

# NEWMONT MINING CORP /DE/

## FORM 8-K (Current report filing)

Filed 03/02/05 for the Period Ending 02/24/05

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

# NEWMONT MINING CORP /DE/

## FORM 8-K (Unscheduled Material Events)

Filed 3/2/2005 For Period Ending 2/24/2005

Address	1700 LINCOLN STREET DENVER, Colorado 80203
Telephone	303-863-7414
CIK	0001164727
Industry	Gold & Silver
Sector	Basic Materials
Fiscal Year	12/31

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**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported):**  
February 24, 2005

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**Newmont Mining Corporation**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or Other Jurisdiction of Incorporation)

**001-31240**

(Commission File Number)

**84-1611629**

(I.R.S. Employer Identification No.)

**1700 Lincoln Street, Denver, Colorado 80203**

(Address of principal executive offices) (zip code)

**(303) 863-7414**

(Registrant's telephone number, including area code)

**Not Applicable**

(Former Name or Former Address, if Changed Since Last Report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## ITEM 1.01. Entry into a Material Definitive Agreement

### Award of Bonuses for 2004 Performance

On February 24, 2005, the Compensation and Management Development Committee (the “Committee”) of the Board of Directors of Newmont Mining Corporation (the “Corporation”) awarded annual cash incentives for 2004 to the Corporation’s Chief Executive Officer and the Corporation’s other four most highly compensated executive officers in 2004 (the “named executive officers”) in the amounts set forth below. Annual cash incentive awards were made pursuant to the Corporation’s Annual Incentive Compensation Payroll Practice (“AICP”). The named executive officers (and other senior management) are eligible to receive both a corporate performance bonus and a personal performance bonus. Participants in the AICP are assigned target awards as a percentage of their eligible base salary. Target award percentages increase at higher management levels to 100% of eligible base salary in the case of the Chief Executive Officer. The weight of corporate performance and personal performance factors varies by participant.

The 2004 corporate performance bonus is paid in cash based on achievement of corporate performance goals, which consist of (a) certain goals relating to net asset value, (b) certain reserve replacement goals, (c) certain free cash flow goals, and (d) an earnings goal. All of these performance goals were established by the Committee. The AICP bonus amount depends on the Corporation’s performance against these goals. If the Corporation meets the goals, each eligible employee receives a payment equal to his or her target award percentage; if the Corporation exceeds the goals, the payment can increase to as high as 200% of the target award percentage; if the Corporation does not meet the goals, the payment can decrease and, if the Corporation fails to achieve certain threshold performance, the payment will not be made at all. In 2004, the Corporation achieved a corporate performance percentage of 106.6% of target performance, based on the Corporation’s actual performance results as compared to the 2004 corporate performance goals.

The personal performance bonus is also paid in cash. Target bonus levels are determined by the grade level of each respective executive officer or other AICP participant, and payouts are based on an evaluation of each executive’s personal contribution to the Corporation. In 2004, the maximum payout percentage for the personal performance bonus was 150% of the target level for the grade (with awards paid above the target level based on exemplary performance). Performance deemed to fall below expectations results in a payment below the target level, or in some cases no payment at all. In 2004, personal performance awards to the named executive officers and other AICP participants were based on certain factors such as the individual goals and accomplishments of the relevant executive officer or other AICP participant, as well as his or her contributions to the positive results realized by the Corporation during 2004.

In 2003, the Corporation eliminated the Intermediate Term Incentive Compensation Plan (“ITIP”), which paid bonuses in the form of cash and restricted stock based on a consolidated three-year performance measurement. The elimination of the ITIP resulted in a reduction in total direct compensation for the executive team. In order to address this reduction, the Committee approved cash transition payments over three years to those executives who previously participated in the ITIP. The transition payments are also based on the Corporation’s achievement of corporate performance goals under the AICP, in which the Corporation achieved a corporate performance percentage of 106.6% of target performance based on the Corporation’s actual performance during 2004.

