

Fennemore Craig, P.C.
Anthony W. Austin (No. 025351)
Tyler D. Carlton (No. 035275)
Stacy Porche (No. 037193)
2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85016
Telephone: (602) 916-5000
Email: aaustin@fennemorelaw.com
Email: tcarlton@fennemorelaw.com
Email: sporche@fennemorelaw.com

Attorneys for Debtor Golden Vertex Corp.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re: ELEVATION GOLD MINING CORPORATION, Debtor in a Foreign Proceeding.	Chapter: 15 Jointly Administered Case No. 2:24-bk-06359-EPB
In re: Golden Vertex Corp., Debtor in a Foreign Proceeding.	Case No. 2:24-bk-06364-DPC
In re: Golden Vertex (Idaho) Corp., Debtor in a Foreign Proceeding.	Case No. 2:24-bk-06367-BKM
In re: Eclipse Gold Mining Corporation, Debtor in a Foreign Proceeding.	Case No. 2:24-bk-06368-MCW
In re: Alcmene Mining Inc., Debtor in a Foreign Proceeding.	Case No. 2:24-bk-06370-EPB
In re: Hercules Gold USA LLC, Debtor in a Foreign Proceeding.	Case No. 2:24-bk-06371-DPC

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1 Court entered an order setting forth that (i) the Canadian Proceeding is recognized as a
2 “foreign main proceeding” under 11 U.S.C. § 1517; and (ii) giving full force and effect in
3 the United States to the Initial Order of the Canadian Court made by Justice Fitzpatrick
4 dated August 1, 2024 and the Amended and Restated Initial Order dated August 12, 2024
5 [DE 49].

6 GVC owns the Moss Mine in Mohave County, Arizona (the “Moss Mine”), which
7 is comprised of certain patented (fee owned) and unpatented mining claims and state land
8 mineral exploration permits. Portions of the Moss Mine are burdened with certain payment
9 obligations pursuant to agreements with various parties including: (1) the Patriot Royalty
10 Agreement; (2) the Nomad Royalty Agreement; (3) the Greenwood Royalty; and (4) a
11 Finder’s Fee Arrangement. This Motion pertains to the Finder’s Fee Agreement; the
12 remaining agreements will be dealt with in separate motions, to be filed.

13 A hearing is set before Justice Fitzpatrick in the Canadian Court for consideration
14 of a motion to approve a sale of the Group’s assets, including the assets comprising the
15 Moss Mine, which is scheduled to be heard on November 22, 2024 at 2:00 p.m. This
16 Application has been set prospectively. The hearing will be confirmed subject to the receipt
17 and selection of an offer for the sale of or investment in the Group’s assets or business
18 pursuant to the Sale and Investment Solicitation Process authorized by the Canadian Court
19 on August 12, 2024.

20 Contemporaneously with this Motion, the Group has submitted a motion to expedite
21 setting a briefing and hearing schedule to determine the nature of BHL’s interest related to
22 the Finder’s Fee Agreement. In that motion, GVC requests that this Court set a hearing and
23 briefing schedule subject to this Motion as soon as practicable before November 22, 2024.

24 **B. The Finder’s Fee Agreement**

25 On March 4, 2011, BHL entered into an agreement with Northern Vertex Capital
26 Inc. (“NVC”), a British Columbia corporation (today known as Elevation) (the “Finder’s
27 Fee Agreement”). The Finder’s Fee Agreement is attached hereto as **Exhibit A**. The
28 Finder’s Fee Agreement provides compensation to BHL for the performance of specified

1 services by BHL. The compensation is payable quarterly and is a fee based on the quarterly
2 average price of gold and silver produced from certain patented and unpatented claims at
3 the Moss Mine (hereafter the “Property”) and is payable for a specified term, i.e., so long
4 as “NVC controls, holds or owns any interest, direct or indirect, in the Property.” **Ex. A**
5 **§ 4.**

