that at the date of execution and delivery by it of this agreement it is authorized to carry on the business of a trust company in each of the provinces of Canada but if, notwithstanding the provisions of this Section 7.14, it ceases to be so authorized to carry on business, the validity and enforceability of this agreement and the Voting Rights, the Automatic Exchange Right and the Automatic Exchange Rights on Liquidation shall not be affected in any manner whatsoever by reason only of such event but the Trustee shall, within 90 days after ceasing to be authorized to carry on the business of a trust company in any province of Canada, either become so authorized or resign in the manner and with the effect specified in Article 10.

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**7.15 Conflicting Claims**

- (1) If conflicting claims or demands are made or asserted with respect to any interest of any Beneficiary in any Exchangeable Shares, including any disagreement between the heirs, representatives, successors or assigns succeeding to all or any part of the interest of any Beneficiary in any Exchangeable Shares, resulting in conflicting claims or demands being made in connection with such interest, then the Trustee shall be entitled, in its sole discretion, to refuse to recognize or to comply with any such claims or demands. In so refusing, the Trustee may elect not to exercise any Voting Rights, Automatic Exchange Right or Automatic Exchange Rights on Liquidation subject to such conflicting claims or demands and, in so doing, the Trustee shall not be or become liable to any person on account of such election or its failure or refusal to comply with any such conflicting claims or demands. The Trustee shall be entitled to continue to refrain from acting and to refuse to act until:
  - (a) the rights of all adverse claimants with respect to the Voting Rights, Automatic Exchange Right or Automatic Exchange Rights on Liquidation subject to such conflicting claims or demands have been adjudicated by a final judgement of a court of competent jurisdiction; or
  - (b) all differences with respect to the Voting Rights, Automatic Exchange Right or Automatic Exchange Rights on Liquidation subject to such conflicting claims or demands have been conclusively settled by a valid written agreement binding on all such adverse claimants, and the Trustee shall have been furnished with an executed copy of such agreement certified to be in full force and effect.
- (2) If the Trustee elects to recognize any claim or comply with any demand made by any such adverse claimant, it may in its discretion require such claimant to furnish such surety bond or other security satisfactory to the Trustee as it shall deem appropriate to fully indemnify it as between all conflicting claims or demands.

**7.16 Privacy**

The parties acknowledge that the Trustee may, in the course of providing services hereunder, collect or receive financial and other personal information about such parties and/or their representatives, as individuals, or about other individuals related to the subject matter hereof, and use such information for the following purposes:

- (a) to provide the services required under this Agreement and other services that may be requested from time to time;
  - (b) to help the Trustee manage its servicing relationships with such individuals;
  - (c) to meet the Trustee's legal and regulatory requirements; and
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- (d) if social insurance numbers are collected by the Trustee, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

Each party acknowledges and agrees that the Trustee may receive, collect, use and disclose personal information provided to it or acquired by it in the course of this agreement for the purposes described above and, generally, in the manner and on the terms described in its privacy code, which the Trustee shall make available on its website or upon request, including revisions thereto. Further, each party agrees that it shall not provide or cause to be provided to Trustee any personal information relating to an individual (other than a Beneficiary as contemplated by this agreement) who is not a party to this Agreement unless that party has assured itself that such individual understands and has consented to the aforementioned uses and disclosures.

**7.17 Force Majeure**

Neither Newmont and New Exchangeco nor the Trustee shall be liable to any other party, or held in breach of this agreement, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, governmental action or judicial order, earthquakes, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times by the Trustee under this agreement shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this section.

**7.18 Acceptance of Trust**

The Trustee hereby accepts the Trust created and provided for, by and in this agreement and agrees to perform the same upon the terms and conditions herein set forth and to hold all rights, privileges and benefits conferred hereby and by law in trust for the various persons who shall from time to time be Beneficiaries, subject to all the terms and conditions herein set forth.

**ARTICLE 8  
COMPENSATION**

**8.1 Fees and Expenses of the Trustee**

Newmont and New Exchangeco jointly and severally agree to pay the Trustee reasonable compensation for all of the services rendered by it under this agreement and will reimburse the Trustee for all reasonable expenses (including, but not limited to, taxes other than taxes based on the net income or capital of the Trustee, fees paid and disbursements reimbursed to legal counsel and other experts and advisors and agents and assistants, and travel expenses) and disbursements, including the cost and expense of any suit or litigation of any character and any proceedings before any Agency, and including fees and expenses for attendance at any Newmont Meeting, reasonably incurred by the Trustee in connection with its duties under this agreement; provided that Newmont and New Exchangeco shall have no obligation to reimburse the Trustee for any expenses or disbursements paid, incurred or suffered by the Trustee in any suit or litigation or any such proceedings in which the Trustee is determined to have acted in bad faith or with fraud, negligence, recklessness or wilful misconduct. Any amount owing under this

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Section or otherwise under this Agreement and unpaid thirty (30) days after request for such payment with appropriate supporting documentation, shall bear interest from the expiration of such thirty (30) day period at a rate per annum equal to the then current reasonable rate charged by the Trustee. The obligation in this Section shall survive the resignation or removal of the Trustee and the termination of the trusts created by this Agreement.

**ARTICLE 9  
INDEMNIFICATION AND LIMITATION OF LIABILITY**

**9.1 Indemnification of the Trustee**

- (1) Newmont and New Exchangeco jointly and severally agree to indemnify and hold harmless the Trustee and each of its directors, officers, employees and agents appointed and acting in accordance with this agreement (collectively, the “**Indemnified Parties**”) against all claims, losses, damages, reasonable costs, penalties, fines and reasonable expenses (including reasonable expenses of the Trustee’s legal counsel) which, without fraud, negligence, recklessness, wilful misconduct or bad faith on the part of such Indemnified Party, may be paid, incurred or suffered by the Indemnified Party by reason or as a result of the Trustee’s acceptance or administration of the Trust, its compliance with its duties set forth in this agreement, or any written or oral instruction delivered to the Trustee by Newmont or New Exchangeco pursuant hereto.
  - (2) In no case shall Newmont or New Exchangeco be liable under this indemnity for any claim against any of the Indemnified Parties unless Newmont and New Exchangeco shall be notified by the Trustee of the written assertion of a claim or of any action commenced against the Indemnified Parties, promptly after any of the Indemnified Parties shall have received any such written assertion of a claim or shall have been served with a summons or other first legal process giving information as to the nature and basis of the claim. Subject to (ii) below, Newmont and New Exchangeco shall be entitled to participate at their own expense in the defence and, if Newmont and New Exchangeco so elect at any time after receipt of such notice, either of them may assume the defence of any suit brought to enforce any such claim. The Trustee shall have the right to employ separate counsel in any such suit and participate in the defence thereof, but the fees and expenses of such counsel shall be at the expense of the Trustee unless: (i) the employment of such counsel has been authorized by Newmont or New Exchangeco; or (ii) the named parties to any such suit include both the Trustee and Newmont or New Exchangeco and the Trustee shall have been advised by counsel acceptable to Newmont or New Exchangeco that there may be one or more legal defences available to the Trustee that are different from or in addition to those available to Newmont or New Exchangeco and that, in the judgement of such counsel, would present a conflict of interest were a joint representation to be undertaken (in which case Newmont and New Exchangeco shall not have the right to assume the defence of such suit on behalf of the Trustee but shall be liable to pay the reasonable fees and expenses of counsel for the
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Trustee). The indemnities contained in this Article 9 shall survive the termination of the Trust and the resignation or removal of the Trustee.

**9.2 Limitation of Liability**

The Trustee shall not be held liable for any loss which may occur by reason of depreciation of the value of any part of the Trust Estate or any loss incurred on any investment of funds pursuant to this agreement, except to the extent that such loss is attributable to the fraud, negligence, recklessness, wilful misconduct or bad faith on the part of the Trustee.

**ARTICLE 10  
CHANGE OF TRUSTEE**

**10.1 Resignation**

The Trustee, or any trustee hereafter appointed, may at any time resign by giving written notice of such resignation to Newmont and New Exchangeco specifying the date on which it desires to resign, provided that such notice shall not be given less than thirty (30) days before such desired resignation date unless Newmont and New Exchangeco otherwise agree and provided further that such resignation shall not take effect until the date of the appointment of a successor trustee and the acceptance of such appointment by the successor trustee. Upon receiving such notice of resignation, Newmont and New Exchangeco shall promptly appoint a successor trustee, which shall be a corporation organized and existing under the laws of Canada and authorized to carry on the business of a trust company in all provinces of Canada, by written instrument in duplicate, one copy of which shall be delivered to the resigning trustee and one copy to the successor trustee. Failing the appointment and acceptance of a successor trustee, a successor trustee may be appointed by order of a court of competent jurisdiction upon application of one or more of the parties to this agreement. If the retiring trustee is the party initiating an application for the appointment of a successor trustee by order of a court of competent jurisdiction, Newmont and New Exchangeco shall be jointly and severally liable to reimburse the retiring trustee for its legal costs and expenses in connection with same.

**10.2 Removal**

The Trustee, or any trustee hereafter appointed, may (provided a successor trustee is appointed) be removed at any time on not less than 30 days' prior notice by written instrument executed by Newmont and New Exchangeco, in duplicate, one copy of which shall be delivered to the trustee so removed and one copy to the successor trustee, provided that such removal shall not take effect until the date of acceptance of appointment by the successor trustee.

**10.3 Successor Trustee**

Any successor trustee appointed as provided under this agreement shall execute, acknowledge and deliver to Newmont and New Exchangeco and to its predecessor trustee an instrument accepting such appointment. Thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor under this agreement, with the like effect as if originally named as trustee in this

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agreement. However, on the written request of Newmont and New Exchangeco or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due to it pursuant to the provisions of this agreement, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon the request of any such successor trustee, Newmont, New Exchangeco and such predecessor trustee shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers.

