

UNDER THE AUSPICES OF THE JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC
SECTOR INCLUDING ORGANS OF STATE

HELD AT JOHANNESBURG

Re:

MERVYN CARSTENS)
RAYGEN PHILLIPS) Implicated Persons

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT Mervyn Carstens and Raygen Phillips hereby give notice of their intention to apply on 8 January 2021 on these papers for the following:

1. Condonation for the late filing of this application;
2. Condonation for their failure to comply with Rule 3.3.6 and that the implicated persons have not within 2 (two) weeks of the date of the notice in terms of Rule 3.3 applied in writing:
 - 2.1 To supply a written statement setting out what areas of the evidence of Mr Craythorne they intend to dispute and the grounds on which it was disputed for the reasons as set out in the affidavit of Mr Mervyn Carstens annexed hereto in support hereof;
 - 2.2 Mervyn Carstens and Raygen Phillips furthermore seek an indulgence to file a supplementary witness statement in which they elaborate further on the areas of Mr Craythorne's affidavit they dispute and the grounds on which they dispute it;
 - 2.3 Mervyn Carstens and Raygen Phillips were the implicated persons furthermore seek an indulgence to file a further affidavit in respect of Mr Torres of Gobodo and his affidavit and report.

3. Mervyn Carstens and Raygen Phillips furthermore seek a directive in terms of which they will be permitted to file a statement in response to the affidavit of Mr Peter Bishop pursuant to a notice received by them on 4 January 2021 in which statement they will set out the areas of the affidavit they dispute and the grounds on which it is disputed.
4. After Mervyn Carstens and Raygen Phillips have filed all their witness statements, they will then present an application to cross-examine the witnesses should the Honourable Chairperson of this Commission deem this to be necessary.
5. The implicated persons furthermore seek a directive from the Chairperson of the Commission for disclosure of the affidavit of Mr Bekker discussed in the affidavit of Mr Bishop.

BE PLEASED TO TAKE NOTICE ACCORDINGLY.

DATED AT CAPE TOWN on this the 7TH DAY OF JANUARY 2021.

HEROLD GIE ATTORNEYS

Per:  R. L. BROWN

Wembley 3, 80 McKenzie Street
CAPE TOWN

(REF: RLB/ch/CAR269/0002)

Email: rbrown@heroldgie.co.za

Cell: 082 902 4258

Tel: 021 464-4700

TO: THE SECRETARY OF THE COMMISSION

Professor Ithumeleng Mosala

2nd Floor, Hillside House

17 Empire Road

PARKTOWN

Johannesburg

Email: secretary@commissionsc.org.za

Email: enquiries@sastatecapture.org.za



UNDER THE AUSPICES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

HELD AT JOHANNESBURG

Re:

MERVYN CARSTENS)
RAYGEN PHILLIPS) Implicated Persons

AFFIDAVIT IN SUPPORT OF CONDONATION

I, the undersigned,

MERVYN CARSTENS

do hereby make oath and swear that:

1. I am an adult male miner and the former Chief Executive Officer of the Alexkor, Richtersveld Mining Company, Joint Venture. I reside at 13 Laurel Street, Loevenstein, Bellville. The facts herein contained are within my own personal knowledge and belief unless the context indicates otherwise and are both true and correct.
2. Where I make submissions of a legal nature I do so on the advice of my legal representatives which I verily believe to be true and correct.
3. I am deposing to this affidavit in support of an application for condonation.
4. There are several areas where I have failed to timeously take action.
5. The first of these is to give written indication of my intention to file an affidavit in which I contest the areas I wish to contest as raised by Mr Craythorne.

6. In his affidavit he implicates me in several areas and I do wish to formally contest these and to advise on the basis on which I do so.
7. I admit that I had not done so timeously.
8. The Notice in terms of Rule 3.3 which was received by me on 12 November 2020. In accordance with the Notice I had 14 calendar days to give notice of this application and to file an affidavit.
9. In response thereto I advised that I would be unable to do so as I was in the process of contesting the fairness of my dismissal and in this regard I instructed my attorneys of record, to forward to the Secretary of the Commission the letter which I attach hereto dated 20 November 2020 and which I mark "C1".
10. I requested an extension of time until 15 December 2020. I did not receive a response to "C1" however I confirm that in terms of the original notice 3.3, I was to have filed my response on or by 27 November 2020.
11. As such the affidavit I file herewith (which in any event is incomplete), is 41 calendar days' late. I submit that given the enormity of the issues in which I have been implicated, 41 days in this context is not a substantial delay.

REASONS FOR THE DELAY

12. Firstly I was involved in an arbitration in which I am contesting the fairness of my dismissal which was set down for 24 and 25 November 2020 and which absorbed all of my attention and time.
13. I had no time to prepare the affidavit acquired by the Rule 3.3 notice.
14. Secondly the affidavit of Craythorne is enormous. There are some 326 paragraphs and the affidavit and annexures run into several hundreds of pages.
15. I was simply unable to deal with the contents within the time allowed.
16. In addition I have had an exposure incident.