6 **III. LAW AND ARGUMENT**

7 **A. This Court has authority to adjudicate the nature of BHL’s interest.**

8 The Bankruptcy Code has set forth that “the purpose of this chapter is to incorporate
9 the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for
10 dealing with cases of cross-border insolvency with the objectives of [. . .] fair and efficient
11 administration of cross-border insolvencies that protects the interests of all creditors, and
12 other interested entities, including the debtor.” 11 U.S.C.A. § 1501(a)(3). Pursuant to 11
13 U.S.C. § 105(a), “[t]he court may issue any order, process, or judgment that is necessary
14 or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 105(a)
15 has been interpreted as granting bankruptcy courts “broad authority” and discretion to
16 enforce the provisions of the Bankruptcy Code. *Marrama v. Citizens Bank of Mass.*, 549
17 U.S. 365, 375 (2007). Additionally, “[u]pon recognition of a foreign proceeding, whether
18 main or nonmain, where necessary to effectuate the purpose of this chapter and to protect
19 the assets of the debtor or the interests of the creditors, the court may, at the request of the
20 foreign representative, grant any appropriate relief.” 11 U.S.C. § 1521(a).

21 **B. BHL has no real property interest under the Finder’s Fee Agreement.**

22 “Where the intent of the parties is expressed in clear and unambiguous language,
23 there is no need or room for construction or interpretation and a court may not resort
24 thereto.” *Grosvenor Holdings, L.C. v. Figueroa*, 218 P.3d 1045, 1050 (Ariz. Ct. App. 2009)
25 (citation omitted); *N. Ariz. Gas Serv., Inc. v. Petrolane Transp., Inc.*, 702 P.2d 696, 701
26 (Ariz. Ct. App. 1984) (applying contract law to dispute related to royalty). Indeed, “[a]
27 general principle of contract law is that when parties bind themselves by a lawful contract,

1 the terms of which are clear and unambiguous, a court must give effect to the contract as
2 written.” *Grosvenor*, 218 P.3d at 1050 (citation omitted).

3 Here, the plain language of the Finder’s Fee Agreement reveals that BHL holds no
4 real property interests in the Property. First, BHL contracted with NVC for compensation
5 in exchange for the provision of data, information, and consulting services related to a then-
6 mineral prospect (today, known as the Moss Mine) a contract setting out payment for
7 services rendered is not an interest in real property. Additionally, the Finder’s Fee
8 Agreement only addresses the payment of a fee after the minerals have been produced and
9 severed from the ground, therefore, BHL has no real property interest in the Property under
10 the Finder’s Fee Agreement. Finally, the agreement itself lacks any indicia of any intent to
11 create an interest in real property. BHL has no real property interest here.

12 First, a mere finder’s fee cannot serve as the basis to create an interest in real
13 property. For example, in *Hydrocarbon Horizons, Inc. v. Pecos Development Corp.*, the
14 court determined that a contract related to a finder’s fee was not a real property transaction.
15 797 S.W.2d 265, 267 (Tex. App. 1990), *writ denied*, 803 S.W.2d 266 (Tex. 1991). Instead,
16 the plaintiff “earned its fee by simply supplying geological information to Pecos,” and “was
17 not for services rendered in connection with the sale or purchase of any oil and gas lease.”
18 *Id.*

19 Here, the Finder’s Fee Agreement is nothing more than payment for services
20 rendered in connection with the BHL’s introduction to a third party who intended to
21 purchase an interest in the Moss Mine and the provision of consulting advice regarding
22 geologic and title information. Again, the terms of the Finder’s Fee Agreement state clearly
23 that it relates to the “provision of the data, information, and services” and that BHL will
24 deliver “data and information concerning the Property.” **Ex. A §§ 2–3.** The Finder’s Fee
25 Agreement then discusses the calculation of payment for the BHL’s services which fee is
26 calculated based upon the quarterly average sale price of produced minerals from the
27 Property. Accordingly, the Finder’s Fee Agreement is precisely what it is entitled and is
28 not an interest in real property.

1 Further, even if the Court accepts that BHL holds a royalty interest in the Property
2 under the Finder's Fee Agreement, there is still no real property interest. The right to an
3 accrued royalty (i.e., a share of the proceeds from the sale of the minerals produced) is a
4 personal property interest, and the right to unaccrued royalties (minerals in the ground) can
5 only "be an interest in real property when the parties so intend." *See Paloma Inv. Ltd.*
6 *P'ship v. Jenkins*, 978 P.2d 110, 115 (Ariz. Ct. App. 1998); *see also Cheapside Minerals,*
7 *Ltd. v. Devon Energy Prod. Co., L.P.*, 94 F.4th 492, 498 (5th Cir. 2024) ("[A]ccrued royalty
8 interests are personal property, . . . as is the right to payment for severed minerals." (citation
9 omitted)).