#### **10.4 Notice of Successor Trustee**

Upon acceptance of appointment by a successor trustee as provided herein, Newmont and New Exchangeco shall cause to be mailed notice of the succession of such trustee hereunder to each Beneficiary specified in a List. If Newmont or New Exchangeco shall fail to cause such notice to be mailed within 10 days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of Newmont and New Exchangeco.

### **ARTICLE 11 NEWMONT SUCCESSORS**

#### **11.1 Certain Requirements in Respect of Combination, etc.**

As long as any outstanding Exchangeable Shares are owned of record by any person other than Newmont or any of its affiliates, Newmont shall not consummate any transaction (whether by way of reconstruction, reorganization, consolidation, arrangement, merger, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, property and assets would become the property of any other person or, in the case of a merger, of the continuing corporation resulting therefrom unless, but may do so if:

- (a) such other person or continuing corporation (the “ **Newmont Successor** ”), by operation of law, becomes, without more, bound by the terms and provisions of this agreement or, if not so bound, executes, prior to or contemporaneously with the consummation of such transaction, a trust agreement supplemental hereto and such other instruments (if any) as are satisfactory to the Trustee, acting reasonably, and in the opinion of legal counsel to the Trustee are reasonably necessary or advisable to evidence the assumption by the Newmont Successor of liability for all moneys payable and property deliverable hereunder and the covenant of such Newmont Successor to pay and deliver or cause to be delivered the same and its agreement to observe and perform all the covenants and obligations of Newmont under this agreement; and
  - (b) such transaction shall, to the satisfaction of the Trustee, acting reasonably, and in the opinion of legal counsel to the Trustee, be upon such terms and conditions as substantially to preserve and not to impair in any material respect any of the rights, duties, powers and authorities of the Trustee or of the Beneficiaries hereunder.
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## **11.2 Vesting of Powers in Successor**

Whenever the conditions of Section 11.1 have been duly observed and performed, the Trustee, Newmont Successor and New Exchangeco shall, if required by Section 11.1, execute and deliver the supplemental trust agreement provided for in Article 12 and thereupon Newmont Successor and such other person that may then be the issuer of the Newmont Shares shall possess and from time to time may exercise each and every right and power of Newmont under this agreement in the name of Newmont or otherwise and any act or proceeding by any provision of this agreement required to be done or performed by the board of directors of Newmont or any officers of Newmont may be done and performed with like force and effect by the directors or officers of such Newmont Successor.

## **11.3 Wholly-Owned Subsidiaries**

Nothing herein shall be construed as preventing (i) the amalgamation or merger of any wholly-owned direct or indirect subsidiary of Newmont with or into Newmont, (ii) the winding-up, liquidation or dissolution of any wholly-owned direct or indirect subsidiary of Newmont (other than New Exchangeco or Callco), provided that all of the assets of such subsidiary are transferred to Newmont or another wholly-owned direct or indirect subsidiary of Newmont, or (iii) any other distribution of the assets of any wholly-owned direct or indirect subsidiary of Newmont (other than New Exchangeco or Callco) among the shareholders of such subsidiary for the purpose of winding up its affairs, and any such transactions are expressly permitted by this Article 11.

## **ARTICLE 12 AMENDMENTS AND SUPPLEMENTAL TRUST AGREEMENTS**

### **12.1 Amendments, Modifications, etc.**

Subject to Section 12.2 and Section 12.4, this agreement may not be amended or modified except by an agreement in writing executed by Newmont, New Exchangeco and the Trustee and approved by the Beneficiaries in accordance with section 10(2) of the Share Provisions.

### **12.2 Ministerial Amendments**

Notwithstanding the provisions of Section 12.1, the parties to this agreement may in writing, at any time and from time to time, without the approval of the Beneficiaries, amend or modify this agreement for the purposes of:

- (a) adding to the covenants of any or all parties hereto for the protection of the Beneficiaries hereunder provided that the board of directors of each of New Exchangeco and Newmont shall be of the good faith opinion (confirmed in writing by each to the Trustee) that such additions will not be prejudicial to the rights or interests of the Beneficiaries;
  - (b) making such amendments or modifications not inconsistent with this agreement (as confirmed in writing by New Exchangeco which may be
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relied upon by the Trustee), as may be necessary or desirable with respect to matters or questions which, in the good faith opinion of the board of directors of each of Newmont and New Exchangeco (confirmed in writing by each to the Trustee) and in the opinion of the Trustee, in reliance upon a certificate of New Exchangeco, having in mind the best interests of the Beneficiaries, it may be expedient to make, provided that such boards of directors (confirmed in writing by each to the Trustee) and the Trustee, acting in reliance upon a certificate of New Exchangeco, shall be of the opinion that such amendments and modifications will not be prejudicial to the rights or interests of the Beneficiaries; or

- (c) making such changes or corrections which, on the advice of counsel to Newmont, New Exchangeco and the Trustee, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error.

### **12.3 Meeting to Consider Amendments**

New Exchangeco, at the request of Newmont, shall call a meeting or meetings of the Beneficiaries for the purpose of considering any proposed amendment or modification requiring approval pursuant hereto. Any such meeting or meetings shall be called and held in accordance with the by-laws of New Exchangeco, the Share Provisions and all applicable laws. The Trustee shall have no duty under this agreement to monitor or enforce compliance by New Exchangeco with the requirements of this Section 12.3.

### **12.4 Changes in Capital of Newmont and New Exchangeco**

At all times after the occurrence of any event contemplated pursuant to section 2.7 or 2.8 of the Support Agreement or otherwise, as a result of which either Newmont Shares or the Exchangeable Shares or both are in any way changed, and after the Trustee has been notified in writing of what has occurred in reasonable detail by Newmont or New Exchangeco, as the case may be, this agreement shall forthwith be amended and modified as is necessary, in the opinion of counsel, in order that it shall apply with full force and effect, mutatis mutandis, to all new securities into which Newmont Shares or the Exchangeable Shares or both are so changed and the parties hereto shall execute and deliver a supplemental trust agreement giving effect to and evidencing such necessary amendments and modifications.

### **12.5 Execution of Supplemental Trust Agreements**

Notwithstanding Section 12.1, from time to time New Exchangeco (when authorized by a resolution of its Board of Directors), Newmont (when authorized by a resolution of its board of directors) and the Trustee may, subject to the provisions of these presents, and they shall, when so directed by these presents, execute and deliver by their proper officers, trust agreements or other instruments supplemental hereto, which thereafter shall form part hereof, for any one or more of the following purposes:

- (a) evidencing the succession of Newmont Successors and the covenants of and obligations assumed by each such Newmont Successor in accordance
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with the provisions of Article 10 and the successors of the Trustee or any successor trustee in accordance with the provisions of Article 10;

- (b) making any additions to, deletions from or alterations of the provisions of this agreement or the Voting Rights, the Automatic Exchange Right or the Automatic Exchange Rights on Liquidation which, in the opinion of the Trustee, in reliance upon a certificate of New Exchangeco, will not be prejudicial to the interests of the Beneficiaries or are, in the opinion of counsel to the Trustee, necessary or advisable in order to incorporate, reflect or comply with any legislation the provisions of which apply to Newmont, New Exchangeco, the Trustee or this agreement; and
- (c) for any other purposes not inconsistent, as confirmed in writing by New Exchangeco which may be relied upon by the Trustee, with the provisions of this agreement, including to make or evidence any amendment or modification to this agreement as contemplated hereby; provided that, in the opinion of the Trustee, in reliance upon a certificate of New Exchangeco, the rights of the Trustee and Beneficiaries will not be prejudiced thereby.

### **ARTICLE 13 TERMINATION**

#### **13.1 Term**

The Trust created by this agreement shall continue until the earliest to occur of the following events:

- (a) no outstanding Exchangeable Shares are held by a Beneficiary;
- (b) each of Newmont and New Exchangeco elects in writing to terminate the Trust and such termination is approved by the Beneficiaries in accordance with section 10(2) of the Share Provisions; and
- (c) 21 years after the death of the last survivor of the descendants of His Majesty King George VI of Canada and the United Kingdom of Great Britain and Northern Ireland living on the date of the creation of the Trust.

#### **13.2 Survival of Agreement**

This agreement shall survive any termination of the Trust and shall continue until there are no Exchangeable Shares outstanding held by a Beneficiary; provided, however, that the provisions of Article 8 and Article 9 shall survive any termination of this agreement.

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**ARTICLE 14  
GENERAL**

**14.1 Severability**

If any term or other provision of this agreement is invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and provisions of this agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

**14.2 Enurement**

This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns and, subject to the terms hereof, to the benefit of the Beneficiaries.

**14.3 Notices to Parties**

Any notice and other communications required or permitted to be given pursuant to this agreement shall be in writing and shall be deemed sufficiently given if delivered in person or if sent by facsimile transmission (provided such transmission is recorded as being transmitted successfully) at or to the address or facsimile telephone number set forth beneath the name of such party below:

- (a) in the case of New Exchangeco:

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

Attention: General Counsel or Secretary  
Facsimile: (303) 837-5837

- (b) in the case of Newmont:

Newmont Mining Corporation  
6363 South Fiddler's Green Circle, Suite 800  
Greenwood Village, CO 80111  
Attention: General Counsel or Secretary  
Facsimile: (303) 837-5837

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- (c) in the case of New Exchangeco and Newmont, with a copy to:

Goodmans LLP  
Suite 3400, 333 Bay Street  
Toronto, Ontario, Canada M5H 2S7

Attention: Jonathan Lampe  
Facsimile: (416) 979-1234

- (d) in the case of Computershare:

100 University Avenue, 9<sup>th</sup> Floor, North Tower  
Toronto, Ontario, Canada M5J 2Y1

Attention: Manager, Corporate Trust Services  
Facsimile: 1-888-453-0330

or at such other address as the party to which such notice or other communication is to be given has last notified the party giving the same in the manner provided in this Section. Any notice given shall be deemed to have been received on the date of such delivery or sending. Provided that if any notice or other communication to which this Section applies is given or delivered by facsimile transmission and is recorded as having been transmitted successfully after 5:00 pm (local time of recipient) on a business day or at any time on a day that is not a business day, such notice or other communication shall be deemed to have been given or delivered and received on the following business day.

