

1 Fennemore Craig, P.C.
2 Anthony W. Austin (No. 025351)
3 Tyler D. Carlton (No. 035275)
4 Stacy Porche (No. 037193)
5 2394 E. Camelback Road, Suite 600
6 Phoenix, Arizona 85016
7 Telephone: (602) 916-5000
8 Email: aaustin@fennemorelaw.com
9 Email: tcarlton@fennemorelaw.com
10 Email: sporche@fennemorelaw.com
11 *Attorneys for Debtor Golden Vertex Corp.*

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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

1 **THE GROUP’S MOTION FOR SUMMARY JUDGMENT**
2 **AGAINST NOMAD ROYALTY COMPANY LIMITED**

3 Pursuant to Federal Rule of Bankruptcy Procedure 7056, incorporating Federal Rule
4 of Civil Procedure 56, made applicable to this contested matter by virtue of Federal Rule
5 of Bankruptcy Procedure 9014(c), Elevation Gold Mining Corporation (“Elevation”) and
6 its direct and indirect subsidiaries, which include Eclipse Gold Mining Corporation
7 (“Eclipse”), and Golden Vertex Corp. (“GVC”) (collectively, the “Group”), hereby move
8 for summary judgment in this matter against Nomad Royalty Company Limited (“Nomad”)
9 to the extent that Nomad claims to have an interest in any real property held by GVC,
10 relying on the “Letter Agreement.”

11 Nomad holds a “production royalty.” There are two types of royalties: accrued and
12 unaccrued. An accrued royalty is a personal property interest while an unaccrued royalty
13 is only a real property interest when the parties intend.

14 Nomad’s “production royalty” arises only after extraction of the minerals, making
15 it an accrued royalty. This accrued royalty creates only a personal property interest.

16 However, even if Nomad’s royalty is an unaccrued royalty, there is no evidence of
17 any intent that the royalty is a real property interest. The plain language of the parties’
18 agreement makes it clear that there was no intent to create a real property interest. Nomad
19 holds only a “production royalty” based on extraction of minerals, revealing that the parties
20 did not intend to create a real property interest. Nothing in the Letter Agreement supports
21 any intent to convey Nomad a real property interest.

22 Thus, whether Nomad’s royalty is accrued or unaccrued, the Letter Agreement’s
23 plain language reveals that Nomad holds no real property interest thereunder. Thus, the
24 Group is entitled to judgment as a matter of law.

25 The Group respectfully asks that the Court grant summary judgment to it. This
26 Motion is supported by the following Memorandum of Points and Authorities, the
27 concurrently filed Statement of Facts (“SOF”), the filings, and any other record on file with
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1 the clerk of the above captioned court concerning this matter, as well as the main
2 proceeding in the Canadian Court.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. FACTUAL BACKGROUND**

5 The Group has obtained protection from its creditors in proceedings (the “Canadian
6 Proceeding”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C.
7 1985, c. C-36 (as amended, the “CCAA”), pending before the Supreme Court of British
8 Columbia (the “Canadian Court”) as Action No. S245121. SOF ¶ 1. Subsequently, this
9 instant Chapter 15 case was commenced ancillary to the Canadian Proceeding. SOF ¶ 2.
10 Additionally, this Court entered an order setting forth that: (i) the Canadian Proceeding is
11 recognized as a “foreign main proceeding” under 11 U.S.C. § 1517 and (ii) giving full force
12 and effect in the United States to the Initial Order of the Canadian Court made by Justice
13 Fitzpatrick dated August 1, 2024 and the Amended and Restated Initial Order dated
14 August 12, 2024. SOF ¶ 3.

15 As is relevant to this Motion, GVC owns the Moss Mine in Mohave County,
16 Arizona, which is comprised of certain patented (fee owned) and unpatented mining claims
17 and state land mineral exploration permits. SOF ¶ 4. Portions of the Moss Mine are
18 burdened with certain payment obligations, including obligations to Nomad. SOF ¶¶ 5–6.