17. My health is not of the best and I am currently self-isolating which has made consultation with my attorney of record, difficult.
18. Thirdly, Ms Raygen Phillips resides in Port Nolloth and access from Port Nolloth to consult our attorneys in Cape Town has been a challenge.
19. In addition there was the interruption of the year end period. My attorney of record, despite a valiant effort to try to complete the affidavit timeously was not able to do so.
20. In addition their offices did close.
21. The task was made all the more difficult by the fact that the affidavit of Mr Torres and the Gobodo Report also needed to be collated and compiled. I had also, on 4 January 2021, received an affidavit in a Rule 3.3 notice of Mr Bishop.
22. All these affidavits are weighty and substantial and requires proper consideration.
23. It is for this reason that I have instructed my attorneys not to file the complete affidavit we have prepared thusfar as there are several areas which require correction and greater discussion.

PROSPECTS OF SUCCESS

24. From the contents of the affidavit which I am able to submit at this stage, all those allegations contained therein is ultimately accepted by this Honourable Commission as being correct, it will provide substantial assistance and guidance and will in fact lead to a much lesser burden for me and Ms Raygen Phillips' implicated persons to discharge.
25. As such I have deemed it appropriate to limit the contents of my affidavit however I am confident that I have much information to offer and the information and allegations I intend to make if proven correct, will completely exonerate me and Ms Raygen Phillips as implicated persons.
26. As such I submit that the prospects of success are tremendous and we should be allowed to completed our submissions.

PREJUDICE

27. Were condonation not to be granted there will be substantial prejudice to me and to Ms Raygen Phillips.
28. The balance of convenience must also be on our side as we are implicated persons and have not been given an opportunity to clear our name.
29. In this regard I can add that my services were terminated summarily and without any hearing and as such I have not had an opportunity of placing in dispute the allegations levelled against me.
30. Furthermore it is my intention to seek out the assistance of an expert witness, Mr Alan, whose testimony/affidavit I believe will greatly assist this Honourable Commission in its quest for the truth.
31. For these reasons I ask that condonation be granted in respect of those items set out in the Notice of Motion to which this affidavit is annexed.

MERVYN CARSTENS



I certify that the above signature is the true signature of the deponent and that he has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to before me, in my presence at _____ (place) on this _____ day of JANUARY 2021, in accordance with the requirements of Government Notices No. R1258 dated 21 July 1972 and as amended by Government Notices No. R1648 dated 19 August 1977 and R1428 dated 11 July 1980.

COMMISSIONER OF OATHS

" C 1 "

HEROLD GIE | ATTORNEYS

Celebrating **125** years of excellence

Professor Itumeleng Mosala
Secretariat: Judicial Commission of Inquiry into
Allegations of State Capture, Corruption & Fraud in
the Public Sector including Organs of State

Email: secretary@commissionsc.org.za

Your Ref	
Our Ref	RLB/ch/CAR269/0002
Direct Tel	021 464 4722
Direct Fax	021 464 4871
Cell:	082 902 4258
E-Mail	rbrown@heroldgie.co.za
Date	20 November 2020

Dear Professor Mosala

MERVYN CARSTENS

1. We act on behalf of Mr Mervyn Carstens who has handed to us a copy of your three notices in terms of rule 3.3. Our client received two notices in respect of Craythorne and one in respect of Torres.
2. At the outset we advise that our client was employed by a joint venture entity.
3. There are two entities, one of which is Alexkor (which we confirm is indeed wholly owned by the South African Government).
4. The other entity is the Richtersveld Mining Company (the "RMC").
5. Alexkor and the RMC formed a joint venture. This joint venture employed our client.
6. At the outset it is accordingly clear that our client was not employed by an Organ of State and was not employed in the Public Sector.
7. He was employed as the CEO of the joint venture. The joint venture is neither an organ of State or an entity in the public sector.
8. We also advise that our client was dismissed apparently by the joint venture but was communicated with in this regard by Alexkor under circumstances where it is uncertain as to the basis on which they did so.
9. Be that as it may, our client is contesting the fairness of his dismissal and these proceedings are scheduled to commence on 24 and 25 November 2020.
10. Currently all our client's energies and attention is being expended in the preparation for those arbitration proceedings.
11. Accordingly our client is unable to properly deal with all of the issues he is required to deal with in terms of your notice in terms of rule 3.3.