#### **14.4 Notice to Beneficiaries**

Any and all notices to be given and any documents to be sent or delivered to any Beneficiaries by Newmont or New Exchangeco may be given or sent to the address of such Beneficiary shown on the register of holders of Exchangeable Shares in any manner permitted by the by-laws of New Exchangeco from time to time in force in respect of notices to shareholders and shall be deemed to be received (if given or sent in such manner) at the time specified in such by-laws, the provisions of which by-laws shall apply mutatis mutandis to notices or documents as aforesaid sent to such Beneficiaries. The Trustee shall have no duty under this agreement to monitor or enforce compliance by any of Newmont or New Exchangeco with the requirements of this Section. Any and all notices to be given and any documents to be sent or delivered to any Beneficiaries by the Trustee may be given or sent to the address of such Beneficiary shown on the register of holders of Exchangeable Shares maintained by the registrar or transfer agent of the Exchangeable Shares and shall be delivered or sent by mail (or otherwise communicated in the same manner as Newmont utilizes in communications to holders of Newmont Shares, subject to the Trustee being advised in writing of such method and such method being reasonable available to the Trustee).

#### **14.5 Counterparts**

This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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**14.6 Jurisdiction**

This agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**14.7 Attornment**

Each of the Trustee, Newmont and New Exchangeco agrees that any action or proceeding arising out of or relating to this agreement or any of the transactions contemplated by this agreement may be instituted in the courts of Ontario, waives any objection which it may have now or hereafter to the venue of any such action or proceeding, irrevocably submits to the non-exclusive jurisdiction of the said courts in any such action or proceeding, agrees to be bound by any judgement of the said courts and not to seek, and hereby waives, any review of the merits of any such judgement by the courts of any other jurisdiction, and Newmont hereby appoints New Exchangeco at its registered office in the Province of Ontario as attorney for service of process.

**[Signature Page Follows.]**

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**IN WITNESS WHEREOF** the parties hereto have caused this agreement to be duly executed as of the date first above written.

**NEWMONT MINING CORPORATION OF CANADA  
LIMITED**

Per: \_\_\_\_\_  
Name:  
Title:

**COMPUTERSHARE TRUST COMPANY OF CANADA**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**NEWMONT MINING CORPORATION**

Per: \_\_\_\_\_  
Name:  
Title:

*Voting and Exchange Trust Agreement*

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## APPENDIX "A"

### SUPPORT AGREEMENT

**THIS AGREEMENT** made as of December 15, 2011, between Newmont Mining Corporation, a corporation existing under the laws of the State of Delaware (hereinafter referred to as "**Newmont**"), Newmont Holdings ULC, an unlimited liability company existing under the laws of Nova Scotia (hereinafter referred to as "**NHULC**") and Newmont Mining Corporation of Canada Limited, a corporation existing under the laws of the Province of British Columbia (hereinafter referred to as "**New Exchangeco**").

#### RECITALS:

- (a) in connection with an arrangement agreement (the "**Arrangement Agreement**") made as of October 31, 2011 between Newmont, NHULC, Newmont Canada FN Holdings Limited ("**Old NMCCL**"), New Exchangeco and Newmont NE Holdings Subco Limited, exchangeable shares in the capital of New Exchangeco (the "**Exchangeable Shares**") are to be issued to certain holders of exchangeable shares in the capital of Old NMCCL pursuant to the Plan of Arrangement contemplated by the Arrangement Agreement; and
- (b) pursuant to the Arrangement Agreement, Newmont, New Exchangeco and NHULC are required to execute a support agreement substantially in the form of this agreement.

In consideration of the foregoing and the mutual agreements contained herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

#### Section 1.1 Defined Terms

Each initially capitalized term used and not otherwise defined herein shall have the meaning ascribed thereto in the rights, privileges, restrictions and conditions (collectively, the "**Share Provisions**") attaching to the Exchangeable Shares as set out in the articles of New Exchangeco. In this agreement, "**including**" means "including without limitation" and "**includes**" means "includes without limitation". In this agreement, "**Callco**" means NHULC, or in Newmont's sole discretion, such other company which exercises the Liquidation Call Right, Retraction Call Right or Redemption Call Right, including Newmont or NHULC, which Newmont causes to be bound by the terms and conditions set forth in this agreement.

#### Section 1.2 Interpretation Not Affected by Headings

The division of this agreement into Articles, Sections, and other portions and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this agreement. Unless otherwise specified, references to an "Article" or "Section" refer to the specified Article or Section of this agreement.

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**Section 1.3 Number, Gender**

Words importing the singular number only shall include the plural and vice versa. Words importing any gender shall include all genders.

**Section 1.4 Date for any Action**

If any date on which any action is required to be taken under this agreement is not a business day, such action shall be required to be taken on the next succeeding business day. For the purposes of this agreement, a “ **business day** ” means any day other than a Saturday, Sunday, a public holiday or a day on which commercial banks are not open for business in Toronto, Ontario or New York, New York under applicable law.

**ARTICLE 2  
COVENANTS OF NEWMONT AND ACQUISITIONCO**

**Section 2.1 Covenants Regarding Exchangeable Shares**

So long as any Exchangeable Shares not owned by Newmont or its affiliates are outstanding, Newmont will:

- (a) not declare or pay any dividend on the Newmont Shares unless (i) New Exchangeco shall (A) on the same day declare or pay, as the case may be, an equivalent dividend (as provided for in the Share Provisions) on the Exchangeable Shares (an “ **Equivalent Dividend** ”), and (B) have sufficient money or other assets or authorized but unissued securities available to enable the due declaration and the due and punctual payment, in accordance with applicable law, of any such Equivalent Dividend, or (ii) New Exchangeco shall (A) subdivide the Exchangeable Shares in lieu of a stock dividend thereon (as provided for in the Share Provisions) (an “ **Equivalent Stock Subdivision** ”), and (B) have sufficient authorized but unissued securities available to enable the Equivalent Stock Subdivision;
  - (b) advise New Exchangeco sufficiently in advance of the declaration by Newmont of any dividend on the Newmont Shares and take all such other actions as are reasonably necessary, in co-operation with New Exchangeco, to ensure that (i) the respective declaration date, record date and payment date for an Equivalent Dividend on the Exchangeable Shares shall be the same as the declaration date, record date and payment date for the corresponding dividend on the Newmont Shares, or (ii) the record date and effective date for an Equivalent Stock Subdivision shall be the same as the record date and payment date for the corresponding stock dividend on the Newmont Shares;
  - (c) ensure that the record date for any dividend declared on the Newmont Shares is not less than 7 days after the declaration date of such dividend;
  - (d) take all such actions and do all such things as are reasonably necessary to enable and permit New Exchangeco, in accordance with applicable law, to pay and
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otherwise perform its obligations with respect to the satisfaction of the Liquidation Amount, the Retraction Price or the Redemption Price in respect of each issued and outstanding Exchangeable Share (other than Exchangeable Shares owned by Newmont or its affiliates) upon the liquidation, dissolution or winding-up of New Exchangeco or any other distribution of the assets of New Exchangeco among its shareholders for the purpose of winding up its affairs, the delivery of a Retraction Request by a holder of Exchangeable Shares or a redemption of Exchangeable Shares by New Exchangeco, as the case may be, including all such actions and all such things as are necessary or desirable to enable and permit New Exchangeco to cause to be delivered Newmont Shares to the holders of Exchangeable Shares in accordance with the provisions of section 5, 6 or 7, as the case may be, of the Share Provisions;

- (e) take all such actions and do all such things as are reasonably necessary or desirable to enable and permit Callco or Newmont, in accordance with applicable law, to perform its obligations arising upon the exercise by it of the Liquidation Call Right, the Retraction Call Right or the Redemption Call Right, including all such actions and all such things as are necessary or desirable to enable and permit Callco or Newmont to cause to be delivered Newmont Shares to the holders of Exchangeable Shares in accordance with the provisions of the Liquidation Call Right, the Retraction Call Right or the Redemption Call Right, as the case may be; and
- (f) except in connection with any event, circumstance or action which causes or could cause the occurrence of a Redemption Date, not exercise its vote as a shareholder to initiate the voluntary liquidation, dissolution or winding up of New Exchangeco or any other distribution of the assets of New Exchangeco among its shareholders for the purpose of winding up its affairs, nor take any action or omit to take any action that is designed to result in the liquidation, dissolution or winding up of New Exchangeco or any other distribution of the assets of New Exchangeco among its shareholders for the purpose of winding up its affairs.

## **Section 2.2 Segregation of Funds**

Newmont will cause New Exchangeco to deposit a sufficient amount of funds in a separate account of New Exchangeco and segregate a sufficient amount of such other assets and property as is necessary to enable New Exchangeco to pay dividends when due and to pay or otherwise satisfy its respective obligations under section 5, 6 and 7 of the Share Provisions, as applicable.