10 As noted above, the Finder's Fee Agreement cannot be an interest in real property
11 because it does not give rise to any interest in the minerals in place. The court in
12 *Hydrocarbon Horizons* relied on *Waco-Tex Materials Co. v. Lee*, 210 S.W.2d 886 (Tex.
13 App. 1948), a previous case dealing with a finder's fee royalty in gravel. In *Waco-Tex*, the
14 court held that a finder's fee royalty based upon minerals removed was not a contract for
15 real property but was rather a personal property interest. *Id.* at 888–89. Specifically, the
16 court noted that where a contract "did not undertake to deal with the mineral in fee; but
17 undertook to deal with it, as, if, and when (after) produced (taken out of and severed from
18 the land), and in that event only; that is, after it became personal property." *Id.* at 888.

19 Here too, the Finder's Fee Agreement does not address minerals in place but rather
20 addresses the minerals only after they have been produced and severed from the land and
21 ties their compensation thereto. BHL earned their fee in consideration of the provision of
22 "data and information" regarding minerals but have no interest in land. **Ex. A § 3.** No
23 provision seeks to address the minerals in place or reserves any right in those minerals to
24 BHL or to require production thereof.

25 Finally, even if the Finder's Fee Agreement was not automatically a personal
26 property interest, the agreement lacks any indicia of an interest in real property. The
27 agreement fails to state that the BHL hold any interest in the minerals themselves. Further,
28 the Agreement is term limited (§ 4) and does not state that BHL's rights are an interest in

1 land or that such rights expressly “run with the land.” These rights are not a covenant that
2 runs with the land because they do not “burden[] the landowner.” *Paloma Inv.*, 978 P.2d at
3 115.

4 For example, in *Paloma Investment*, the court concluded that an agreement to share
5 in the proceeds from sale of water did not create a covenant because that agreement did not
6 require the landowner to take any actions, such as “to pump water or to sell water.” *Id.*
7 Likewise here, the Finder’s Fee Agreement is not a covenant because it does not create any
8 obligation for GVC to do anything relating to the land itself. The only language in the
9 agreement regarding successive owners, § 9, simply states that any sale or transfer of the
10 property will “provide expressly that the transferee is obligated to compensate Finder
11 [BHL] in accordance with this Agreement and that [t]he (sic) transferee shall pay [BHL’s]
12 compensation directly to [BHL].” **Ex. A § 9.**

13 It is clear per the terms of the Finder’s Fee Agreement that the parties contracted for
14 a right to payment determined by the quarterly average price of produced minerals—not
15 for an interest in real property. BHL is not entitled to morph the terms of the Finder’s Fee
16 Agreement to create real property rights where the parties never intended.

17 **IV. CONCLUSION**

18 Therefore, pursuant to 11 U.S.C. §§ 105(a), 1521, the Court should enter an order
19 determining that the nature of BHL’s interest is not an interest in real property.

20
21 DATED this 14th day of October, 2024

FENNEMORE CRAIG, P.C.

22
23 By: /s/ Stacy Porche

24 Anthony W. Austin

25 Tyler D. Carlton

26 Stacy Porche

Attorneys for Debtor Golden Vertex Corp.

27 The foregoing was electronically filed this 14th day
28 of October, 2024 via the Court’s CM/ECF filing system
for filing and transmittal of a Notice of Electronic Filing,

1 receipt of which constitutes service under L.R. Bankr. P.
2 9076-1(a), to the CM/ECF registrants.