Wernbley 3, 80 McKenzie Street, Cape Town 8001
Docex 52 Cape Town, PO Box 105 Cape Town 8003 South Africa



Corporate & Commercial, Employment & Public, Family & Matrimonial, Insolvency & Business Rescue, Insurance, Litigation & Dispute Resolution, Pension & Financial Services, Personal Injury, Property, Wills, Trusts & Estates

DIRECTORS: Shekesh Sirkar BA LLB (Chairman), Pierre le Roux BA LLB HonsB (Chief Executive), Linda Jordan BA LLB PG Dip Tax Law, Martin Vermeulen B Rec (Acc) LLB, Richard Brown BA LLB, Reniel Fourie BCom LLB, Kerli MacKenzie B Mus M Mus B Proc LLB LLM, Jeremy Kibrok BA LLB, Kaamilah Paudse B Soc Sc LLB, Ashley Meyer LLB, Rexho Jaga BA LLB, Peter Smith BCom LLB, Taryn Gravenor LLB, **PRACTISING CONSULTANTS:** Richard Moffat BA LLB, Peter Davis BProc, Henry Stubbings BA LLB **CONSULTANT:** David Lotz **SENIOR ASSOCIATES:** Sue Ndlovu B Soc Sc LLB, Peter Michaels B Soc Sc LLB, Anja Haupt BA LLB, Jahné-Lee Jacobs LLB **ASSOCIATES:** Lutema Lobota BA LLB, Fehdeel Parker B Soc Sc LLB, Mervin Poleraren LLB, Carley Sauls LLB **FINANCIAL MANAGER:** Harry Durrell Professional Accountant (SA)

12. It is our client's intention to do so fully however the timing of his ability to do so is being severely constrained.
13. Accordingly we place on record that our client will be submitting written answers to the allegations levelled against him however he will not be able to do so within the timeframes suggested by you in your notice.
14. He will also raise the preliminary issue concerning the jurisdiction of the Commission over a joint venture.
15. Our client relishes the opportunity to clear his name and requires a short extension of time to be able to do so.
16. Our client will accordingly make whatever submissions he needs to make on or before **15 December 2020**.
17. In the interim, we kindly ask for an extension of time to make a final decision as to the contents of your paragraph 7. We request an extension until **15 December 2020** to make a final decision in this regard.
18. We ask that you kindly acknowledge receipt of this correspondence to you and further advise us of the outcome of our request for an extension of time.

We look forward to hearing from you.

Yours faithfully
HEROLD GIE

per:


R.L. BROWN
Director

- cc **Advocate André Lamprecht**
Email: secretary@commissionsc.org.za
- cc Shannon van Vuuren
Email: secretary@commissionsc.org.za
- cc Rachel Niewenhuis
Email: RachelN@commissionsc.org.za

UNDER THE AUSPICES OF THE JUDICIAL COMMISSION OF INQUIRY INTO
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Re:

MERVYN CARSTENS	}	
RAYGEN PHILLIPS	}	Implicated Persons

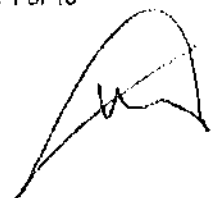
AFFIDAVIT – MERVYN CARSTENS

I, the undersigned,

MERVYN CARSTENS

do hereby make oath and swear that:

1. I am an adult male miner and the former Chief Executive Officer of the Alexkor, Richtersveld Mining Company, Joint Venture. I reside at 13 Laurel Street, Loevenstein, Bellville. The facts herein contained are within my own personal knowledge and belief unless the context indicates otherwise and are both true and correct.
2. Where I make submissions of a legal nature I do so on the advice of my legal representatives which advice I verily believe to be true and correct.
3. I am deposing to this Affidavit pursuant to a Notice in terms of Rule 3.3 of this Honourable Judicial Commission to answer allegations levelled against me by a certain Mr Gavin John Craythorne.



4. On 4 January 2021 I received a further notice in respect of Mr Peter Bishop. The time available to me did not allow for me to respond to the allegations he has raised. I will do so and will seek to file an affidavit in response thereto as soon as I am able to.
5. In addition I have received a Rule 3.3 notice in respect of the Gobodo report and Mr Torres. I will also be responding thereto.
6. Time however did not allow for that response to be completed.

MISSING DOCUMENTS AND AFFIDAVITS

7. I have not received any affidavit by Mr Dekker and as such, will first need to receive this affidavit to complete my response to Mr Bishop's affidavit.
8. In addition, I have not received all of the annexures referred to by Craythorne.
9. I have, most importantly, not been able to complete my response to Mr Craythorne's affidavit. I will do so in the week commencing 11 January 2021.

STRUCTURE

10. Firstly I raise certain preliminary issues which must first be determined as such determination will set out the basis on which this Honourable Judicial Commission has jurisdiction over what is in essence an entity which is not part of the Public Sector and is not an Organ of State.
11. It is however necessary to sketch some of the background context to this affidavit which I do in part as part of the preliminary issue I raise and on its own.
12. I am joined in my response by Miss Raygen Phillips who has likewise received a Notice in terms of Rule 3.3 in respect of Mr Craythorne.
13. For ease of reference she will be compiling her own affidavit however Miss Phillips and I have in essence "teamed up" in that we have both appointed the same set of attorneys to represent our interests, which are aligned.