## **Section 2.3 Reservation of Newmont Shares**

Newmont hereby represents, warrants and covenants in favour of New Exchangeco and Callco that Newmont has reserved for issuance and will, at all times while any Exchangeable Shares (other than Exchangeable Shares held by Newmont or its affiliates) are outstanding, keep available, free from pre-emptive and other rights, out of its authorized and unissued capital stock such number of Newmont Shares (or other shares or securities into which Newmont Shares may be reclassified or changed as contemplated by Section 2.7): (a) as is equal to the sum of (i) the

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number of Exchangeable Shares issued and outstanding from time to time and (ii) the number of Exchangeable Shares issuable upon the exercise of all rights to acquire Exchangeable Shares outstanding from time to time; and (b) as are now and may hereafter be required to enable and permit Newmont to meet its obligations under the Voting and Exchange Trust Agreement and under any other security or commitment pursuant to which Newmont may now or hereafter be required to issue Newmont Ordinary Shares, to enable and permit Callco or Newmont to meet its obligations under each of the Liquidation Call Right, the Retraction Call Right and the Redemption Call Right and to enable and permit New Exchangeco to meet its obligations hereunder and under the Share Provisions.

#### **Section 2.4 Notification of Certain Events**

In order to assist Newmont to comply with its obligations hereunder and to permit Callco or Newmont to exercise the Liquidation Call Right, the Retraction Call Right and the Redemption Call Right, New Exchangeco will notify Newmont and Callco of each of the following events at the time set forth below:

- (a) in the event of any determination by the Board of Directors of New Exchangeco to institute voluntary liquidation, dissolution or winding-up proceedings with respect to New Exchangeco or to effect any other distribution of the assets of New Exchangeco among its shareholders for the purpose of winding up its affairs, at least 60 days prior to the proposed effective date of such liquidation, dissolution, winding-up or other distribution;
- (b) promptly, upon the earlier of receipt by New Exchangeco of notice of and New Exchangeco otherwise becoming aware of any threatened or instituted claim, suit, petition or other proceedings with respect to the involuntary liquidation, dissolution or winding-up of New Exchangeco or to effect any other distribution of the assets of New Exchangeco among its shareholders for the purpose of winding up its affairs;
- (c) immediately, upon receipt by New Exchangeco of a Retraction Request;
- (d) on the same date on which notice of redemption is given to holders of Exchangeable Shares, upon the determination of a Redemption Date in accordance with the Share Provisions; and
- (e) as soon as practicable upon the issuance by New Exchangeco of any Exchangeable Shares or rights to acquire Exchangeable Shares (other than the issuance of Exchangeable Shares and rights to acquire Exchangeable Shares pursuant to the Arrangement).

#### **Section 2.5 Delivery of Newmont Shares to New Exchangeco and Callco**

In furtherance of its obligations under Section 2.1(d) and Section 2.1(e), upon notice from New Exchangeco or Callco of any event that requires New Exchangeco or Callco to cause to be delivered Newmont Shares to any holder of Exchangeable Shares, Newmont shall forthwith allot, issue and deliver or cause to be delivered to the relevant holder of Exchangeable Shares as

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directed by New Exchangeco or Callco the requisite number of Newmont Shares to be allotted to, received by, and issued to or to the order of, the former holder of the surrendered Exchangeable Shares (but, for the avoidance of doubt, not to New Exchangeco or Callco). All such Newmont Shares shall be duly authorized and validly issued as fully paid and shall be free and clear of any lien, claim or encumbrance. In consideration of the issuance and delivery of each such Newmont Share, New Exchangeco or Callco, as the case may be, shall subscribe a cash amount or pay a purchase price equal to the fair market value of such Newmont Shares.

## **Section 2.6 Qualification of Newmont Shares**

If any Newmont Shares (or other shares or securities into which Newmont Shares may be reclassified or changed as contemplated by Section 2.7) to be issued and delivered hereunder require registration or qualification with or approval of or the filing of any document, including any prospectus or similar document or the taking of any proceeding with or the obtaining of any order, ruling or consent from any governmental or regulatory authority under any United States or Canadian federal, state, provincial or territorial securities or other law or regulation or pursuant to the rules and regulations of any securities or other regulatory authority in the United States or Canada or the fulfillment of any other United States or Canadian legal requirement before such shares (or such other shares or securities) may be issued by Newmont and delivered by Newmont at the direction of Callco or New Exchangeco, if applicable, to the holder of surrendered Exchangeable Shares or in order that such shares (or such other shares or securities) may be freely traded thereafter (other than any restrictions of general application on transfer by reason of a holder being a “ **control person** ” for purposes of Canadian federal, provincial or territorial securities Law or the equivalent thereof under any United States Laws), Newmont will in good faith expeditiously take all such actions and do all such things as are reasonably necessary or desirable to cause such Newmont Shares (or such other shares or securities) to be and remain duly registered, qualified or approved under United States and/or Canadian law. Newmont will in good faith expeditiously take all such actions and do all such things as are reasonably necessary or desirable to cause all Newmont Shares (or such other shares or securities) to be delivered hereunder to be listed, quoted or posted for trading on all stock exchanges and quotation systems on which outstanding Newmont Shares (or such other shares or securities) have been listed by Newmont and remain listed and are quoted or posted for trading at such time.

## **Section 2.7 Economic Equivalence**

So long as any Exchangeable Shares not owned by Newmont or its affiliates are outstanding:

- (a) Newmont will not without prior approval of New Exchangeco and the prior approval of the holders of the Exchangeable Shares given in accordance with section 10(2) of the Share Provisions:
    - (i) issue or distribute Newmont Shares (or securities exchangeable for or convertible into or carrying rights to acquire Newmont Shares) to the holders of all or substantially all of the then outstanding Newmont Shares by way of stock dividend or other distribution, other than an issue of Newmont Shares (or securities exchangeable for or convertible into or
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carrying rights to acquire Newmont Shares) to holders of Newmont Shares (i) who exercise an option to receive dividends in Newmont Shares (or securities exchangeable for or convertible into or carrying rights to acquire Newmont Shares) in lieu of receiving cash dividends, or (ii) pursuant to any dividend reinvestment plan or similar arrangement; or

- (ii) issue or distribute rights, options or warrants to the holders of all or substantially all of the then outstanding Newmont Shares entitling them to subscribe for or to purchase Newmont Shares (or securities exchangeable for or convertible into or carrying rights to acquire Newmont Shares); or
- (iii) issue or distribute to the holders of all or substantially all of the then outstanding Newmont Shares (A) shares or securities (including evidence of indebtedness) of Newmont of any class (other than Newmont Shares or securities convertible into or exchangeable for or carrying rights to acquire Newmont Shares), or (B) rights, options, warrants or other assets other than those referred to in Section 2.7(a)(ii),

unless in each case the economic equivalent on a per share basis of such rights, options, securities, shares, evidences of indebtedness or other assets is issued or distributed simultaneously to holders of the Exchangeable Shares and at least 7 days prior written notice thereof is given to the holders of Exchangeable Shares; provided that, for greater certainty, the above restrictions shall not apply to any securities issued or distributed by Newmont in order to give effect to and to consummate, is in furtherance of or is otherwise in connection with the transactions contemplated by, and in accordance with, the Plan of Arrangement.

- (b) Newmont will not without the prior approval of New Exchangeco and the prior approval of the holders of the Exchangeable Shares given in accordance with section 10(2) of the Share Provisions:
  - (i) subdivide, redivide or change the then outstanding Newmont Shares into a greater number of Newmont Shares; or
  - (ii) reduce, combine, consolidate or change the then outstanding Newmont Shares into a lesser number of Newmont Shares; or
  - (iii) reclassify or otherwise change Newmont Shares or effect an amalgamation, merger, reorganization or other transaction affecting Newmont Shares;

unless the same or an economically equivalent change shall simultaneously be made to, or in the rights of the holders of, the Exchangeable Shares and at least seven days prior written notice is given to the holders of Exchangeable Shares.

- (c) Newmont will ensure that the record date for any event referred to in Section 2.7(a) or Section 2.7(b), or (if no record date is applicable for such event) the effective date for any such event, is not less than five business days after the
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date on which such event is declared or announced by Newmont (with contemporaneous notification thereof by Newmont to New Exchangeco).

- (d) The Board of Directors of New Exchangeco shall determine, acting in good faith and in its sole discretion, economic equivalence for the purposes of any event referred to in Section 2.7(a) or Section 2.7(b) and each such determination shall be conclusive and binding on Newmont. In making each such determination, the following factors shall, without excluding other factors determined by the Board of Directors of New Exchangeco to be relevant, be considered by the Board of Directors of New Exchangeco:
- (i) in the case of any stock dividend or other distribution payable in Newmont Shares, the number of such shares issued in proportion to the number of Newmont Shares previously outstanding;
  - (ii) in the case of the issuance or distribution of any rights, options or warrants to subscribe for or purchase Newmont Shares (or securities exchangeable for or convertible into or carrying rights to acquire Newmont Shares), the relationship between the exercise price of each such right, option or warrant and the Current Market Price of a Newmont Share;
  - (iii) in the case of the issuance or distribution of any other form of property (including any shares or securities of Newmont of any class other than Newmont Shares, any rights, options or warrants other than those referred to in Section 2.7(d)(ii), any evidences of indebtedness of Newmont or any assets of Newmont), the relationship between the fair market value (as determined by the Board of Directors of New Exchangeco in the manner above contemplated) of such property to be issued or distributed with respect to each outstanding Newmont Share and the Current Market Price of a Newmont Share;
  - (iv) in the case of any subdivision, redivision or change of the then outstanding Newmont Shares into a greater number of Newmont Shares or the reduction, combination, consolidation or change of the then outstanding Newmont Shares into a lesser number of Newmont Shares or any amalgamation, merger, reorganization or other transaction affecting Newmont Shares, the effect thereof upon the then outstanding Newmont Shares; and
  - (v) in all such cases, the general taxation consequences of the relevant event to holders of Exchangeable Shares to the extent that such consequences may differ from the taxation consequences to holders of Newmont Shares as a result of differences between taxation laws of Canada and the United States (except for any differing consequences arising as a result of differing marginal taxation rates and without regard to the individual circumstances of holders of Exchangeable Shares).
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- (e) New Exchangeco agrees that, to the extent required, upon due notice from Newmont, New Exchangeco will use its best efforts to take or cause to be taken such steps as may be necessary for the purposes of ensuring that appropriate dividends are paid or other distributions are made by New Exchangeco, or subdivisions, redivisions or changes are made to the Exchangeable Shares, in order to implement the required economic equivalence with respect to the Newmont Shares and Exchangeable Shares as provided for in this Section 2.7.