19 **A. Nomad’s Interest**

20 In March 2004, Patriot Gold Corp. (“Patriot Gold”) entered into the “Letter
21 Agreement” with MinQuest, Inc. (“MinQuest”). SOF ¶ 6. The Letter Agreement relates to
22 certain patented and unpatented lode claims and specified areas of interest at the Moss
23 Mine (hereafter the “Property”). SOF ¶ 9.

24 GVC is the successor-in-interest to Patriot Gold’s rights and obligations under the
25 Letter Agreement pursuant to the Assignment and Assumption Agreement. SOF ¶ 10.
26 Nomad is the purported present assignee of MinQuest Inc.’s rights and obligations. GVC
27 has no evidence of said assignment but is relying on Nomad’s assertions.

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1 **B. Contents of the Letter Agreement**

2 The Letter Agreement provided that it would be binding until such time as MinQuest
3 and Patriot Gold entered into a “formal and comprehensive agreement.” SOF ¶ 7. No such
4 agreement was documented. SOF ¶ 8.

5 Pursuant to the “Production Royalties” section of the Letter Agreement, Nomad
6 purportedly holds a production royalty ranging from 0.5% to 3.0% of the Net Smelter
7 Return (“NSR”) on certain undefined net smelter returns. SOF ¶ 11. The Letter Agreement
8 unambiguously provides for “production royalties.” SOF ¶ 11.

9 The Letter Agreement contains no express language that it runs with the land or, for
10 that matter, is even binding on successors and assigns. SOF ¶ 12. The Letter Agreement
11 provides for a term of “20 years with automatic extensions so long as Patriot Gold holds
12 all or portions of the ‘Property’” (“Term”). SOF ¶ 13. The Letter Agreement states that it
13 is assignable “freely by either party so long as Assignee accepts terms and conditions of
14 the Lease in writing.”¹ SOF ¶ 14.

15 There is no obligation for GVC to pay the annual maintenance fees for the
16 unpatented claims that comprise the Property. SOF ¶ 15. Further, there is no requirement
17 for GVC to report to anyone in any form or fashion or to notice anyone of any material
18 events, including a sale, relating to the Property. SOF ¶ 16. There are no covenants of
19 production, no indemnity provisions of any type or kind (at a minimum, a mineral interest
20 owner would seek an environmental indemnity), and no security provisions. SOF ¶ 17.

21 Now, in this bankruptcy proceeding, Nomad asserts that it holds a real property
22 interest under the Letter Agreement. No language in the Letter Agreement supports
23 Nomad’s claim. Instead, Nomad holds only a personal property interest.

24 **II. LEGAL STANDARD**

25 Federal Rule of Civil Procedure (“Civil Rule”) 56(a), as applicable to this
26 proceeding under Bankruptcy Rules 7056 and 9014(c), provides: “The court shall grant

27 _____
28 ¹ The parties to the Letter Agreement sometimes referred to the Letter Agreement as the
“Lease” in the Letter Agreement.

1 summary judgment if the movant shows that there is no genuine dispute as to any material
2 fact and the movant is entitled to judgment as a matter of law.” *See* Fed. R. Civ. P. 56(a);
3 *see also In re Linton*, 631 B.R. 882, 892–93 (B.A.P. 9th Cir. 2021). On summary judgment,
4 the movant must show “that there is no genuine issue of material fact.” *In re*
5 *Healthcentral.com*, 504 F.3d 775, 788 (9th Cir. 2007). “If this burden has been met, we
6 must then assess whether the non-moving party has come forward with its own significant
7 and probative evidence showing a genuine issue of material fact as to the relevant claims
8 or defense.” *Id.* Furthermore, “the mere existence of some alleged factual dispute between
9 the parties will not defeat an otherwise properly supported motion for summary judgment;
10 the requirement is that there be no genuine issue of material fact.” *Anderson v. Liberty*
11 *Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). An unambiguous contract does not present an
12 issue of fact because “[t]he construction of a contract is a question of law where the terms
13 of the agreement are clear and unambiguous.” *In re Bataa/Kierland LLC*, 496 B.R. 183,
14 191 (D. Ariz. 2013).