3 Robert M. Charles, Jr.
4 Lewis Roca Rothgerber Christie LLP
rcharles@lewisroca.com

5 William L. Roberts
6 Lawson Lundell LLP
wroberts@lawsonlundell.com

7 Larry L. Watson
8 Office of the U.S. Trustee
Larry.watson@usdoj.gov

9 Bradley Cosman
10 Amir Gamliel
11 Perkins Coie LLP
bcosman@perkinscoie.com
agamliel@perkinscoie.com
12 *Attorneys for Creditor Maverix Metals, Inc.*

13 Jimmie W. Pursell, Jr.
14 Anthony F. Pusateri
Jimmie.pursell@quarles.com
Anthony.pusateri@quarles.com
15 *Attorneys for Patriot Gold Corp.*

16 Jeffrey C. Whitley
17 Whitley Legal Group, P.C.
jeff@whitleylegalgroup.com
18 *Attorneys for Hartmut W. Baitis,*
19 *Robert B. Hawkins and Larry L. Lackey*

20 Paul A. Loucks
21 DeConcini McDonald Yetwin & Lacy, P.C.
ploucks@dmyl.com
Attorneys for Patriot Gold Corporation

22 Patrick A. Clisham
23 Michael P. Rolland
24 Engelman Berger, P.C.
drm@eblawyers.com
mpr@eplawyers.com
25 *Attorneys for Mohave Electric Cooperative*

26 /s/ Gidget Kelsey
27
28

EXHIBIT A

Finder's Agreement Moss Mine

This Finder's Agreement Moss Mine ("Agreement") is made by and among Northern Vertex Capital Inc., a British Columbia corporation ("NVC"), and Hartmut W. Baitis, Robert B. Hawkins and Larry L. Lackey (collectively "Finder").

Recitals

- A. NVC is engaged in the business of exploration for and development of minerals.
- B. Each of Hartmut W. Baitis, Robert B. Hawkins and Larry L. Lackey is a professional geologist.
- C. Finder provided certain data, information and consulting services to NVC concerning the business opportunity and the mineral prospect known as the Moss Mine in Mohave County, Arizona, described in Exhibit A (the "Property"), and Finder introduced NVC to Idaho State Gold Company, LLC, an Idaho limited liability company ("ISGC"), which with Patriot Gold Corp., a Nevada corporation ("Patriot"), is a party to the Exploration Option to Enter Joint Venture Agreement Moss Mine effective February 28, 2011 (the "Patriot Agreement"). NVC and ISGC have agreed to enter an agreement in accordance with which ISGC has agreed to assign the Patriot Agreement to NVC.
- D. The parties desire to provide for Finder's provision of the data, information and consulting services to NVC and for NVC's compensation to Finder.

Now, therefore, in consideration of their mutual promises, the parties agree as follows:

1. **Property.** The Property subject to this Agreement consists of the fee lands, patented mining claims and unpatented mining claims described in Exhibit A. This Agreement also applies to any mineral rights or property interests which NVC acquires in the area of interest described in the Patriot Agreement (the "Area of Interest").
2. **Finder's Services.** Finder shall deliver Finder's data and information concerning the Property, including geological, geochemical, geophysical, engineering, metallurgical, mineralogical and title information concerning the Property.
3. **Compensation.** In consideration of Finder's provision of the data, information and services to NVC, NVC agrees to pay to Finder the following payments (collectively the "Fee"):
 - a. On or before thirty (30) days after the end of each calendar quarter, NVC shall pay to Finder the Fee for each troy ounce of gold produced from the Moss Mine, as described in the Patriot Agreement, at the following rates:

Quarterly Average Price Per Troy Ounce of Gold	Finder's Fee
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Handwritten signatures and initials:
RBT
H.B.
W.L.L.
J.H.

Less than \$700	\$5.00 per Troy ounce
Equal to or greater than \$700 but less than \$1,000	\$10.00 per Troy ounce
\$1,000 or more	\$15.00 per Troy ounce

Quarterly Average Price Per Troy Ounce of Silver	Finder's Fee
Less than \$15	\$0.10 per Troy ounce
More than \$15 but less than \$25	\$0.20 per Troy ounce
\$25 or more	\$0.35 per Troy ounce

In addition to the portion of the Fee payable based on the production of gold and silver from the Property, NVC shall pay to Finder the sum of Fifteen Thousand Dollars (\$15,000.00) representing three percent (3%) of the initial payment payable under the Patriot Agreement and the amount of three percent (3%) of all Exploration and Drilling Work Expenditures incurred by NVC until the commencement of Commercial Production, as defined in the Patriot Agreement. NVC shall pay the portion of the Fee based on the initial payment under the Patriot Agreement on NVC's execution and delivery of the Patriot Agreement. NVC shall pay the portion of the Fee based on the Exploration and Development Work Expenditures on a quarterly basis and not later than thirty (30) days after the end of each calendar quarter.