**Section 2.8 Tender Offers**

In the event that a tender offer, share exchange offer, issuer bid, take-over bid or similar transaction with respect to Newmont Shares (an “ Offer ”) is proposed by Newmont or is proposed to Newmont or its shareholders and is recommended by the Board of Directors of Newmont, or is otherwise effected or to be effected with the consent or approval of the Board of Directors of Newmont, and the Exchangeable Shares are not redeemed by New Exchangeco or purchased by Callco or Newmont pursuant to the Redemption Call Right, Newmont will expeditiously and in good faith take all such actions and do all such things as are reasonably necessary or desirable to enable and permit holders of Exchangeable Shares (other than Newmont and its affiliates) to participate in such Offer to the same extent and on an economically equivalent basis as the holders of Newmont Shares, without discrimination. Without limiting the generality of the foregoing, Newmont will expeditiously and in good faith take all such actions and do all such things as are reasonably necessary or desirable to ensure that holders of Exchangeable Shares may participate in each such Offer without being required to retract Exchangeable Shares as against New Exchangeco (or, if so required, to ensure that any such retraction, shall be effective only upon, and shall be conditional upon, the closing of such Offer and only to the extent necessary to tender or deposit to the Offer). Nothing herein shall affect the rights of New Exchangeco to redeem (or Callco or Newmont to purchase pursuant to the Redemption Call Right) Exchangeable Shares, as applicable, in the event of a Newmont Control Transaction.

**Section 2.9 Ownership of Outstanding Shares**

Without the prior approval of New Exchangeco and the prior approval of the holders of the Exchangeable Shares given in accordance with section 10(2) of the Share Provisions, Newmont covenants and agrees in favour of New Exchangeco that, as long as any outstanding Exchangeable Shares are owned by any person other than Newmont or any of its affiliates, Newmont will be and remain the direct or indirect beneficial owner of all issued and outstanding voting shares in the capital of New Exchangeco and Callco.

**Section 2.10 Newmont and Affiliates Not to Vote Exchangeable Shares**

Newmont covenants and agrees that it will appoint and cause to be appointed proxyholders with respect to all Exchangeable Shares held by it and its affiliates for the sole purpose of attending each meeting of holders of Exchangeable Shares in order to be counted as part of the quorum for each such meeting. Newmont further covenants and agrees that it will not, and will cause its affiliates not to, exercise any voting rights which may be exercisable by holders of Exchangeable Shares from time to time pursuant to the Share Provisions or pursuant to the provisions of the BCBCA (or any successor or other corporate statute by which New

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Exchangeco may in the future be governed) with respect to any Exchangeable Shares held by it or by its affiliates in respect of any matter considered at any meeting of holders of Exchangeable Shares.

**Section 2.11 Ordinary Market Purchases**

For certainty, nothing contained in this agreement, including the obligations of Newmont contained in Section 2.8, shall limit the ability of Newmont (or any of its subsidiaries including, without limitation, Callco or New Exchangeco) to make ordinary market purchases of Newmont Shares in accordance with applicable laws and regulatory or stock exchange requirements.

**Section 2.12 Stock Exchange Listing**

Newmont covenants and agrees in favour of New Exchangeco that, as long as any outstanding Exchangeable Shares are owned by any person other than Newmont or any of its affiliates, Newmont will use its best efforts to maintain a listing for such Exchangeable Shares on The Toronto Stock Exchange.

**ARTICLE 3  
NEWMONT SUCCESSORS**

**Section 3.1 Certain Requirements in Respect of Combination, etc.**

As long as any outstanding Exchangeable Shares are owned by any person other than Newmont or any of its affiliates, Newmont shall not consummate any transaction (whether by way of reconstruction, reorganization, consolidation, arrangement, merger, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, property and assets would become the property of any other person or, in the case of a merger, of the continuing corporation resulting therefrom unless, but may do so if:

- (a) such other person or continuing corporation (the “**Newmont Successor**”) by operation of law, becomes, without more, bound by the terms and provisions of this agreement or, if not so bound, executes, prior to or contemporaneously with the consummation of such transaction, an agreement supplemental hereto and such other instruments (if any) as are reasonably necessary or advisable to evidence the assumption by the Newmont Successor of liability for all moneys payable and property deliverable hereunder and the covenant of such Newmont Successor to pay and deliver or cause to be delivered the same and its agreement to observe and perform all the covenants and obligations of Newmont under this agreement; and
  - (b) such transaction shall be upon such terms and conditions as substantially to preserve and not to impair in any material respect any of the rights, duties, powers and authorities of the other parties hereunder or the holders of the Exchangeable Shares.
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**Section 3.2 Vesting of Powers in Successor**

Whenever the conditions of Section 3.1 have been duly observed and performed, the parties, if required by Section 3.1, shall execute and deliver the supplemental agreement provided for in Section 3.1(a) and thereupon the Newmont Successor and such other person that may then be the issuer of the Newmont Shares shall possess and from time to time may exercise each and every right and power of Newmont under this agreement in the name of Newmont or otherwise and any act or proceeding by any provision of this agreement required to be done or performed by the Board of Directors of Newmont or any officers of Newmont may be done and performed with like force and effect by the directors or officers of such Newmont Successor.

**Section 3.3 Wholly-Owned Subsidiaries**

Nothing herein shall be construed as preventing (i) the amalgamation or merger of any wholly-owned direct or indirect subsidiary of Newmont with or into Newmont, (ii) the winding-up, liquidation or dissolution of any wholly-owned direct or indirect subsidiary of Newmont, provided that all of the assets of such subsidiary are transferred to Newmont or another wholly-owned direct or indirect subsidiary of Newmont, or (iii) any other distribution of the assets of any wholly-owned direct or indirect subsidiary of Newmont among the shareholders of such subsidiary for the purpose of winding up its affairs, and any such transactions are expressly permitted by this Article 3.

**ARTICLE 4  
GENERAL**

**Section 4.1 Term**

This agreement shall come into force and be effective as of the date hereof and shall terminate and be of no further force and effect at such time as no Exchangeable Shares (or securities or rights convertible into or exchangeable for or carrying rights to acquire Exchangeable Shares) are held by any person other than Newmont and any of its affiliates.

**Section 4.2 Changes in Capital of Newmont and New Exchangeco**

At all times after the occurrence of any event contemplated pursuant to Section 2.7 and Section 2.8 or otherwise, as a result of which either Newmont Shares or the Exchangeable Shares or both are in any way changed, this agreement shall forthwith be amended and modified as necessary in order that it shall apply with full force and effect, *mutatis mutandis*, to all new securities into which Newmont Shares or the Exchangeable Shares or both are so changed and the parties hereto shall execute and deliver an agreement in writing giving effect to and evidencing such necessary amendments and modifications.

**Section 4.3 Severability**

If any term or other provision of this agreement is invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and provisions of this agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially

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adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

**Section 4.4 Amendments, Modifications**

- (a) Subject to Section 4.2, Section 4.3 and Section 4.5 this agreement may not be amended or modified except by an agreement in writing executed by New Exchangeco, Callco and Newmont and approved by the holders of the Exchangeable Shares in accordance with section 10(2) of the Share Provisions.
- (b) No amendment or modification or waiver of any of the provisions of this agreement otherwise permitted hereunder shall be effective unless made in writing and signed by all of the parties hereto.

**Section 4.5 Ministerial Amendments**

Notwithstanding the provisions of Section 4.4, the parties to this agreement may in writing at any time and from time to time, without the approval of the holders of the Exchangeable Shares, amend or modify this agreement for the purposes of:

- (a) adding to the covenants of any or all parties provided that the Board of Directors of each of New Exchangeco, Callco and Newmont shall be of the good faith opinion that such additions will not be prejudicial to the rights or interests of the holders of the Exchangeable Shares;
- (b) making such amendments or modifications not inconsistent with this agreement as may be necessary or desirable with respect to matters or questions which, in the good faith opinion of the Board of Directors of each of New Exchangeco, Callco and Newmont, it may be expedient to make, provided that each such Board of Directors shall be of the good faith opinion that such amendments or modifications will not be prejudicial to the rights or interests of the holders of the Exchangeable Shares; or
- (c) making such changes or corrections which, on the advice of counsel to New Exchangeco, Callco and Newmont, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error, provided that the Boards of Directors of each of New Exchangeco, Callco and Newmont shall be of the good faith opinion that such changes or corrections will not be prejudicial to the rights or interests of the holders of the Exchangeable Shares.

**Section 4.6 Meeting to Consider Amendments**

New Exchangeco, at the request of Newmont, shall call a meeting or meetings of the holders of the Exchangeable Shares for the purpose of considering any proposed amendment or

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modification requiring approval pursuant to Section 4.4. Any such meeting or meetings shall be called and held in accordance with the bylaws of New Exchangeco, the Share Provisions and all applicable laws.