14. I now raise the following preliminary issues:

PRELIMINARY ISSUES

15. Given the fact that I have not received all the relevant information, I must reserve for myself the right to supplement this affidavit. I however file this affidavit so as not to delay the matter, even though it is incomplete.

16. Section 239 of the Constitution of the Republic of South Africa, Act 108 of 1996 defines Organ of State to be :

- "(a) a Department of State or administration in the National, Provincial or Local Sphere of Governments; or*
- (b) any other functionary or institution –*
- (i) exercising a power of performing a function in terms of the Constitution or a Provincial Constitution; or*
- (ii) exercising a public power of performing a public function in terms of any legislation, but does not include a Court or Judicial Officer."*


17. Alexkor is a State owned company, the shares of which are held in the name of the Minister for the time being of Public Enterprises, currently the Honourable Pravin Gordhan.

18. The Richtersveld Mining Company is a private company and falls outside of the public sphere.

19. Alexkor and the Richtersveld Mining Company, pursuant to a successful land claim by the Richtersveld community teamed up and formed a Joint Venture.

20. The Joint Venture was established in terms of a Court Order which also incorporated a written Deed of Settlement concluded between the Richtersveld community, Alexkor and the Government of the Republic of South Africa.

21. A Pooling and Sharing Joint Venture ("PSJV") was established pursuant to the Court Order.



22. The terms of the Court Order and written Deed of Settlement was that the Richtersveld Mining Company ("RMC") and Alexkor SOC would form a Joint Board of the PSJV.
23. The Interim Joint Board of the PSJV then passed a unanimous Resolution which was signed by both parties.
24. In terms of this unanimous Resolution the relationship between the parties in the PSJV is governed by the Deed of Settlement and unanimous Resolution.
25. The overall supervision of the activities of the pooled operations vests in the Joint Board which is comprised of three members of each party (i.e. 3 from Alexkor and 3 from the RMC).
26. The Marine Mining assets and rights belonging to Alexkor SOC and the Land mining rights belonging to the RMC, were placed under the control of the Joint Board of the PSJV in terms of the provisions of the Deed of Settlement and the unanimous Resolution.
27. Alexkor as a State owned company has its own Board and is a State owned company.
28. There is no question that it falls within the jurisdiction of this Honourable Judicial Commission.
29. I however was employed by the PSJV.
30. At no stage did the PSJV exercise any public powers.
31. At no stage did anything which was done by the PSJV constitute administrative action.
32. Under the circumstances I submit that the PSJV falls outside of the Public Sector and accordingly beyond the jurisdiction of this Honourable Judicial Commission.
33. Organs of State all need to be audited by the Auditor-General. When the Auditor-General was asked to confirm whether the PSJV were required to be audited by his

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office, the Auditor-General sent a letter confirming that his office did not need to audit the PSJV. I attach that letter as annexure "MC1" hereto.

34. At no stage was I an employee, a director, a member of, public officer of or in any way, shape and form, part of Alexkor SOC.
35. From time to time I was asked to make submissions to the Alexkor Board and to provide information.
36. Other than that I did not form part of Alexkor.
37. I accordingly ask for a determination from this Honourable Judicial Commission of Enquiry that:
 - 37.1 the PSJV is not an Organ of the State or a State-owned entity;
 - 37.2 the allegations, such as they are, which have been levelled against me have been levelled against me in my capacity as the Chief Executive Officer of an entity that falls outside of the public service and outside of the jurisdiction of this Honourable Judicial Commission's terms of reference; and
 - 37.3 I be completely excused from having to answer any of the allegations levelled against me by any person herein in relation to my role as CEO of the PSJV.
38. Out of an abundance of caution however I will nevertheless proceed to complete this affidavit on the basis as set out above with full reservation of all my rights and under protest.
39. My protest in this regard is that I was employed as the Chief Executive Officer of an entity which falls outside of the terms of reference of enquiry of this Honourable Judicial Commission.

CONSPIRACY

40. For the sake of good record, I deny that:

40.1 there was a conspiracy to capture Alexkor;

40.2 if there was such a conspiracy, then:

40.2.1 I was not aware thereof, and

40.2.2 I did not participate therein;

40.2.3 at all material times I was an employee of the PSJV.

BACKGROUND

41. The starting point of my affidavit is section 217 of the Constitution, Act 106 of 1996. Section 217 deals with procurement however it is limited to procurement by an Organ of State in the National, Provincial or Local sphere of Government or any other institution identified in National legislation.
42. The PSJV falls outside of this definition.
43. As I understand it the Public Finance Management Act No 1 of 1999 as amended by Act 29 of 1999 together with the Municipal Finance Management Act No 56 of 2003 was promulgated to largely regulate public finances, in particular procurement.
44. I also understand that there are various directives issued by the Department of National Treasury to manage supply chain management.
45. It is however so that none of this applies to the PSJV. I readily concede that the PFMA and the National Treasury guidelines do apply to Alexkor.
46. In these submissions I will refer to the foregoing concerning the application of Section 217 of the Constitution, the PFMA and National Treasury's supply chain management guidelines to highlight the fact that the forensic investigators Gobodo and Mr Craythorne have all misdirected themselves as to the application of procurement and the appointment of service providers in the Public Sector as opposed to the private sector.
47. This is a central issue in these submissions and the contents of my affidavit as well as the affidavit of Raygen Phillips. As will be demonstrated hereunder, the vast

majority of the allegations levelled against me will need to be reconsidered in the light thereof.