The following chart represents cash payments awarded to the named executive officers under the AICP and the transition payments described above for performance in 2004:

Name and Title	Corporate Performance Bonus	Personal Performance Bonus	Transition Payment
Wayne W. Murdy, Chairman and Chief Financial Officer	\$ 562,448	\$ 298,856	\$320,466
Pierre Lassonde, President	323,965	207,209	139,928
David H. Francisco, Executive Vice President, Operations	241,449	130,238	108,391
Bruce D. Hansen, Senior Vice President and Chief Financial Officer	190,548	111,719	88,068
John A. S. Dow, Executive Vice President	188,775	110,680	90,777

On February 24, 2005, the Committee also awarded restricted stock (or, in the case of Mr. Lassonde, restricted stock units) based on the Corporation's performance. Restricted stock awards are intended to reward the named executive officers and other eligible executives based on the attainment of corporate performance goals established by the Committee, which track the corporate performance goals established under the AICP, as described above. If the Corporation meets the corporate performance goals, each eligible executive will receive an award of stock or units equal to his or her target award percentage; if the Corporation exceeds the goals, the award can increase to as high as 200% of the target award percentage; if the Corporation does not meet the goals, the award can decrease and, if the Corporation fails to achieve certain threshold performance, the award will not be made at all. The named executive officers and other eligible executives have been assigned target awards based upon a percentage of their eligible base salary, which ranged from 75% to 135% for 2004 for the named executive officers. In 2004, the Corporation achieved a corporate performance percentage of 106.6% of target performance, based on the Corporation's actual performance results as compared to the 2004 performance goals. On February 24, 2005, as a result of meeting the corporate performance goals for 2004, the Committee made restricted stock awards for 2004 in the form of restricted stock of Newmont Common Stock or restricted stock units under the Newmont Mining Corporation 1999 Employees Stock Plan, with such stock or units vesting in equal installments over three years. The named executive officers were awarded the following amounts of restricted stock or units of Newmont Common Stock for 2004:

	Restricted Stock Awarded
Wayne W. Murdy	25,427
Pierre Lassonde	13,216
David H. Francisco	9,209
Bruce D. Hansen	7,268
John A. S. Dow	7,200

The terms of the restricted stock and restricted stock units are governed by the Newmont Mining Corporation 1999 Employees Stock Plan and are subject to the restrictions set forth in the standard form of award agreements which are delivered to each executive. Copies of the forms of agreement under which such restricted stock or restricted stock unit awards were made are attached hereto as Exhibits 10.1 and 10.2, respectively.

#### Establishment of 2005 Performance Targets

The Committee also established and approved on February 24, 2005 certain goals relating to the corporate performance targets for the 2005 AICP, according to which annual cash incentives, restricted stock awards and cash transition payments will be determined for 2005. The performance targets for 2005 consist of five performance factors, with equal weighting, which measure achievement of certain goals relating to (a) net asset value, (b) replacement of proven and probably reserves, (c) free cash flow, (d) earnings per share, and (e) gross margin.

#### Base Salaries

On February 24, 2005 (and February 1, 2004 in the case of Mr. Murdy), the Committee approved the annual base salaries of the Corporation's named executive officers after a review of personal performance and competitive market data. Such salaries are effective February 1, 2005, except in the case of Mr. Murdy, whose 2005 salary was effective January 1, 2005. The following table sets forth the base salaries for the named executive officers for 2005 and well as 2004:

<u>Name</u>	<u>Year</u>	<u>Base Salary</u>
Wayne W. Murdy	2005	\$900,000
	2004	\$800,000
Pierre Lassonde	2005	\$632,245
	2004	\$591,360
David H. Francisco	2005	\$500,000
	2004	\$456,000
Bruce D. Hansen	2005	\$405,000
	2004	\$360,000
John A.S. Dow	2005	\$356,000 <sup>1</sup>
	2004	\$356,000

<sup>1</sup> Mr. Dow retired on March 1, 2005. Therefore, his salary was not revised for 2005.