**Section 4.7 Enurement**

This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

**Section 4.8 Notices to Parties**

Any notice and other communications required or permitted to be given pursuant to this agreement shall be sufficiently given if delivered in person or if sent by facsimile transmission (provided such transmission is recorded as being transmitted successfully) to the parties at the following addresses:

- (a) in the case of Newmont, to the following address:

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

Attention: General Counsel or Secretary  
Facsimile: (303) 837-5837

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
27<sup>th</sup> Floor  
New York, New York 10019

Attention: David Katz  
Facsimile: (212) 403-2309

- (b) in the case of Callco, to the following address:

c/o Newmont Mining Corporation  
6363 South Fiddler's Green Circle, Suite 800  
Greenwood Village, CO 80111

Attention: General Counsel or Secretary  
Facsimile: (303) 837-5837

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with a copy to:

Goodmans LLP  
Suite 3400, 333 Bay Street  
Toronto, Ontario, Canada M5H 2S7

Attention: Jonathan Lampe  
Facsimile: (416) 979-1234

(c) in the case of New Exchangeco, to the following address:

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

Attention: General Counsel or Secretary  
Facsimile: (303) 837-5837

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
27<sup>th</sup> Floor  
New York, New York 10019

Attention: David Katz  
Facsimile: (212) 403-2309

or at such other address as the party to which such notice or other communication is to be given has last notified the party given the same in the manner provided in this Section, and if not given the same shall be deemed to have been received on the date of such delivery or sending.

#### **Section 4.9 Counterparts**

This agreement may be executed in counterparts (by facsimile or otherwise), each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

#### **Section 4.10 Jurisdiction**

This agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Each party hereto irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising hereunder or related hereto.

**[Signature page follows.]**

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**IN WITNESS WHEREOF** , the parties hereto have caused this agreement to be duly executed as of the date first above written.

**NEWMONT MINING CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory

**NEWMONT HOLDINGS ULC**

Per: \_\_\_\_\_  
Authorized Signatory

**NEWMONT MINING CORPORATION OF CANADA  
LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

**SUPPORT AGREEMENT**

**THIS AGREEMENT** made as of December 15, 2011, between Newmont Mining Corporation, a corporation existing under the laws of the State of Delaware (hereinafter referred to as “**Newmont**”), Newmont Holdings ULC, an unlimited liability company existing under the laws of Nova Scotia (hereinafter referred to as “**NHULC**”) and Newmont Mining Corporation of Canada Limited, a corporation existing under the laws of the Province of British Columbia (hereinafter referred to as “**New Exchangeco**”).

**RECITALS:**

- (a) in connection with an arrangement agreement (the “**Arrangement Agreement**”) made as of October 31, 2011 between Newmont, NHULC, Newmont Canada FN Holdings Limited (“**Old NMCCCL**”), New Exchangeco and Newmont NE Holdings Subco Limited, exchangeable shares in the capital of New Exchangeco (the “**Exchangeable Shares**”) are to be issued to certain holders of exchangeable shares in the capital of Old NMCCCL pursuant to the Plan of Arrangement contemplated by the Arrangement Agreement; and
- (b) pursuant to the Arrangement Agreement, Newmont, New Exchangeco and NHULC are required to execute a support agreement substantially in the form of this agreement.

In consideration of the foregoing and the mutual agreements contained herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

**Section 1.1 Defined Terms**

Each initially capitalized term used and not otherwise defined herein shall have the meaning ascribed thereto in the rights, privileges, restrictions and conditions (collectively, the “**Share Provisions**”) attaching to the Exchangeable Shares as set out in the articles of New Exchangeco. In this agreement, “**including**” means “including without limitation” and “**includes**” means “includes without limitation”. In this agreement, “**Calco**” means NHULC, or in Newmont’s sole discretion, such other company which exercises the Liquidation Call Right, Retraction Call Right or Redemption Call Right, including Newmont or NHULC, which Newmont causes to be bound by the terms and conditions set forth in this agreement.

**Section 1.2 Interpretation Not Affected by Headings**

The division of this agreement into Articles, Sections, and other portions and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this agreement. Unless otherwise specified, references to an “Article” or “Section” refer to the specified Article or Section of this agreement.

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### Section 1.3 Number, Gender

Words importing the singular number only shall include the plural and vice versa. Words importing any gender shall include all genders.

### Section 1.4 Date for any Action

If any date on which any action is required to be taken under this agreement is not a business day, such action shall be required to be taken on the next succeeding business day. For the purposes of this agreement, a “ **business day** ” means any day other than a Saturday, Sunday, a public holiday or a day on which commercial banks are not open for business in Toronto, Ontario or New York, New York under applicable law.

## ARTICLE 2 COVENANTS OF NEWMONT AND ACQUISITIONCO

### Section 2.1 Covenants Regarding Exchangeable Shares

So long as any Exchangeable Shares not owned by Newmont or its affiliates are outstanding, Newmont will:

- (a) not declare or pay any dividend on the Newmont Shares unless (i) New Exchangeco shall (A) on the same day declare or pay, as the case may be, an equivalent dividend (as provided for in the Share Provisions) on the Exchangeable Shares (an “ **Equivalent Dividend** ”), and (B) have sufficient money or other assets or authorized but unissued securities available to enable the due declaration and the due and punctual payment, in accordance with applicable law, of any such Equivalent Dividend, or (ii) New Exchangeco shall (A) subdivide the Exchangeable Shares in lieu of a stock dividend thereon (as provided for in the Share Provisions) (an “ **Equivalent Stock Subdivision** ”), and (B) have sufficient authorized but unissued securities available to enable the Equivalent Stock Subdivision;
  - (b) advise New Exchangeco sufficiently in advance of the declaration by Newmont of any dividend on the Newmont Shares and take all such other actions as are reasonably necessary, in co-operation with New Exchangeco, to ensure that (i) the respective declaration date, record date and payment date for an Equivalent Dividend on the Exchangeable Shares shall be the same as the declaration date, record date and payment date for the corresponding dividend on the Newmont Shares, or (ii) the record date and effective date for an Equivalent Stock Subdivision shall be the same as the record date and payment date for the corresponding stock dividend on the Newmont Shares;
  - (c) ensure that the record date for any dividend declared on the Newmont Shares is not less than 7 days after the declaration date of such dividend;
  - (d) take all such actions and do all such things as are reasonably necessary to enable and permit New Exchangeco, in accordance with applicable law, to pay and
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otherwise perform its obligations with respect to the satisfaction of the Liquidation Amount, the Retraction Price or the Redemption Price in respect of each issued and outstanding Exchangeable Share (other than Exchangeable Shares owned by Newmont or its affiliates) upon the liquidation, dissolution or winding-up of New Exchangeco or any other distribution of the assets of New Exchangeco among its shareholders for the purpose of winding up its affairs, the delivery of a Retraction Request by a holder of Exchangeable Shares or a redemption of Exchangeable Shares by New Exchangeco, as the case may be, including all such actions and all such things as are necessary or desirable to enable and permit New Exchangeco to cause to be delivered Newmont Shares to the holders of Exchangeable Shares in accordance with the provisions of section 5, 6 or 7, as the case may be, of the Share Provisions;

- (e) take all such actions and do all such things as are reasonably necessary or desirable to enable and permit Callco or Newmont, in accordance with applicable law, to perform its obligations arising upon the exercise by it of the Liquidation Call Right, the Retraction Call Right or the Redemption Call Right, including all such actions and all such things as are necessary or desirable to enable and permit Callco or Newmont to cause to be delivered Newmont Shares to the holders of Exchangeable Shares in accordance with the provisions of the Liquidation Call Right, the Retraction Call Right or the Redemption Call Right, as the case may be; and
- (f) except in connection with any event, circumstance or action which causes or could cause the occurrence of a Redemption Date, not exercise its vote as a shareholder to initiate the voluntary liquidation, dissolution or winding up of New Exchangeco or any other distribution of the assets of New Exchangeco among its shareholders for the purpose of winding up its affairs, nor take any action or omit to take any action that is designed to result in the liquidation, dissolution or winding up of New Exchangeco or any other distribution of the assets of New Exchangeco among its shareholders for the purpose of winding up its affairs.

## **Section 2.2 Segregation of Funds**

Newmont will cause New Exchangeco to deposit a sufficient amount of funds in a separate account of New Exchangeco and segregate a sufficient amount of such other assets and property as is necessary to enable New Exchangeco to pay dividends when due and to pay or otherwise satisfy its respective obligations under section 5, 6 and 7 of the Share Provisions, as applicable.

## **Section 2.3 Reservation of Newmont Shares**

Newmont hereby represents, warrants and covenants in favour of New Exchangeco and Callco that Newmont has reserved for issuance and will, at all times while any Exchangeable Shares (other than Exchangeable Shares held by Newmont or its affiliates) are outstanding, keep available, free from pre-emptive and other rights, out of its authorized and unissued capital stock such number of Newmont Shares (or other shares or securities into which Newmont Shares may be reclassified or changed as contemplated by Section 2.7): (a) as is equal to the sum of (i) the

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number of Exchangeable Shares issued and outstanding from time to time and (ii) the number of Exchangeable Shares issuable upon the exercise of all rights to acquire Exchangeable Shares outstanding from time to time; and (b) as are now and may hereafter be required to enable and permit Newmont to meet its obligations under the Voting and Exchange Trust Agreement and under any other security or commitment pursuant to which Newmont may now or hereafter be required to issue Newmont Ordinary Shares, to enable and permit Callco or Newmont to meet its obligations under each of the Liquidation Call Right, the Retraction Call Right and the Redemption Call Right and to enable and permit New Exchangeco to meet its obligations hereunder and under the Share Provisions.

#### **Section 2.4 Notification of Certain Events**

In order to assist Newmont to comply with its obligations hereunder and to permit Callco or Newmont to exercise the Liquidation Call Right, the Retraction Call Right and the Redemption Call Right, New Exchangeco will notify Newmont and Callco of each of the following events at the time set forth below:

- (a) in the event of any determination by the Board of Directors of New Exchangeco to institute voluntary liquidation, dissolution or winding-up proceedings with respect to New Exchangeco or to effect any other distribution of the assets of New Exchangeco among its shareholders for the purpose of winding up its affairs, at least 60 days prior to the proposed effective date of such liquidation, dissolution, winding-up or other distribution;
- (b) promptly, upon the earlier of receipt by New Exchangeco of notice of and New Exchangeco otherwise becoming aware of any threatened or instituted claim, suit, petition or other proceedings with respect to the involuntary liquidation, dissolution or winding-up of New Exchangeco or to effect any other distribution of the assets of New Exchangeco among its shareholders for the purpose of winding up its affairs;
- (c) immediately, upon receipt by New Exchangeco of a Retraction Request;
- (d) on the same date on which notice of redemption is given to holders of Exchangeable Shares, upon the determination of a Redemption Date in accordance with the Share Provisions; and
- (e) as soon as practicable upon the issuance by New Exchangeco of any Exchangeable Shares or rights to acquire Exchangeable Shares (other than the issuance of Exchangeable Shares and rights to acquire Exchangeable Shares pursuant to the Arrangement).