48. I annex hereto and marked "MC2" the Deed of Settlement referred to above which Deed of Settlement is dated 22 April 2007 as well as the unanimous Resolution which was signed on or about 31 August 2007 as "MC3".
49. These documents are central to my submissions as they form the framework of the PSJV.
50. In terms of the provisions of the unanimous Resolution, the marketing of the precious stones (diamonds) produced from the pooled operation areas is the responsibility of the PSJV Board.
51. During 2012/2013 the view of the Board and Management of the PSJV, was to strategically change its operation to leverage off its position as a primary producer of diamonds to also participate in the post extraction treatment, processing and beneficiation of the diamonds as this would deliver additional benefits to the PSJV.
52. I pause to also point out that the previous service provider, Diamond Marketing Consultants, was appointed by the Alexkor SOC Board (prior to the PSJV being established) without following any due process in terms of the PFMA. They were simply appointed unilaterally by the Alexkor Board prior to the land claim by the Richtersveld community having been settled in the manner it was. I point out the irony that the sea mining contractors at that stage did not object to their appointment outside of the PFMA by Alexkor, which was subject to the PFMA as it was most certainly part of the public sector.
53. There was also no written agreement between Diamond Marketing Consultants and Alexkor. I further point out that despite a diligent search by myself and the Company Secretary, Ms Raygen Phillips, we were unable to locate any written agreement between Diamond Marketing Consultants (Pty) Ltd and Alexkor. To the best of my knowledge and belief, such written agreement does not exist. This was the situation that the Board faced at the time of them making the strategic decision to focus on post-mineral extraction treatment, processing and beneficiation.
54. Ms Raygen Phillips will sign a confirmatory affidavit in this regard.

55. Accordingly a strategic decision was made by the Board and management of the PSJV, not just for the PSJV to appoint another service provider to conduct the valuation, marketing and selling of diamonds but to rather also seek to appoint a service provider who would come up with innovative solutions to ensure that the PSJV was able to benefit from the post extraction treatment of the diamonds.
56. A request for proposals was published, a copy of which I annex hereto marked "MC4". At the outset I do apologise for the poor copy thereof. I will endeavour to obtain a clearer copy and place it before this Honourable Judicial Commission by way of a supplementary affidavit.
57. Annexure "GC10" to the affidavit of Graythorne however does include this request for proposal which was numbered RFP03/14.
58. I wish to highlight the following extracted from the first four paragraphs of "MC4":

"Although there is considerable scope for the ongoing expansion of the earnings and job creation impact of the current diamond mining activities, the Department of Public Enterprises has stipulated the need for Alexkor to develop and implement a strategy to introduce viable and economically sustainable activities in the Richtersveld that extend beyond primary minerals extraction activity. The post minerals extraction (PME) treatment, processing and beneficiation industries are broadly defined as any and/or diverse industrial minerals processing activity extending across the various stages of value chain beneficiation including manufacturing production of final consumer products. Beneficiation entails the transformation of the mineral (or a combination of minerals) to a higher value product, which can either be consumed locally or exported. The term is used interchangeably with value addition. The development of the PME service sector is considered a key proposition that will ensure additional economic benefit for the communities that rely on the primary extraction activity for the economic survival. This is captured in the Minerals and Petroleum Resources Development Act ("MPRDA") to facilitate among objectives, the development of peripheral and value adding activities that will ensure an economic life for the Richtersveld beneficiary communities beyond their anticipated life with the mine (currently estimated to be between 10 – 20 years)."

59. From the foregoing it is significant that it is the Department of Public Enterprises which has stipulated the need, not for the Joint Venture, but rather for Alexkor to develop and implement a strategy to introduce PME processing and beneficiation.
60. The PME focus of the tender was accordingly foremost in the minds of the Board members of the PSJV.
61. Interested companies were requested to submit written expressions of interest to participate in RFP03/14.
62. The PSJV received 9 expressions of interest from 9 different companies showing interest.
63. All 9 companies were accordingly invited to attend the briefing session at the mine on 13 November 2014. Of the 9 who expressed an interest only 7 companies attended the briefing session. After the compulsory briefing session, the 7 companies were asked to present innovative written proposals for enhancing the revenue of the mine through marketing and post minerals extraction treatment for the processing and beneficiation of diamonds extracted in the Richtersveld.
64. The clear intention of the Board was for the PSJV to leverage its position as a prime producer of diamonds to participate in post minerals extraction treatment, processing and beneficiation of its diamond products to deliver additional benefits to the PSJV.
65. At the time a company by the name of Gamiro Advisory Services ("Gamiro") led by Devon Pather was providing other advisory services to the PSJV especially around community involvement and engagement. Devon Pather happens to be married to Heather Sonn. Heather Sonn was involved in the community engagement aspects of the mandate. To the best of my knowledge and belief, Heather Sonn is a shareholder and plays a limited role within Gamiro, however with this particular instruction to Gamiro, we did not deal with Heather Sonn at all but rather with Mr Devon Pather who provided the services contracted for.
66. On this issue we did not deal with Heather Sonn. I am personally aware that she is married to Devon Pather and is presumably a shareholder within Gamiro and from