The total of the Fee payable under this Agreement shall not exceed Twenty-One Million Dollars (\$21,000,000.00). On NVC's payment of the Fee in the amount of Twenty-One Million Dollars (\$21,000,000.00) NVC's obligation to pay the Fee shall terminate.

b. NVC shall have the option to purchase the Fee. The purchase price for the Fee shall be Two Million Four Hundred Thousand Dollars (\$2,400,000.00) ~~in~~ cash and/or shares upon mutual agreement. NVC may exercise the option at any time within ninety (90) days after the commencement of commercial production of minerals from the Property as term "Commercial Production" is defined in the Patriot Agreement. If NVC elects to exercise the option, it shall notify Finder and the parties shall close the purchase and sale of the Fee within thirty (30) days following Finder's receipt of NVC's notice. NVC shall pay the purchase price in cash. Finder shall execute and deliver to NVC an instrument conveying to NVC all of Finder's right, title and interest in and to the Fee and terminating NVC's obligation to pay the Fee.

c. All payments shall be paid by NVC to Finder by check or wire transfer to an account which Finder designates. On NVC's first payment of the Fee, each of Hartmut W. Baitis, Robert B. Hawkins and Larry L. Lackey shall provide to NVC their United States social security numbers.

4. **Term.** The term of this Agreement shall extend to and include the term of the Patriot Agreement and shall continue so long as NVC controls, holds or owns any interest, direct or indirect, in the Property.

5. **Nature of Relationship.** This Agreement shall not be deemed to constitute either party as the agent, legal representative, or partner of the other party or to create any mining partnership or any other partnership relationship. Except as expressly provided in this Agreement, each party shall have the free and unrestricted right independently to engage in business endeavors of any sort outside the Property and the Area of Interest.

Handwritten signatures and initials: "Hartmut W. Baitis", "Robert B. Hawkins", "Larry L. Lackey", and "HBB".

6. Confidentiality. The data and information, including the terms of this Agreement, coming into the possession of a party by virtue of this Agreement, shall be deemed confidential and shall not be disclosed to outside third parties except as may be required to publicly record or protect title to the Property or to publicly announce and disclose information under the laws and regulations of Canada, the United States or any Province, state or local government, or under the rules and regulations of any stock exchange on which stock of any party, or a party's affiliate is listed. Each party agrees with respect to any public announcements or disclosures so required, including the announcement of the execution of this Agreement, if any, to inform the other party of the content of the announcement or disclosure in advance of its intention to make such announcement or disclosure in sufficient time to permit the other party to jointly or simultaneously make a similar public announcement or disclosure if the other parties so desire, except that in the event any party anticipates selling or assigning all or a portion of its interest, such party shall have the right to furnish information to the party to which the sale or assignment is anticipated upon obtaining from such party an agreement to hold confidential any information so furnished. Nothing in this Agreement shall limit or restrict the right of a party to provide, deliver or release to parent companies, companies with a common parent, subsidiary companies or affiliated companies, including the terms of this Agreement, coming into the possession of such party by virtue of this Agreement.

7. Notices. Any notices required or authorized to be given by this Agreement shall be in written form. Any notices required or authorized to be given by this Agreement may be sent by registered or certified delivery, postage prepaid and return receipt requested, addressed to the proper party at the following address or such address as the party shall have designated to the other parties in accordance with this Section. Any notice required or authorized to be given by this Agreement shall be deemed to have been sufficiently given or served in written form if mailed as provided herein, personally delivered to the proper party, or sent by email, telex, telegraph, facsimile or other wire service, and actually received by such party. Such notice shall be effective on the date of receipt by the addressee party.

If to NVC: Northern Vertex Capital Inc.
Suite 920 – 1055 W. Hasting Street
Vancouver, British Columbia, Canada V6E 2E9

If to Finder: c/o Hartmut W. Baitis
2705 Lorraine Drive
Missoula, Montana 59803

8. Covenants, Warranties and Representations. Each of the parties covenants, warrants and represents for itself as follows:

8.1 Compliance with Laws. That it has complied with all applicable laws and regulations of any governmental body, federal, state or local, regarding the terms of and performance of its obligations under this Agreement.

Handwritten signatures and initials:
JHB 5/11/13
PDA JH

8.2 No Pending Proceedings. That there are no lawsuits or proceedings pending or threatened which affect its ability to perform the terms of this Agreement.

8.3 Authority. That it has the full right, title and authority to enter into this Agreement and to perform its obligations, and neither this Agreement, nor its performance, violates or constitutes a default under the provisions of any other agreement to which it is a party or to which it is bound.

8.4 Costs. That it shall pay all costs and expenses incurred or to be incurred by it in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

8.5 Patriot Act. It is not on the Specially Designated National & Blocked Persons List of the Office of Foreign Assets Control of the United States Treasury Department and is not otherwise blocked or banned by any foreign assets office rule or any other law or regulation, including the USA Patriot Act or Executive Order 13224.

9. Binding Effect of Obligations. This Agreement shall be binding upon and inure to the benefit of the respective parties and their successors and assigns. NVC covenants that NVC shall cause the terms of any agreement or instrument between NVC and any third party for the assignment, conveyance, sale or other transfer of the Patriot Agreement and the Property to provide expressly that the transferee is obligated to compensate Finder in accordance with this Agreement and that he transferee shall pay Finder's compensation directly to Finder.

10. Whole Agreement. The parties agree that the whole agreement between them is written in this Agreement and the memorandum to be executed by the parties. There are no terms or conditions, express or implied, other than expressly stated in this Agreement. This Agreement may be amended or modified only by an instrument in writing, signed by the parties with the same formality as this Agreement.

11. Governing Law and Forum Selection. This Agreement shall be construed and enforced in accordance with the laws of the State of Arizona. The parties submit to the jurisdiction of the Superior Court in and for Mohave County, Arizona, and the United States District Court for the district and division in which the Property is situated, and waive any objections to the jurisdiction of such courts and venue of any actions or proceedings in such courts arising from or relating to this Agreement.

12. Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute the same Agreement.

13. Severability. If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the United States or any state, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

*Handwritten signature: JHB 11/13
FEB 2014*

14. Memorandum. The parties shall execute and deliver to one another a memorandum of this Agreement in format acceptable for recording under the laws of the State of Arizona.

The parties have executed this Agreement effective on the date when signed by both parties.

Northern Vertex Capital Inc.

By

Name

Title

CEO

3/4/2011

Hartmut W. Baitis

Hartmut W. Baitis

3/4/2011

Robert B. Hawkins

Robert B. Hawkins

3/4/2011

Larry L. Lackey

Larry L. Lackey

3/4/2011

Exhibit A
Description of Property
Finder's Agreement
Moss Mine

A. Patented Mining Claims.

Sections 19, 20, 29 and 30, T20N, R20W, G&SR B&M, Mohave County, Arizona

Key No. 1	MS4484
Key 2	MS4484
California Moss Lot 37 (Greenwood)	MS182
California Moss Lot 38 (Gintoff)	MS796
Moss Millsite	MS4484
Divide	MS4484
Keystone Wedge	MS4484
Ruth Extension	MS4485
Omega	MS4484
Ruth	MS2213
Rattan Extension	MS4485
Rattan	MS857
Partnership	MS4485
Mascot	MS4485
Empire	MS4485

B. Unpatented Mining Claims.

Moss unpatented lode claims located in Sections 19, 20, 29 and 30, T20N, R20W, G&SR B&M
Mohave County, Arizona

<u>CLAIM NAME</u>	<u>CLAIMANT'S NAME</u>	<u>AMC NUMBER</u>
Moss 11-33	MinQuest Inc.	361998-362020
Moss 33F	MinQuest Inc.	362021
Moss 34-39	MinQuest Inc.	362022-362027
Moss 39F	MinQuest Inc.	362028
Moss 40-47	MinQuest Inc.	362029-362036
Moss 47B	MinQuest Inc.	362037
Moss 48-70	MinQuest Inc.	362038-362060
Moss 1-10	MinQuest Inc.	398978-398987
Moss 118-148	MinQuest Inc.	398988-399018

C. Underlying Agreements.

Letter Agreement between MinQuest, Inc. and Patriot Gold Corp. dated March 4, 2004.

Purchase Agreement among Patriot Gold Corp. and various parties in respect of the California Moss patented mining claim and the royalty deeds executed and delivered by Patriot Gold Corp. in accordance with the Purchase Agreement.

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