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ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(c) Exhibits

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
10.1	Form of Restricted Stock Award Agreement used for the Executive Officers pursuant to the Newmont Mining Corporation 1999 Employees Stock Plan
10.2	Form of Restricted Stock Unit Agreement used for the Executive Officers pursuant to the Newmont Mining Corporation 1999 Employee Stock Plan.

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SIGNATURE

Pursuant to the requirements of the Securities and Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

By: /s/ Sharon E. Thomas

\_\_\_\_\_  
Name: Sharon E. Thomas

Title: Vice President and Secretary

Dated: March 2, 2005

EXHIBIT INDEX

Exhibit Number	Description of Exhibit
10.1	Form of Restricted Stock Award Agreement used for the Executive Officers pursuant to the Newmont Mining Corporation 1999 Employees Stock Plan
10.2	Form of Restricted Stock Unit Agreement used for the Executive Officers pursuant to the Newmont Mining Corporation 1999 Employee Stock Plan

**NEWMONT MINING CORPORATION**  
**1999 EMPLOYEES STOCK PLAN**  
**RESTRICTED STOCK AWARD AGREEMENT**

This Agreement ("Agreement") is dated as of \_\_\_\_\_, between Newmont Mining Corporation, a Delaware corporation ("Newmont") and [ \_\_\_\_\_ ] ("Executive").

**WITNESSETH:**

WHEREAS, in recognition of Executive's contributions and services to Newmont and its subsidiaries and affiliates during the 2004 calendar year, the Compensation Committee of the Newmont Board of Directors ("Newmont Committee") has awarded Executive a grant of restricted shares of Newmont's common stock ("Stock"), subject to the restrictions set forth in this Agreement pursuant to the terms and conditions of the Newmont Mining Corporation 1999 Employees Stock Plan ("Stock Plan"); capitalized terms used but not defined herein shall have the meanings given such terms in the Stock Plan;

NOW, THEREFORE, in consideration of the premises and as an inducement and incentive to Executive to perform his duties and fulfill his responsibilities on behalf of Newmont and its subsidiaries at the highest level of dedication and competence, and other good and valuable consideration, receipt of which is hereby acknowledged, Newmont hereby awards to Executive [ \_\_\_\_\_ ] shares of Stock, pursuant to the terms and subject to the conditions and restrictions set forth in this Agreement and the Stock Plan, including the Vesting Period, as such term is defined in this Agreement ("Restricted Stock"), and in connection with such award, Newmont and Executive hereby agree as follows:

**AGREEMENT:**

1. **Vesting Period** . The Vesting Period shall commence on the date of this Agreement and shall end on the dates set forth below as to that percentage of the total shares of Restricted Stock subject to this Agreement set forth opposite each such date:

<u>Date</u>	<u>Percentage Vested</u>
	33%
	33%
	34%

2. **Stock Certificate Legend** . Executive acknowledges that if stock certificates are issued to him and registered in his name for the Restricted Stock, such certificate(s) shall bear the following legend and such other legends as may be required by law or contract:

"The shares represented by this certificate are subject to the restrictions, terms and conditions set forth in a Restricted Stock Award Agreement, dated as of \_\_\_\_\_, between Newmont Mining Corporation and the registered owner ("Agreement"). Copies of the Agreement are on file in the offices of the Secretary, Newmont Mining Corporation, 1700 Lincoln Street, Denver, Colorado 80203."

Executive agrees that upon receipt of such stock certificate(s) to deposit all such stock certificate(s) with Newmont or such other escrow holder as the Newmont Committee may appoint, together with a stock power endorsed in blank or other appropriate instrument of transfer, to be held by Newmont or such escrow holder. The foregoing to the contrary notwithstanding, Executive agrees that, in Newmont's discretion, such stock certificate(s), so registered and legended, may be delivered directly to and held by the Secretary of Newmont, or, alternatively, Executive's ownership of the Restricted Stock may be evidenced solely by a "book entry" ( *i.e.*, a computerized or manual entry) in the records of Newmont or its designated stock transfer agent in Executive's name.