15 **III. ARGUMENT**

16 The Group is entitled to summary judgment because Nomad’s royalty is not a real
17 property interest. The right to an accrued royalty (i.e., a share of the proceeds from the sale
18 of the minerals produced) is a personal property interest, and the right to unaccrued
19 royalties (minerals in the ground) can only “be an interest in real property when the parties
20 so intend.” *See Paloma Inv. Ltd. P’ship v. Jenkins*, 978 P.2d 110, 115 (Ariz. Ct. App.
21 1998);² *see also Cheapside Mins., Ltd. v. Devon Energy Prod. Co., L.P.*, 94 F.4th 492, 498
22 (5th Cir. 2024) (“[A]ccrued royalty interests are personal property, . . . as is the right to
23 payment for severed minerals.” (citation omitted)). “Where the intent of the parties is
24 expressed in clear and unambiguous language, there is no need or room for construction or

25 ² Arizona law governs Nomad’s interests under the Letter Agreement. Because “property
26 interests are created and defined by state law,” state law governs even in bankruptcy
27 proceedings. *In re Rega Props., Ltd.*, 894 F.2d 1136, 1139 (9th Cir. 1990). “[S]tate law
28 should generally be used to decide issues regarding property interests—applies equally to
contract cases, which would be governed by state law absent the bankruptcy.” *Id.*

1 interpretation and a court may not resort thereto.” *Grosvenor Holdings, L.C. v. Figueroa*,
2 218 P.3d 1045, 1050 (Ariz. Ct. App. 2009) (citation omitted); *N. Ariz. Gas Serv., Inc. v.*
3 *Petrolane Transp., Inc.*, 702 P.2d 696, 701 (Ariz. Ct. App. 1984) (applying contract law to
4 dispute related to royalty). “A general principle of contract law is that when parties bind
5 themselves by a lawful contract, the terms of which are clear and unambiguous, a court
6 must give effect to the contract as written.” *Grosvenor*, 218 P.3d at 1050 (citation omitted).

7 Here, the Letter Agreement’s plain language clearly reveals that Nomad does not
8 hold a real property interest. Instead, Nomad has a “production royalty.”

9 Thus, Nomad’s interest is, at best, an accrued royalty. Accrued royalties are not real
10 property interests.

11 However, even if the Court can construe Nomad’s “production royalty” as an
12 unaccrued royalty, there is still no evidence of any intent for Nomad’s royalty to be a real
13 property interest. Not only is the royalty tied to production, but it cannot be a covenant
14 running with the land since assignees are not necessarily bound. There is simply no
15 provision in the Letter Agreement that supports any intent to convey a real property interest
16 to Nomad. Instead, the Letter Agreement’s plain language shows that Nomad holds only a
17 personal property interest.

18 Either way, there is no genuine dispute of material fact, and the Group is entitled to
19 judgment as a matter of law because Nomad’s “production royalty” under the Letter
20 Agreement is not a real property interest and Nomad does not otherwise hold a real property
21 interest in the Property. Summary judgment in favor of the Group is therefore necessary.

22 **A. The Letter Agreement is an accrued royalty that creates only a personal**
23 **property interest.**

24 The parties unambiguously agreed to “production royalties,” i.e., an interest in
25 severed minerals that constitute personal property interests in the form of accrued royalties.
26 A right to payment that “arises only after severance of the product from the realty” is an
27 accrued royalty. *Hardy v. Greathouse*, 94 N.E.2d 134, 138 (Ill. 1950). Indeed, “once
28 minerals have been severed from the reservoir or strata wherein they were originally

1 contained, such minerals, including royalties thereon, become personalty.” *Sabine Prod.*
2 *Co. v. Frost Nat’l Bank of San Antonio*, 596 S.W.2d 271, 276 (Tex. Civ. App. 1980);
3 *accord Finstrom v. First State Bank of Buxton*, 525 N.W.2d 675, 677 (N.D. 1994) (“Upon
4 severance of the gravel, the royalty interest accrues and becomes a personal property
5 interest.”). In short, an interest in a royalty based on production is not an interest in the
6 minerals in place. They are separate and distinct interests.