#### **Section 2.5 Delivery of Newmont Shares to New Exchangeco and Callco**

In furtherance of its obligations under Section 2.1(d) and Section 2.1(e), upon notice from New Exchangeco or Callco of any event that requires New Exchangeco or Callco to cause to be delivered Newmont Shares to any holder of Exchangeable Shares, Newmont shall forthwith allot, issue and deliver or cause to be delivered to the relevant holder of Exchangeable Shares as

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directed by New Exchangeco or Callco the requisite number of Newmont Shares to be allotted to, received by, and issued to or to the order of, the former holder of the surrendered Exchangeable Shares (but, for the avoidance of doubt, not to New Exchangeco or Callco). All such Newmont Shares shall be duly authorized and validly issued as fully paid and shall be free and clear of any lien, claim or encumbrance. In consideration of the issuance and delivery of each such Newmont Share, New Exchangeco or Callco, as the case may be, shall subscribe a cash amount or pay a purchase price equal to the fair market value of such Newmont Shares.

## **Section 2.6 Qualification of Newmont Shares**

If any Newmont Shares (or other shares or securities into which Newmont Shares may be reclassified or changed as contemplated by Section 2.7) to be issued and delivered hereunder require registration or qualification with or approval of or the filing of any document, including any prospectus or similar document or the taking of any proceeding with or the obtaining of any order, ruling or consent from any governmental or regulatory authority under any United States or Canadian federal, state, provincial or territorial securities or other law or regulation or pursuant to the rules and regulations of any securities or other regulatory authority in the United States or Canada or the fulfillment of any other United States or Canadian legal requirement before such shares (or such other shares or securities) may be issued by Newmont and delivered by Newmont at the direction of Callco or New Exchangeco, if applicable, to the holder of surrendered Exchangeable Shares or in order that such shares (or such other shares or securities) may be freely traded thereafter (other than any restrictions of general application on transfer by reason of a holder being a “ **control person** ” for purposes of Canadian federal, provincial or territorial securities Law or the equivalent thereof under any United States Laws), Newmont will in good faith expeditiously take all such actions and do all such things as are reasonably necessary or desirable to cause such Newmont Shares (or such other shares or securities) to be and remain duly registered, qualified or approved under United States and/or Canadian law. Newmont will in good faith expeditiously take all such actions and do all such things as are reasonably necessary or desirable to cause all Newmont Shares (or such other shares or securities) to be delivered hereunder to be listed, quoted or posted for trading on all stock exchanges and quotation systems on which outstanding Newmont Shares (or such other shares or securities) have been listed by Newmont and remain listed and are quoted or posted for trading at such time.

## **Section 2.7 Economic Equivalence**

So long as any Exchangeable Shares not owned by Newmont or its affiliates are outstanding:

- (a) Newmont will not without prior approval of New Exchangeco and the prior approval of the holders of the Exchangeable Shares given in accordance with section 10(2) of the Share Provisions:
    - (i) issue or distribute Newmont Shares (or securities exchangeable for or convertible into or carrying rights to acquire Newmont Shares) to the holders of all or substantially all of the then outstanding Newmont Shares by way of stock dividend or other distribution, other than an issue of Newmont Shares (or securities exchangeable for or convertible into or
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carrying rights to acquire Newmont Shares) to holders of Newmont Shares (i) who exercise an option to receive dividends in Newmont Shares (or securities exchangeable for or convertible into or carrying rights to acquire Newmont Shares) in lieu of receiving cash dividends, or (ii) pursuant to any dividend reinvestment plan or similar arrangement; or

- (ii) issue or distribute rights, options or warrants to the holders of all or substantially all of the then outstanding Newmont Shares entitling them to subscribe for or to purchase Newmont Shares (or securities exchangeable for or convertible into or carrying rights to acquire Newmont Shares); or
- (iii) issue or distribute to the holders of all or substantially all of the then outstanding Newmont Shares (A) shares or securities (including evidence of indebtedness) of Newmont of any class (other than Newmont Shares or securities convertible into or exchangeable for or carrying rights to acquire Newmont Shares), or (B) rights, options, warrants or other assets other than those referred to in Section 2.7(a)(ii),

unless in each case the economic equivalent on a per share basis of such rights, options, securities, shares, evidences of indebtedness or other assets is issued or distributed simultaneously to holders of the Exchangeable Shares and at least 7 days prior written notice thereof is given to the holders of Exchangeable Shares; provided that, for greater certainty, the above restrictions shall not apply to any securities issued or distributed by Newmont in order to give effect to and to consummate, is in furtherance of or is otherwise in connection with the transactions contemplated by, and in accordance with, the Plan of Arrangement.

- (b) Newmont will not without the prior approval of New Exchangeco and the prior approval of the holders of the Exchangeable Shares given in accordance with section 10(2) of the Share Provisions:
  - (i) subdivide, redivide or change the then outstanding Newmont Shares into a greater number of Newmont Shares; or
  - (ii) reduce, combine, consolidate or change the then outstanding Newmont Shares into a lesser number of Newmont Shares; or
  - (iii) reclassify or otherwise change Newmont Shares or effect an amalgamation, merger, reorganization or other transaction affecting Newmont Shares;

unless the same or an economically equivalent change shall simultaneously be made to, or in the rights of the holders of, the Exchangeable Shares and at least seven days prior written notice is given to the holders of Exchangeable Shares.

- (c) Newmont will ensure that the record date for any event referred to in Section 2.7(a) or Section 2.7(b), or (if no record date is applicable for such event) the effective date for any such event, is not less than five business days after the date
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on which such event is declared or announced by Newmont (with contemporaneous notification thereof by Newmont to New Exchangeco).

- (d) The Board of Directors of New Exchangeco shall determine, acting in good faith and in its sole discretion, economic equivalence for the purposes of any event referred to in Section 2.7(a) or Section 2.7(b) and each such determination shall be conclusive and binding on Newmont. In making each such determination, the following factors shall, without excluding other factors determined by the Board of Directors of New Exchangeco to be relevant, be considered by the Board of Directors of New Exchangeco:
- (i) in the case of any stock dividend or other distribution payable in Newmont Shares, the number of such shares issued in proportion to the number of Newmont Shares previously outstanding;
  - (ii) in the case of the issuance or distribution of any rights, options or warrants to subscribe for or purchase Newmont Shares (or securities exchangeable for or convertible into or carrying rights to acquire Newmont Shares), the relationship between the exercise price of each such right, option or warrant and the Current Market Price of a Newmont Share;
  - (iii) in the case of the issuance or distribution of any other form of property (including any shares or securities of Newmont of any class other than Newmont Shares, any rights, options or warrants other than those referred to in Section 2.7(d)(ii), any evidences of indebtedness of Newmont or any assets of Newmont), the relationship between the fair market value (as determined by the Board of Directors of New Exchangeco in the manner above contemplated) of such property to be issued or distributed with respect to each outstanding Newmont Share and the Current Market Price of a Newmont Share;
  - (iv) in the case of any subdivision, redivision or change of the then outstanding Newmont Shares into a greater number of Newmont Shares or the reduction, combination, consolidation or change of the then outstanding Newmont Shares into a lesser number of Newmont Shares or any amalgamation, merger, reorganization or other transaction affecting Newmont Shares, the effect thereof upon the then outstanding Newmont Shares; and
  - (v) in all such cases, the general taxation consequences of the relevant event to holders of Exchangeable Shares to the extent that such consequences may differ from the taxation consequences to holders of Newmont Shares as a result of differences between taxation laws of Canada and the United States (except for any differing consequences arising as a result of differing marginal taxation rates and without regard to the individual circumstances of holders of Exchangeable Shares).
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- (e) New Exchangeco agrees that, to the extent required, upon due notice from Newmont, New Exchangeco will use its best efforts to take or cause to be taken such steps as may be necessary for the purposes of ensuring that appropriate dividends are paid or other distributions are made by New Exchangeco, or subdivisions, redivisions or changes are made to the Exchangeable Shares, in order to implement the required economic equivalence with respect to the Newmont Shares and Exchangeable Shares as provided for in this Section 2.7.

## **Section 2.8 Tender Offers**

In the event that a tender offer, share exchange offer, issuer bid, take-over bid or similar transaction with respect to Newmont Shares (an “**Offer**”) is proposed by Newmont or is proposed to Newmont or its shareholders and is recommended by the Board of Directors of Newmont, or is otherwise effected or to be effected with the consent or approval of the Board of Directors of Newmont, and the Exchangeable Shares are not redeemed by New Exchangeco or purchased by Callco or Newmont pursuant to the Redemption Call Right, Newmont will expeditiously and in good faith take all such actions and do all such things as are reasonably necessary or desirable to enable and permit holders of Exchangeable Shares (other than Newmont and its affiliates) to participate in such Offer to the same extent and on an economically equivalent basis as the holders of Newmont Shares, without discrimination. Without limiting the generality of the foregoing, Newmont will expeditiously and in good faith take all such actions and do all such things as are reasonably necessary or desirable to ensure that holders of Exchangeable Shares may participate in each such Offer without being required to retract Exchangeable Shares as against New Exchangeco (or, if so required, to ensure that any such retraction, shall be effective only upon, and shall be conditional upon, the closing of such Offer and only to the extent necessary to tender or deposit to the Offer). Nothing herein shall affect the rights of New Exchangeco to redeem (or Callco or Newmont to purchase pursuant to the Redemption Call Right) Exchangeable Shares, as applicable, in the event of a Newmont Control Transaction.