3. **Nontransferability** . Executive acknowledges that no shares of Restricted Stock, or any interest therein, may be sold, transferred, pledged, assigned, encumbered or otherwise disposed of (whether voluntary or involuntary or by operation of law, by judgment, levy, attachment, garnishment or other legal or equitable proceedings (including bankruptcy)) prior to the end of the Vesting Period with respect to such shares of Restricted Stock, provided, however, that (i) the Vesting Period shall terminate and all of the Restricted Stock shall become fully vested and nonforfeitable upon the occurrence of an event described in Section 15(b) of the Stock Plan, and (ii) Executive may, with the prior written approval of the Vice President of Human Resources of Newmont, transfer all or any portion of his Restricted Stock to a family trust or similar vehicle for personal estate planning purposes, in the manner and subject to the terms prescribed by the Vice President of Human Resources of Newmont.

4. **Termination of Employment** . If (i) Executive dies, (ii) Executive's employment by Newmont or any subsidiary terminates by reason of (1) Disability (as determined under the terms of the Long-Term Disability Plan of Newmont), (2) retirement under Newmont's Pension Plan entitling Executive to an immediate pension, or (3) such other circumstances as may be approved in writing by the Vice President of Human Resources of Newmont, or (iii) there shall occur an event described in Section 15(b) of the Stock Plan, in any such case prior to the completion of the Vesting Period, the Vesting Period shall terminate, and all of the shares of Restricted Stock not theretofore forfeited in accordance with this Agreement shall become fully vested and nonforfeitable, as of the date of Executive's death or other termination of employment, referred to in clause (i) or (ii), or immediately prior to the date of any such event referred to in clause (iii). If Executive ceases to be employed by Newmont and/or a Subsidiary prior to the completion of the Vesting Period under circumstances other than those set forth in clause (i) or (ii) of the immediately preceding sentence, Executive agrees that the Restricted Stock will be immediately and unconditionally forfeited and revert to Newmont, without any action required by Executive or Newmont, to the extent that the Vesting Period had not ended in accordance with paragraph 1 hereof or clause (iii) of this paragraph 3(b) as of the date of such cessation of employment.

5. **Stock Power** . Upon expiration or termination of the Vesting Period as provided herein, the stock power (if any) applicable to shares of Restricted Stock theretofore subject to such forfeiture but not forfeited shall lapse, and such shares shall be fully vested and nonforfeitable.

6. **Rights as a Stockholder** . Executive shall have all rights of a stockholder (including, without limitation, dividend and voting rights) with respect to the Restricted Stock, for record dates occurring on or after the date of this Agreement and prior to the date any such

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shares of Restricted Stock are forfeited in accordance with this Agreement. Any dividends paid in the form of Stock or other

property or distributions other than normal dividends (whether in cash, stock, securities or derivative securities, or otherwise, including, without limitation, any change in the shares of Restricted Stock pursuant to Section 15(a) of the Stock Plan) paid or made with respect to the Restricted Stock shall, during the Vesting Period, be deposited with Newmont or the escrow holder appointed pursuant to paragraph 2 hereof, together with a stock power endorsed in blank or other appropriate instrument of transfer, or credited to Executive's book-entry account established under paragraph 2 hereof, as applicable, and shall be subject to the same restrictions (including, without limitation, the Vesting Period) as such Restricted Stock and otherwise considered to be such Restricted Stock for all purposes hereunder.

7. **Withholding Taxes** . Executive acknowledges the existence of Federal, state, local and foreign income tax and employment tax withholding obligations with respect to the Restricted Stock and agrees that such obligations must be met. If Executive properly elects, within the period permitted under Section 83(b) of the Code after the date on which the shares of Restricted Stock are transferred to Executive, to be taxed with respect to all or any portion of such shares as of the date of transfer rather than the date or dates upon which Executive would otherwise be taxable under Section 83(a) of the Code, Executive shall file a copy of such election with Newmont within the period prescribed by the Treasury Regulations promulgated under Section 83(b) of the Code, and Executive agrees to pay to Newmont in cash at the time of such election any taxes required to be withheld with respect to such shares. To the extent that the immediately preceding sentence does not apply, upon the expiration or termination of the Vesting Period or any portion thereof with respect to shares of Restricted Stock, or upon such other date as of which the value of any shares of Restricted Stock first becomes includible in Executive's gross income for tax purposes (such shares, the "Vested Stock"), Executive hereby (a) directs Newmont to deliver on behalf of Executive to Mellon Investor Services, or its successors or assigns, or such other entity that may be designated by Newmont for such purpose from time to time (the "Designated Entity"), the number of shares of Vested Stock that will result in proceeds at least equal to the amount of any withholding taxes due in respect of the Vested Stock, and (b) directs the Designated Entity (or its designated broker) to sell such shares on behalf of Executive and to deliver to Newmont a portion of the proceeds from such sale equal to the amount of such withholding taxes in respect of such Vested Stock (or portion thereof); *provided* , *however* , that if the Newmont Committee determines that such a sale of shares of Vested Stock would or may be prohibited by Newmont's Stock Trading Policy or by any applicable law, regulation or rule, such shares shall not be sold in the manner described above but instead a portion of the shares of Vested Stock shall be withheld by Newmont and returned to Newmont's Treasury Account in satisfaction of such applicable withholding taxes (based on the minimum statutory tax withholding rates that are applicable to supplemental taxable income); *provided further* , *however* , that, in lieu of any such sale or retention of shares, Executive may elect to pay any such taxes to Newmont in cash by filing written notice of such election with Newmont not less than five (5) days prior to the date any shares of Restricted Stock become Vested Stock and remitting such payment to Newmont not later than such date. Notwithstanding the foregoing, the Newmont Committee may, in its sole discretion, require Executive to agree to not make an election pursuant to Section 83(b) of the Code as a condition for the receipt of the Restricted Stock hereunder.

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8. **Acknowledgements.**

(a) Executive hereby acknowledges receipt of a copy of the Stock Plan and agrees to be bound by all of the terms and provisions thereof, including the terms and provisions adopted after the award of the Restricted Stock but prior to the completion of the Vesting Period, subject to the last paragraph of Section 19 of the Stock Plan as in effect on the date hereof. If and to the extent that any provision contained in this Agreement is inconsistent with the Stock Plan, the Stock Plan shall govern.

(b) This Agreement and the obligation of Newmont to transfer shares of Stock hereunder shall be subject to (a) all applicable Federal and state laws, rules and regulations and (b) any registration, qualification, approvals or other requirements imposed by any government or regulatory agency or body which the Newmont Committee shall, in its sole discretion, determine to be necessary or applicable.

9. **Notices** . Any notice or other communication required or permitted hereunder shall, if to Newmont, be in accordance with the Stock Plan, and, if to Executive, be in writing and delivered in person or by registered or certified mail or overnight courier, postage prepaid, addressed to Executive at his last known address as set forth in Newmont's records.

10. **Severability** . If any of the provisions of this Agreement should be deemed unenforceable, the remaining provisions shall remain in full force and effect.

11. **Governing Law** . This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

12. **Transferability of Agreement** . This Agreement may not be transferred, assigned, pledged or hypothecated by either party hereto, other than by operation of law. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, including, in the case of Executive, his estate, heirs, executors, legatees, administrators, designated beneficiary and personal representatives. Nothing contained in this Agreement shall be deemed to prevent transfers of the Restricted Stock in the event of Executive's death in accordance with Section 16(b) of the Stock Plan.

13. **Counterparts** . This Agreement has been executed in two counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Newmont Mining Corporation has caused this Agreement to be executed by its Vice President and Secretary and Executive has executed this Agreement, both as of the day and year first written above.

NEWMONT MINING CORPORATION

By: \_\_\_\_\_  
Sharon E. Thomas  
Vice President and Secretary

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

\_\_\_\_\_  
Executive

**NEWMONT MINING CORPORATION  
1999 EMPLOYEES STOCK PLAN  
RESTRICTED STOCK UNIT AGREEMENT**

This Agreement ("Agreement") is dated as of \_\_\_\_\_, between Newmont Mining Corporation, a Delaware corporation ("Newmont") and [ \_\_\_\_\_ ] ("Executive").

**WITNESSETH:**

WHEREAS, in recognition of Executive's contributions and services to Newmont and its Subsidiaries and affiliates during the 2004 calendar year, the Compensation and Management Development Committee of the Newmont Board of Directors ("Newmont Committee") has awarded Executive a right to receive shares of Newmont's common stock ("Common Stock"), subject to the restrictions set forth in this Agreement pursuant to the terms and conditions of the Newmont Mining Corporation 1999 Employees Stock Plan ("Plan"); capitalized terms used but not defined herein shall have the meanings given such terms in the Plan;

NOW, THEREFORE, in consideration of the premises and as an inducement and incentive to Executive to perform his or her duties and fulfill his or her responsibilities on behalf of Newmont and its Subsidiaries at the highest level of dedication and competence, and other good and valuable consideration, receipt of which is hereby acknowledged, Newmont hereby awards to Executive a right to receive [ \_\_\_\_\_ ] shares of Common Stock, pursuant to the terms and subject to the conditions and restrictions set forth in this Agreement and the Plan, including the Vesting Period, as such term is defined in this Agreement (the "RSUs"), and in connection with such award, Newmont and Executive hereby agree as follows:

**AGREEMENT:**

1. **Vesting Period.** The Vesting Period shall commence on the date of this Agreement and shall end on the dates set forth below as to that percentage of the total shares of Common Stock subject to this Agreement set forth opposite each such date:

<u>Date</u>	<u>Percentage Vested</u>
	33%
	33%
	34%

2. **Termination of Employment.** Notwithstanding the foregoing, if (i) Executive dies, (ii) Executive's employment by Newmont or any Subsidiary terminates by reason of (1) Disability entitling Executive to long-term disability benefits under Newmont's Disability Plans, or a similar plan, as determined by the Committee, (2) retirement under Newmont's Pension Plan entitling Executive to an immediate pension, or as otherwise determined by the Committee, or (3) such other circumstances as may be approved in writing by the Vice President of Human Resources of Newmont, or (iii) there shall occur an event described in Section 15(b) of the Plan, in any such case prior to the completion of the Vesting Period, the Vesting Period shall terminate, and all RSUs not theretofore forfeited in accordance with this Agreement shall become fully vested and nonforfeitable, as of the date of Executive's death or other termination

of employment, referred to in clause (i) or (ii), or immediately prior to the date of any such event referred to in clause (iii). If Executive ceases to be employed by Newmont and/or a Subsidiary prior to completion of the Vesting Period under circumstances other than those set forth in clause (i), (ii) or (iii) of the immediately preceding sentence, Executive agrees that the RSUs awarded will be immediately and unconditionally forfeited without any action required by Executive or Newmont, to the extent that the Vesting Period had not ended in accordance with Paragraph 1 as of the date of such cessation of employment.

**3. No Ownership Rights Prior to Issuance of Common Stock.** Executive shall not have any rights as a shareholder of Newmont with respect to the shares of Common Stock underlying the RSUs, including but not limited to the right to vote with respect to such shares of Common Stock, until and after the shares of Common Stock have been actually issued to Executive and transferred on the books and records of Newmont; *provided, however*, upon vesting of the RSUs pursuant to the Vesting Period, or Executive's earlier termination of employment under circumstances entitling Executive to vest in the RSUs pursuant to Paragraph 2, Newmont shall make a cash payment to the Executive equal to any dividends paid with respect to shares of Common Stock underlying such RSUs from the date of this Agreement until the date such RSUs vest.

**4. Withholding Taxes.** Upon vesting pursuant to the Vesting Period, or Executive's earlier termination of employment under circumstances entitling Executive to vest in the RSUs pursuant to Paragraph 2, Executive shall be entitled to receive the shares of Common Stock, less an amount of shares of Common Stock with a Fair Market Value on the date of vesting equal to the minimum required withholding obligation taking into account Executive's effective tax rate and all applicable federal, state, local and foreign taxes, and Executive shall be entitled to receive the net number of shares of Common Stock after withholding of shares for taxes unless such tax obligations are satisfied in accordance with Paragraph 5.

**5. Delivery of Shares of Common Stock.** As soon as reasonably practicable following the date of vesting pursuant to the Vesting Period, or Executive's earlier termination of employment or other event entitling Executive to vest in the RSUs pursuant to Paragraph 2, Newmont shall cause to be delivered to Executive a stock certificate representing the number of shares of Common Stock (net of tax withholding as provided in Paragraph 4) deliverable to Executive in accordance with the provisions of this Agreement; *provided, however*, that Newmont may allow Executive to elect to have shares of Common Stock, which are deliverable in accordance with the provisions of this Agreement upon vesting (or a portion of such shares at least sufficient to satisfy Executive's tax withholding obligations with respect to such Common Stock), sold on behalf of Executive, with the cash proceeds thereof, net of tax withholding, remitted to Executive, in lieu of Executive receiving a stock certificate representing such shares.

**6. Nontransferability.** Executive's interest in the RSUs and any shares of Common Stock relating thereto may not be sold, transferred, pledged, assigned, encumbered or otherwise alienated or hypothecated otherwise than by will or by the laws of descent and distribution, prior to such time as the shares of Common Stock have actually been issued and delivered to Executive.

7. **Acknowledgements.** Executive acknowledges receipt of and understands and agrees to the terms of the RSUs award and the Plan. In addition to the above terms, Executive understands and agrees to the following:

(a) Executive hereby acknowledges receipt of a copy of the Plan and agrees to be bound by all of the terms and provisions thereof, including the terms and provisions adopted after the date of this Agreement but prior to the completion of the Vesting Period. If and to the extent that any provision contained in this Agreement is inconsistent with the Plan, the Plan shall govern.

(b) Executive acknowledges that as of the date of this Agreement, the Agreement and the Plan set forth the entire understanding between Executive and Newmont regarding the acquisition of shares of Common Stock underlying the RSUs in Newmont and supersedes all prior oral and written agreements pertaining to the RSUs.

(c) Executive understands that his or her employer, Newmont and its Subsidiaries hold certain personal information about Executive, including but not limited to his or her name, home address, telephone number, date of birth, social security number, salary, nationality, job title and details of all RSUs or other entitlement to shares of Common Stock awarded, canceled, exercised, vested, unvested or outstanding (“personal data”). Certain personal data may also constitute “sensitive personal data” within the meaning of applicable law. Such data include but are not limited to the information provided above and any changes thereto and other appropriate personal and financial data about Executive. Executive hereby gives explicit consent to Newmont and any of its Subsidiaries to process any such personal data and/or sensitive personal data. Executive also hereby gives explicit consent to Newmont to transfer any such personal data and/or sensitive personal data outside the country in which Executive is employed, including, but not limited to the United States. The legal persons for whom such personal data are intended include, but are not limited to Newmont and its agent, Mellon Investor Services. Executive has been informed of his or her right of access and correction to his or her personal data by applying to Director of Compensation, Newmont Corporate.

(d) Executive understands that Newmont has reserved the right to amend or terminate the Plan at any time, and that the award of RSUs under the Plan at one time does not in any way obligate Newmont or its Subsidiaries to grant additional RSUs in any future year or in any given amount. Executive acknowledges and understands that the RSUs are awarded in connection with Executive’s status as an employee of his or her employer and can in no event be interpreted or understood to mean that Newmont is Executive’s employer or that there is an employment relationship between Executive and Newmont. Executive further acknowledges and understands that Executive’s participation in the Plan is voluntary and that the RSUs and any future RSUs under the Plan are wholly discretionary in nature, the value of which do not form part of any normal or expected compensation for any purposes, including, but not limited to, calculating any termination, severance, resignation, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments, other than to the extent required by local law.

(e) Executive acknowledges and understands that the future value of the shares of Common Stock acquired by Executive under the Plan is unknown and cannot be predicted with certainty and that no claim or entitlement to compensation or damages arises from

the forfeiture of the RSUs or termination of the Plan or the diminution in value of any shares of Common Stock acquired under the Plan and Executive irrevocably releases Newmont and its Subsidiaries from any such claim that may arise.

8. **No Right to Continued Employment.** Neither the RSUs nor any terms contained in this Agreement shall confer upon Executive any expressed or implied right to be retained in the service of any Subsidiary for any period at all, nor restrict in any way the right of any such Subsidiary, which right is hereby expressly reserved, to terminate his or her employment at any time with or without cause. Executive acknowledges and agrees that any right to receive delivery of shares of Common Stock is earned only by continuing as an employee of a Subsidiary at the will of such Subsidiary, or satisfaction of any other applicable terms and conditions contained in this Agreement and the Plan, and not through the act of being hired, being granted the RSUs or acquiring shares of Common Stock hereunder.

9. **Compliance with Laws and Regulations.** The award of the RSUs to Executive and the obligation of Newmont to deliver shares of Common Stock hereunder shall be subject to (a) all applicable federal, state, local and foreign laws, rules and regulations, and (b) any registration, qualification, approvals or other requirements imposed by any government or regulatory agency or body which the Newmont Committee shall, in its sole discretion, determine to be necessary or applicable. Moreover, shares of Common Stock shall not be delivered hereunder if such delivery would be contrary to applicable law or the rules of any stock exchange.

10. **Investment Representation.** If at the time of delivery of shares of Common Stock, the Common Stock is not registered under the Securities Act of 1933, as amended (the "Securities Act"), and/or there is no current prospectus in effect under the Securities Act with respect to the Common Stock, Executive shall execute, prior to the delivery of any shares of Common Stock to Executive by Newmont, an agreement (in such form as the Newmont Committee may specify) in which Executive represents and warrants that Executive is purchasing or acquiring the shares acquired under this Agreement for Executive's own account, for investment only and not with a view to the resale or distribution thereof, and represents and agrees that any subsequent offer for sale or distribution of any kind of such shares shall be made only pursuant to either (i) a registration statement on an appropriate form under the Securities Act, which registration statement has become effective and is current with regard to the shares being offered or sold, or (ii) a specific exemption from the registration requirements of the Securities Act, but in claiming such exemption Executive shall, prior to any offer for sale of such shares, obtain a prior favorable written opinion, in form and substance satisfactory to the Newmont Committee, from counsel for or approved by the Newmont Committee, as to the applicability of such exemption thereto.

11. **Definitions.** All capitalized terms that are used in this Agreement that are not defined herein have the meanings defined in the Plan. In the event of a conflict between the terms of the Plan and the terms of this Agreement, the terms of the Plan shall prevail.

12. **Notices.** Any notice or other communication required or permitted hereunder shall, if to Newmont, be in accordance with the Plan, and, if to Executive, be in writing and delivered in person or by registered or certified mail or overnight courier, postage prepaid, addressed to Executive at his or her last known address as set forth in Newmont's records.

13. **Severability.** If any of the provisions of this Agreement should be deemed unenforceable, the remaining provisions shall remain in full force and effect.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

15. **Transferability of Agreement.** This Agreement may not be transferred, assigned, pledged or hypothecated by either party hereto, other than by operation of law. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, including, in the case of Executive, his or her estate, heirs, executors, legatees, administrators, designated beneficiary and personal representatives. Nothing contained in this Agreement shall be deemed to prevent transfer of the RSUs in the event of Executive's death in accordance with Section 16(b) of the Plan.

16. **Counterparts.** This Agreement has been executed in two counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Newmont Mining Corporation has caused this Agreement to be executed by its Vice President and Secretary and Executive has executed this Agreement, both as of the day and year first written above.

NEWMONT MINING CORPORATION

By: \_\_\_\_\_  
Sharon E. Thomas  
Vice President and Secretary

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_.

\_\_\_\_\_  
Executive

**End of Filing**