7 Here, the Letter Agreement’s language is clear that the right to payment arises from
8 “production,” which necessarily occurs after severance of the minerals from the Property.
9 SOF ¶ 11. Given this plain language, “there is no need or room for construction or
10 interpretation and a court may not resort thereto.” *Grosvenor*, 218 P.3d at 1050 (citation
11 omitted). Nomad’s interest under the Letter Agreement is an accrued royalty—a personal
12 property right.

13 Further, the Letter Agreement’s plain language reveals that it creates no real
14 property interest. The Letter Agreement instead provides only for “Production Royalties”
15 based on undefined “NSR” or net smelter return on production. SOF ¶ 11. The Letter
16 Agreement is therefore an accrued royalty based solely on production, which is only a
17 personal property interest.

18 **B. Even if the Letter Agreement is an unaccrued royalty, the parties did**
19 **not intend for the Letter Agreement to convey a real property interest,**
20 **so Nomad has no real property interest.**

21 Here, the Letter Agreement’s plain language reveals that the parties did not intend
22 for it to convey a real property interest. However, even if the Letter Agreement could be
23 read as an unaccrued royalty, the parties must still intend that such an unaccrued royalty
24 be an interest in real property. *See Paloma Inv.*, 978 P.2d at 115 (stating an unaccrued
25 royalty can only “be an interest in real property when the parties so intend.”). However,
26 there is no language to support that the parties intended to create a real property interest in
27 favor of Nomad. *Id.* There is simply nothing in the Letter Agreement that supports any
28 intent that Nomad’s right to payment was to be a real property interest. Thus, Nomad does
not hold a real property interest in the Property under the Letter Agreement.

1 First, as discussed, the Letter Agreement unambiguously creates only an interest in
2 the right to payment from “production” of the minerals, not an interest in the minerals
3 themselves. SOF ¶ 11. In *Paloma Investment*, the royalty interest was related to a
4 conveyance of water rights, which are necessarily “interests in real property.” 978 P.2d at
5 115. Thus, the royalty on those rights was a real property interest. *Id.* In contrast, here, the
6 Letter Agreement’s plain language only creates a right to payment from “production” of
7 the minerals, and does not convey to Nomad an interest in the land itself. SOF ¶ 11
8 (emphasis added).

9 Second, the Letter Agreement contains no express language that it runs with the land
10 or, for that matter, is even binding on successors and assigns. SOF ¶ 12. The Letter
11 Agreement is freely assignable, but only to the extent assignees “accept[] the terms and
12 conditions of the Lease in writing.” SOF ¶ 14. An interest cannot run with the land where
13 enforcement of that interest depends on approval by the non-enforcing party. *Choisser v.*
14 *Eyman*, 529 P.2d 741, 744 (Ariz. Ct. App. 1974). For example, in *Choisser*, the court
15 determined that an interest in refund payments related to water rights did not run with the
16 land where the right “had to be approved” before it could be transferred. *Id.* The
17 requirement to get approval “negate[d] any intention that the refund rights would run with
18 the land.” *Id.* Here too, the fact that an assignee of the Letter Agreement must “accept[]
19 terms and conditions of the Lease in writing” shows that the parties did not intend for any
20 payments to run with the land as a real property interest.

21 Third, and related, the Letter Agreement has a defined term of 20 years that only
22 extends so long as “Patriot Gold holds all or portions of the ‘Property.’” SOF ¶ 13. This
23 type of “personal right . . . cannot, by definition, be a covenant running with the land.”
24 *Choisser*, 529 P.2d at 743. Indeed, that the Letter Agreement is, at most, only enforceable
25 against (1) Patriot Gold or (2) its assignees that accept the terms and conditions of the
26 Letter Agreement (as discussed) indisputably reveals that the Letter Agreement did not
27 create any interest that runs with the land or that is otherwise a real property interest.
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