## **Section 2.9 Ownership of Outstanding Shares**

Without the prior approval of New Exchangeco and the prior approval of the holders of the Exchangeable Shares given in accordance with section 10(2) of the Share Provisions, Newmont covenants and agrees in favour of New Exchangeco that, as long as any outstanding Exchangeable Shares are owned by any person other than Newmont or any of its affiliates, Newmont will be and remain the direct or indirect beneficial owner of all issued and outstanding voting shares in the capital of New Exchangeco and Callco.

## **Section 2.10 Newmont and Affiliates Not to Vote Exchangeable Shares**

Newmont covenants and agrees that it will appoint and cause to be appointed proxyholders with respect to all Exchangeable Shares held by it and its affiliates for the sole purpose of attending each meeting of holders of Exchangeable Shares in order to be counted as part of the quorum for each such meeting. Newmont further covenants and agrees that it will not, and will cause its affiliates not to, exercise any voting rights which may be exercisable by holders of Exchangeable Shares from time to time pursuant to the Share Provisions or pursuant to the provisions of the BCBCA (or any successor or other corporate statute by which New

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Exchangeco may in the future be governed) with respect to any Exchangeable Shares held by it or by its affiliates in respect of any matter considered at any meeting of holders of Exchangeable Shares.

### **Section 2.11 Ordinary Market Purchases**

For certainty, nothing contained in this agreement, including the obligations of Newmont contained in Section 2.8, shall limit the ability of Newmont (or any of its subsidiaries including, without limitation, Calco or New Exchangeco) to make ordinary market purchases of Newmont Shares in accordance with applicable laws and regulatory or stock exchange requirements.

### **Section 2.12 Stock Exchange Listing**

Newmont covenants and agrees in favour of New Exchangeco that, as long as any outstanding Exchangeable Shares are owned by any person other than Newmont or any of its affiliates, Newmont will use its best efforts to maintain a listing for such Exchangeable Shares on The Toronto Stock Exchange.

## **ARTICLE 3 NEWMONT SUCCESSORS**

### **Section 3.1 Certain Requirements in Respect of Combination, etc.**

As long as any outstanding Exchangeable Shares are owned by any person other than Newmont or any of its affiliates, Newmont shall not consummate any transaction (whether by way of reconstruction, reorganization, consolidation, arrangement, merger, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, property and assets would become the property of any other person or, in the case of a merger, of the continuing corporation resulting therefrom unless, but may do so if:

- (a) such other person or continuing corporation (the “**Newmont Successor**”) by operation of law, becomes, without more, bound by the terms and provisions of this agreement or, if not so bound, executes, prior to or contemporaneously with the consummation of such transaction, an agreement supplemental hereto and such other instruments (if any) as are reasonably necessary or advisable to evidence the assumption by the Newmont Successor of liability for all moneys payable and property deliverable hereunder and the covenant of such Newmont Successor to pay and deliver or cause to be delivered the same and its agreement to observe and perform all the covenants and obligations of Newmont under this agreement; and
  - (b) such transaction shall be upon such terms and conditions as substantially to preserve and not to impair in any material respect any of the rights, duties, powers and authorities of the other parties hereunder or the holders of the Exchangeable Shares.
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**Section 3.2 Vesting of Powers in Successor**

Whenever the conditions of Section 3.1 have been duly observed and performed, the parties, if required by Section 3.1, shall execute and deliver the supplemental agreement provided for in Section 3.1(a) and thereupon the Newmont Successor and such other person that may then be the issuer of the Newmont Shares shall possess and from time to time may exercise each and every right and power of Newmont under this agreement in the name of Newmont or otherwise and any act or proceeding by any provision of this agreement required to be done or performed by the Board of Directors of Newmont or any officers of Newmont may be done and performed with like force and effect by the directors or officers of such Newmont Successor.

**Section 3.3 Wholly-Owned Subsidiaries**

Nothing herein shall be construed as preventing (i) the amalgamation or merger of any wholly-owned direct or indirect subsidiary of Newmont with or into Newmont, (ii) the winding-up, liquidation or dissolution of any wholly-owned direct or indirect subsidiary of Newmont, provided that all of the assets of such subsidiary are transferred to Newmont or another wholly-owned direct or indirect subsidiary of Newmont, or (iii) any other distribution of the assets of any wholly-owned direct or indirect subsidiary of Newmont among the shareholders of such subsidiary for the purpose of winding up its affairs, and any such transactions are expressly permitted by this Article 3.

**ARTICLE 4  
GENERAL**

**Section 4.1 Term**

This agreement shall come into force and be effective as of the date hereof and shall terminate and be of no further force and effect at such time as no Exchangeable Shares (or securities or rights convertible into or exchangeable for or carrying rights to acquire Exchangeable Shares) are held by any person other than Newmont and any of its affiliates.

**Section 4.2 Changes in Capital of Newmont and New Exchangeco**

At all times after the occurrence of any event contemplated pursuant to Section 2.7 and Section 2.8 or otherwise, as a result of which either Newmont Shares or the Exchangeable Shares or both are in any way changed, this agreement shall forthwith be amended and modified as necessary in order that it shall apply with full force and effect, *mutatis mutandis*, to all new securities into which Newmont Shares or the Exchangeable Shares or both are so changed and the parties hereto shall execute and deliver an agreement in writing giving effect to and evidencing such necessary amendments and modifications.

**Section 4.3 Severability**

If any term or other provision of this agreement is invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and provisions of this agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially

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adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

**Section 4.4 Amendments, Modifications**

- (a) Subject to Section 4.2, Section 4.3 and Section 4.5 this agreement may not be amended or modified except by an agreement in writing executed by New Exchangeco, Callco and Newmont and approved by the holders of the Exchangeable Shares in accordance with section 10(2) of the Share Provisions.
- (b) No amendment or modification or waiver of any of the provisions of this agreement otherwise permitted hereunder shall be effective unless made in writing and signed by all of the parties hereto.

**Section 4.5 Ministerial Amendments**

Notwithstanding the provisions of Section 4.4, the parties to this agreement may in writing at any time and from time to time, without the approval of the holders of the Exchangeable Shares, amend or modify this agreement for the purposes of:

- (a) adding to the covenants of any or all parties provided that the Board of Directors of each of New Exchangeco, Callco and Newmont shall be of the good faith opinion that such additions will not be prejudicial to the rights or interests of the holders of the Exchangeable Shares;
- (b) making such amendments or modifications not inconsistent with this agreement as may be necessary or desirable with respect to matters or questions which, in the good faith opinion of the Board of Directors of each of New Exchangeco, Callco and Newmont, it may be expedient to make, provided that each such Board of Directors shall be of the good faith opinion that such amendments or modifications will not be prejudicial to the rights or interests of the holders of the Exchangeable Shares; or
- (c) making such changes or corrections which, on the advice of counsel to New Exchangeco, Callco and Newmont, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error, provided that the Boards of Directors of each of New Exchangeco, Callco and Newmont shall be of the good faith opinion that such changes or corrections will not be prejudicial to the rights or interests of the holders of the Exchangeable Shares.

**Section 4.6 Meeting to Consider Amendments**

New Exchangeco, at the request of Newmont, shall call a meeting or meetings of the holders of the Exchangeable Shares for the purpose of considering any proposed amendment or

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modification requiring approval pursuant to Section 4.4. Any such meeting or meetings shall be called and held in accordance with the bylaws of New Exchangeco, the Share Provisions and all applicable laws.

**Section 4.7 Enurement**

This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

**Section 4.8 Notices to Parties**

Any notice and other communications required or permitted to be given pursuant to this agreement shall be sufficiently given if delivered in person or if sent by facsimile transmission (provided such transmission is recorded as being transmitted successfully) to the parties at the following addresses:

- (a) in the case of Newmont, to the following address:

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

Attention: General Counsel or Secretary  
Facsimile: (303) 837-5837

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
27<sup>th</sup> Floor  
New York, New York 10019

Attention: David Katz  
Facsimile: (212) 403-2309

- (b) in the case of Callco, to the following address:

c/o Newmont Mining Corporation  
6363 South Fiddler's Green Circle, Suite 800  
Greenwood Village, CO 80111

Attention: General Counsel or Secretary  
Facsimile: (303) 837-5837

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with a copy to:

Goodmans LLP  
Suite 3400, 333 Bay Street  
Toronto, Ontario, Canada M5H 2S7

Attention: Jonathan Lampe  
Facsimile: (416) 979-1234

(c) in the case of New Exchangeco, to the following address:

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

Attention: General Counsel or Secretary  
Facsimile: (303) 837-5837

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
27<sup>th</sup> Floor  
New York, New York 10019

Attention: David Katz  
Facsimile: (212) 403-2309

or at such other address as the party to which such notice or other communication is to be given has last notified the party given the same in the manner provided in this Section, and if not given the same shall be deemed to have been received on the date of such delivery or sending.

#### **Section 4.9 Counterparts**

This agreement may be executed in counterparts (by facsimile or otherwise), each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

#### **Section 4.10 Jurisdiction**

This agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Each party hereto irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising hereunder or related hereto.

**[Signature page follows.]**

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**IN WITNESS WHEREOF** , the parties hereto have caused this agreement to be duly executed as of the date first above written.

**NEWMONT MINING CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory

**NEWMONT HOLDINGS ULC**

Per: \_\_\_\_\_  
Authorized Signatory

**NEWMONT MINING CORPORATION OF CANADA  
LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory