

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") dated March 4, 2021, is made by and between Sunnyside Gold Corporation ("SGC"), Kinross Gold Corporation ("KGC"), and Kinross Gold U.S.A., Inc. ("KGUSA"), on the one hand (collectively, the "Mining Defendants"), and the State of Utah (including each of its departments, agencies, and instrumentalities, including State of Utah Natural Resource Trustees) ("Utah"), on the other hand (each a "Party," and collectively, the "Parties"). Unless otherwise indicated, capitalized terms used in this Agreement are defined in Appendix A, attached and incorporated herein.

### **RECITALS**

WHEREAS, Utah has made claims against the Mining Defendants in the following litigation: *State of Utah v. Environmental Restoration, LLC, et al.* (2:17-cv-00866-TS (D. Utah), and *In re Gold King Mine Release in San Juan County, Colorado on August 5, 2015* (1:18-md-02824 (D.N.M.)) (collectively, the "Litigation" as further defined in Appendix A), which litigation arose from the release that occurred on August 5, 2015 at the Gold King Mine ("Gold King Blowout" as further defined in Appendix A), which claims include, but are not limited to, tort claims and claims under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et. seq ("CERCLA");

WHEREAS, SGC has made counterclaims against Utah in the Litigation, including claims under CERCLA;

WHEREAS, the Parties desire to enter into this Agreement to have a full and final resolution of the "Matters" as defined below in Section 2, to avoid the complication and expense of litigation of such claims between the Parties, and to avoid exposure to liability at trial;

WHEREAS, the Parties agree that this Agreement is fair, reasonable, and in the public interest;

WHEREAS, the Parties do not admit any liability in the Litigation; and

WHEREAS, the Parties enter into this Agreement as a full and final settlement of the Matters.

THEREFORE, the Parties hereby agree as follows.

**1. Payment.** Payment of Five Million Five Hundred Thousand Dollars (\$5,500,000.00) USD by SGC on behalf of the Mining Defendants shall be made to Utah, as directed by Utah, within 30 days of execution of this Agreement and issuance of a final order by

the United States District Court for the District of New Mexico (the “Court” as further defined in Appendix A) with respect to the joint motion for entry of the Consent Decree described in Section 6.A (the “Payment”). In the event SGC does not make the Payment, it shall be made by KGC or KGUSA.

**2. Release by Utah.** In consideration of the promises and covenants contained herein, the Payment and other good and valuable consideration, the sufficiency of which Utah hereby acknowledges, Utah, on its behalf, as *parens patriae*, and on behalf of its past, present, and future affiliates, agents, officers, directors, employees, members, representatives, consultants, attorneys, trustees, and related entities, as well as their heirs, predecessors, successors, and assigns (hereafter collectively referred to as the “Utah Parties”) hereby release the Mining Defendants Parties (as defined in Appendix A) from all civil claims that were, could now be, or could hereafter be asserted with regard to the events or circumstances described or alleged in the First Amended Complaint filed by Utah against the Mining Defendants in the Litigation, including without limitation (a) all of Utah’s tort claims and CERCLA claims against the Mining Defendants in Utah’s First Amended Complaint, and (b) SGC’s counterclaims against Utah (collectively the “Matters”). Nothing in this release shall prohibit or release any claims for breach of this Agreement.

**3. Release by Mining Defendants Parties.** In consideration of the promises and covenants contained herein, and other good and valuable consideration, the sufficiency of which Mining Defendants hereby acknowledge, the Mining Defendants Parties hereby release the Utah Parties from all civil claims that were, could now be, or could hereafter be asserted with regard to the Matters. Nothing in this release shall prohibit or release any claims for breach of this Agreement.

**4. Utah Covenant Not to Sue.**

A. Utah, on behalf of itself and the Utah Parties, agrees and covenants that it will not commence any Action against the Mining Defendants Parties for the Matters.

B. Any Action brought by Utah to enforce (but not to rescind or reform) the terms of this Agreement is excepted from the covenant not to sue included in Section 4.A.

**5. Consent Decree.**

A. The Parties shall enter into a consent decree substantially in the form set forth in Appendix B (“Consent Decree”). Such Consent Decree shall effectuate the provisions in Section

5.B. Such Consent Decree shall be submitted for approval and entry to the Court, and the Parties shall jointly move the Court for entry of such Consent Decree and cooperate in supporting its entry and make additional filings as reasonably requested by either Party or required by the Court in support thereof. If Court approval of the Consent Decree is not obtained, the Parties agree this Agreement shall be deemed to be an “Administrative Settlement Agreement” pursuant to applicable law governing such agreements under CERCLA.

B. Such Consent Decree shall reflect the intention of the Parties with respect to the following provisions:

1. The covenant not to sue in Paragraph 4 herein.
2. With regard to any claims for costs, damages, or other claims of Utah against the Mining Defendants for the Matters under CERCLA, the Parties agree that the Mining Defendants Parties have resolved their liability and are entitled to contribution protection consistent with Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), the Uniform Comparative Fault Act, and any other applicable provision of federal or state law, whether by statute or common law, extinguishing the Mining Defendants Parties’ liability to persons not party to this Agreement for “matters addressed” in this Agreement (as described in this paragraph). Any rights the Mining Defendants may have to obtain contribution or otherwise recover costs or damages from persons not party to this Agreement are preserved. For purposes of this paragraph, the “matters addressed” in this Agreement are any liability of Mining Defendants Parties for the Matters under CERCLA. The contribution protection set forth in this paragraph is intended to provide the broadest protection afforded by CERCLA or and any other applicable provision of federal or state law, or otherwise for “matters addressed” in this Agreement.
3. If Court approval of the Consent Decree is not obtained, then pursuant to Section 5.A above, the Parties agree that Sections 5.B.1 and 5.B.2 will become effective and incorporated in the “Administrative Settlement Agreement” provided for in Section 5.A.

6. **No Admissions.** The Parties explicitly acknowledge that this Agreement represents a settlement of disputed claims, and the Parties understand and agree that nothing contained in this Agreement is to be considered as an admission of any alleged fact, liability or

fault, and that all such allegations, liability and fault are expressly denied. Accordingly, neither this Agreement nor any of its terms shall be offered or received as evidence in any proceeding in any forum as an admission of liability or wrongdoing on the part of any Mining Defendant or Utah.

7. **Acknowledgements.** Each of the Parties declares that it has read and understands the terms of this Agreement, that it has been represented by counsel in the negotiation, execution, and delivery of this Agreement, and that it executes this Agreement voluntarily after consultation with counsel. Each of the Parties participated in the drafting of this Agreement and in the event of any ambiguity, the Parties agree that it shall not be construed against any of them because of their status as a drafter.

8. **No Reliance.** Except as expressly stated in this Agreement or in the Term Sheet between the Parties, (A) no Party (or any owner, member, manager, officer, director, partner, associate, employee, representative, attorney, or agent of any Party) relies upon any statement or representation to any other Party regarding any facts in entering into this Agreement; (B) no Party relies upon any statement, representation, or promise of any other Party (or any owner, member, manager, officer, director, partner, associate, employee, representative, attorney, or agent of any Party in executing this Agreement, and (C) the Parties expressly assume the risk that the facts or law may be, or may become, different from the facts or law as presently believed or understood by the Parties.

9. **Dismissal of Claims.** The Parties shall file dismissals with prejudice of all claims in the Litigation against one another on or before five business days of the Payment.

10. **Fees/Costs.** Each Party shall bear its own costs, expenses, experts' fees, any mediator's fees, and attorneys' fees.

11. **Remaining Litigation.** This Agreement does not impact, interfere with, or limit any Party's claims or defenses against non-Parties in the remaining Litigation. Notwithstanding any other provision of this Agreement, each Party reserves all rights with respect to such remaining Litigation.

12. **Representations and Warranties.** Each Party represents and warrants that this Agreement covers all claims and damages in the Matters. Each Party further represents and warrants that it is the owner of all claims being released, and that such claims have not

been assigned or transferred, and that it is not aware of any other person or entity that has any interest in the claims that have been or could have been asserted in the Litigation and that are referred to in this Agreement.

**13. Authority to Execute.** Each of the Parties represents and warrants that it has full power and authority to execute, deliver, and perform this Agreement and that it has taken all necessary steps for the execution and delivery of this Agreement. Each signatory to this Agreement represents and warrants that he/she has full power and authority to execute on behalf of the Party for whom he/she has executed this Agreement, and to bind legally such Party.

**14. Further Assurances.** The Parties agree to reasonably cooperate with each other in the implementation of this Agreement, and to execute and deliver any further legal instruments and perform any acts which are or may become reasonably necessary, appropriate or desirable to effectuate this Agreement, including but not limited to entering into and obtaining judicial approval of the Consent Decree to provide the Mining Defendants with contribution protection under CERCLA as provided in Section 5.

**15. Press Releases.** Utah agrees that 24 hours prior to issuing its official press release on behalf of Utah regarding this Agreement, Utah will provide the content of the press release to Brad Berge (bberge@hollandhart.com) and Neil Westesen (nwestesen@crowleyfleck.com). The Mining Defendants shall have the right to comment on the press release regarding this Agreement, and Utah will consider those comments in good faith. The Mining Defendants agree that 24 hours prior to issuing any official press release(s) on behalf of the Mining Defendants regarding this settlement, the Mining Defendants will provide the content of the press release(s) to Peter Hsiao (phsiao@kslaw.com). Utah shall have the right to comment on the press release(s) and the Mining Defendants agree to consider those comments in good faith. The Parties agree that they will not disparage each other in their press releases, but that factual statements will not constitute disparagement. Pending any such press release by any Party, the existence and terms of this Agreement shall remain confidential to the full extent permitted by law, except to the extent the Parties notify the Court, including Chief Judge Johnson and/or Judge Torgerson, and to the extent Utah communicates with the Sovereign Plaintiffs.

**16. Applicable Law and Dispute Resolution.**

A. This Agreement shall be governed by and construed in accordance with the laws of



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