time to time does play a role in the advisory services however in this particular experience, she did not.

67. This is one of the hallmarks of the attention seeking nature of the allegations made by Craythorne.
68. With the agreement of the PSJV Board, Gamiro was then asked to conduct the evaluation of the bids.
69. This was pursuant to their mandate being extended to include the evaluation of the 7 bids.
70. I pause to point out that there is nothing unusual in appointing a third party to perform the bid evaluation functions.
71. This might be unusual in terms of the PFMA and National Treasury SCM guidelines, however for an entity falling outside of the Public Sector and which is not an Organ of State or a State owned company, this is not unusual. I also again refer, in this context, to "MC1" hereto (a copy of an email from the Auditor-General confirming that the PSJV falls outside of the public sector and accordingly is not subject to an audit by the Auditor-General's Office).
72. There are no restraints or constraints in this regard on the PSJV appointing Gamiro to perform the evaluation functions.
73. Three companies were short-listed.
74. Scarlet Sky Investment 60 (Pty) Limited with registration number 2009/002967/07, CS Diamonds bearing company registration number 2008/012888/07 and Diamond Realisation (Pty) Limited trading as Fusion Alternatives and bearing company registration number 2010/000915/07.
75. These three short-listed companies were then all invited to make further presentations to the PSJV Tender Committee which was comprised of PSJV Board members. I attended in an ex-officio capacity but was not a voting member, as did Ms Phillips. I can confirm that Ms Kellerman also attended but not as a voting member.

76. Of the three companies who presented to the PSJV Board, SSI presented the most innovative solution.
77. I pause to point out that much has been made in this matter by both Mr Craythorne and by Gobodo of the fact that SSI was permitted to "alter" its proposal.
78. The PSJV Board in RFP03/2014 expressly asked for the PME treatment and beneficiation to be the focus of any proposals.
79. The PSJV as part of its strategic planning did not wish to once again appoint a service provider to conduct evaluation, marketing and selling of diamonds but also to participate in the post mineral extraction treatment, processing and beneficiation of its diamonds to deliver additional benefits to the PSJV.
80. From my vantage point, I can confirm that it was a major focus of the PSJV Board that there be the PME treatment, processing and beneficiation of the diamonds.
81. In this regard the presentation and proposal from SSI was the most innovative of the three companies who presented their bids.
82. If one is constrained by the precepts of the PFMA and the National Treasury's supply chain management guidelines, a changed proposal will require a re-advertising amongst a whole host of other red tape.
83. As the PSJV fell outside of the public service, it was able to nimbly steer all of the companies to focus on the PME treatment, processing and beneficiation of the diamonds produced. In the private sector, which in essence the PSJV was in, this is not unusual and most importantly does not constitute a contravention of any National or Provincial legislation.
84. Subsequent to the presentation by SSI on 11 December 2014 I, in my capacity as CEO, was instructed to obtain clarity on certain of the proposals made by SSI. The clarity and confirmation required included the following:

84.1 upfront guarantee of funding available;

- 84.2 what the number of community members to be trained in cutting and polishing of diamonds was to be;
- 84.3 the local beneficiation strategy;
- 84.4 unequivocal undertaking that the mine will benefit from the post mineral extraction treatment processing and beneficiation of diamonds.
85. I wrote to SSI to request this information.
86. On the 15 December 2014 Scarlet Sky through Mr Daniel Nathan submitted the requested information.
87. After the information was shared with the Tender Committee members, SSI was then conditionally approved as the successful tenderer subject to a due diligence and verification process being conducted.
88. As the CEO I conducted the due diligence exercise which was extensive. I annex a copy thereof as "MC5".
89. The verification exercise however was outsourced to the Chief Legal Officer of Alexkor, Ms Zarina Kellerman, who had attended the Tender Committee meetings but was not entitled to vote. I annex hereto marked "MC6" her email discussions with Daniel Nathan
90. On 29 January 2015 the Due Diligence Report was finalised and circulated to all the Board members except for Mr Duncan Kolrabi who on 27 January 2015 had resigned.
91. After the Board considered the Due Diligence Report and the Verification Report, SSI's appointment was ratified by means of a round robin Resolution.
92. On 1 March 2015 SSI was informed that they were the successful bidder and that the tender was awarded to them.
93. All other unsuccessful bidders were informed that their proposals were unsuccessful.

94. I pause to point out that central to certain of the allegations levelled against me in the Gobodo Report as well by Mr Craythorne is that I advised and misrepresented to the Board that the due diligence and verification exercise had been completed under circumstances where it was not.
95. As I have set out above the due diligence exercise was most definitely completed as well as the verification exercise.
96. My Report in this regard is annexed hereto marked "MC5".
97. With the 2016 tender I can confirm that no due diligence exercise was conducted as SSI was once again the preferred bidder. Given the fact that a due diligence exercise had previously been conducted in 2015, the Board did not deem it necessary to conduct a second due diligence exercise.
98. In addition, the Board was able to observe SSI's successful managing of the process during the previous 12 month months of the first Tender.
99. This was painstakingly explained by Raygen Phillips to Gobodo investigators however they completely misunderstood the information she was supplying to them. She has signed a confirmatory affidavit confirming that she advised the Gobodo representatives of this fact.
100. It is however my belief that Gobodo deliberately ignored this evidence as it tended to place me in a more favourable light.
101. I will return to this particular issue where it is raised in the Gobodo Report by Mr Torres.
102. As can be seen from "MC5" a due diligence exercise on SSI was most definitely conducted in respect of the RFP03/14.
103. I accordingly expressly deny, wherever it is repeated, that I misrepresented to the Board that the due diligence exercise had been done under circumstances where it had not. The due diligence exercise was most definitely done.

104. As further confirmation of the fact that the due diligence exercise was done I submit hereto marked "MC6" a copy of the Report dated 29 February 2016 by the Audit and Risk Committee of the Alexkor Board which Report was submitted to the then Honourable Minister Lynne Brown of the Department of Public Enterprise. I refer specifically to the entries for 29 January 2015 and 27 February 2015 mentioned on page 7 of the Report. "MC6" is also useful as it sets out the chronology of the events as it unfolded.

CONSPIRACY

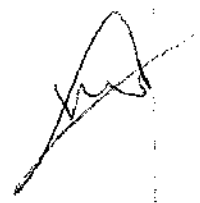
105. I, in my capacity as the CEO of the PSJV and in my personal capacity, can confirm that I was not aware of the existence of any scheme or conspiracy to capture Alexkor. :
106. If there was indeed such a conspiracy, I can confirm that neither I nor Ms Phillips was aware of it or participated in it.
107. Whatever I have done during my tenure as an employee and CEO of the PSJV, was done by me in good faith, to the best of my abilities and in furtherance of the strategic objectives as communicated to me by the PSJV Board.
108. I also relied on advices which was given to me by Ms Kellerman, the Chief Legal Officer of the Alexkor Board who from time to time was seconded to assisted the PSJV Board with legal issues.
109. I had no reason to disbelieve the advices of Ms Kellerman and I can confirm that the PSJV Board also relied on her advices.

SELF-INTEREST MOTIVATIONS OF THE EQUITABLE ACCESS CAMPAIGN ("EAC")

110. Craythorne is a Founding Member of the EAC which has as its stated aim to enter into an agreement with Alexkor after Alexkor has divested itself of its involvement in the PSJV.
111. It is then the vain glorious hope of the EAC that Alexkor would then in turn enter into an agreement with them in terms of which they in turn would market and sell their

own diamonds and retain 85% of the value of the sales with 10% being returned to Alexkor and 5% returned to the community.

112. This I submit, **would constitute theft of the community assets.**
113. The EAC self-interest campaign has at its core a desire to acquire the marine assets of the PSJV. In this regard, it is not dis-similar to the Questco document which also was a proposal to purchase the marine rights.
114. As such the EAC and Craythorne, in particular, wishes to procure the sea mining assets of Alexkor to the exclusion of the Richtersveld community.
115. Even if Alexkor wished to enter into such an agreement, what the EAC consistently chooses to ignore is the provisions of the unanimous Resolution and the Deed of Settlement which requires of Alexkor to eventually depart from mining activities in the Richtersveld and when it does so, to offer the sea mining rights to the RMC on a preferential right of first refusal basis as set out in clause 19 of the unanimous Resolution "MC3" hereto.
116. The EAC led by Craythorne in its various forms has for decades been pursuing this agenda without any success.
117. Through Mr Craythorne who is not even a contractor, these efforts will continue to be refuted as it is designed to benefit only the few marine contractors and not the wider community of the Richtersveld.
118. When one considers further that most of the marine contractors have been mining the sea bed for several decades and had started at a time when local members of the Richtersveld community were racially excluded from leasing mining rights, the issue becomes even more complex.
119. It is for this reason that I describe these efforts as a vain glorious hope.
120. The submissions made by Craythorne in particular and the information provided to the Gobodo Investigators have all been motivated by this purpose, which would require of Alexkor to act in contravention of the Deed of Settlement and the Unanimous Resolution.



121. Were Craythorne to achieve his self-serving aims in this regard, it will be to the detriment of the Richtersveld community.
122. This has however not deterred Mr Craythorne and his followers at all. Craythorne has been hailed as a brave whistleblower however he is not. He is motivated by his own self serving greed and self interests which are not c

AD HOMINE ATTACKS

123. Part and parcel of the EAC has been a campaign to denigrate, insult and defame anyone who dares to oppose and point out to Mr Craythorne that he will not be able to achieve his stated goal of acquiring the marine assets of Alexkor under any circumstances, other than in terms of clause 19 of the Unanimous Resolution "MC3" hereto.
124. I will seek demonstrate at the conclusion of my supplementary affidavit that there is no merit to the allegations levelled against me and against other employees of the PSJV in particular Ms Raygen Phillips,
125. The affidavit of Craythorne is littered with bald allegations with no evidence whatsoever.
126. He leaps to conclusions and in many other places draws suppositions from information which is so disparate that they hardly make sense.
127. In addition to his campaign and the EAC campaign of vilifying Ms Raygen Phillips and myself, as part of his aims and objectives to obtain the sea mining rights of Alexkor, he has fomented and stoked dissent amongst the marine contractors.
128. This has gone on to such an extent that both myself and Ms Phillips have both separately received death threats.
129. A death threat was affixed to the notice board of the local Spar in Port Nolloth in which our lives were threatened. A copy of the death threat as well as a translation by Ms Raygen Phillips is annexed hereto marked "MC7" and "MC8". In addition Mr Craythorne was observed affixing to the PSJV notice board, misleading information

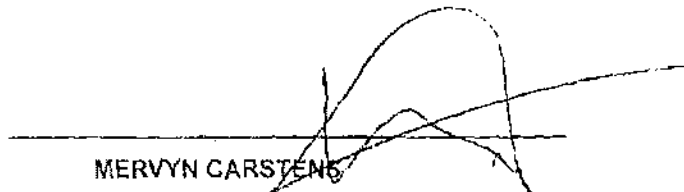
which I believe led to the death threats against myself and Ms Phillips as set out in "MC9" and "MC10".

130. This resulted in the PSJV attorneys writing to Mr Craythorne and a copy of their letter dated 18 October 2017 as well as my letter to Mr Craythorne dated 11 October 2017 is annexed hereto marked "MC11".
131. For these and other reasons, defamation proceedings were instituted against Mr Craythorne by me amongst others.
132. The Board considered the defamation matters and took a principled decision that given the irretrievable breakdown in the relationship and the outrageous allegations made by Mr Craythorne amongst others, that four of the contractors and their significant role players, as a result of these and other unlawful activities, would not have their contracts renewed.
133. When regard is had to the absolute lies and defamation contained in *inter alia* the notice board attachment by Mr Craythorne, it is not difficult to understand why I supported the decision to institute defamation proceedings against Mr Craythorne and others. I did recommend to the PSJV Board that they not renew their mining contracts. However, my recommendation in this regard was not without just cause.

BEE REQUIREMENTS – (THE PROVERBIAL LOG IN MR CRAYTHORNE'S EYE)

134. Mr Craythorne, given the fact that he is a white male, has decided, that to ensure that he at least receives some Black Economic Empowerment points, to place his mining contract in the name of his daughter. In addition, a third person of colour who is employed by him in his home, is also a shareholder and director.
135. As such, he is not a mining contractor and he is not a shareholder of his daughter's mining company which holds the licence. He operates through them.
136. There is however no denying that he has extensive experience as a diver in the industry.

137. I now turn to the contents of his affidavit. [I pause at this stage and will shortly file a supplementary affidavit.]



MERVYN CARSTENS

I certify that the above signature is the true signature of the deponent and that he has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to before me, in my presence at _____ (place) on this _____ day of JANUARY 2021, in accordance with the requirements of Government Notices No. R1258 dated 21 July 1972 and as amended by Government Notices No. R1648 dated 19 August 1977 and R1428 dated 11 July 1980.

COMMISSIONER OF OATHS

" MC 1 "

From: Wessels, Carl (SM) [mailto:Carl@agsa.co.za]
Sent: Monday, 18 June 2018 10:33 AM
To: Goche, George; Ndimande, Chawulani (SM); Fungai Muvaki
Subject: RE: Emailing - OpinionPSJV(2).pdf

Hi Team,

Hi Team. The short answer was "no" the PSJV is not subject to the PFMA.

The PC's opinion was accepted as final.

Carl Wessels

Senior Manager - National E • Auditor-General of South Africa

Tel: +27(0)12 422 9804 • Fax: +27(0)12 426 8060 • Mobile: +27(0)71 6722 676 • Email: carl@agsa.co.za

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"MCZ"

DEED OF SETTLEMENT

Between

THE RICHTERSVELD COMMUNITY

and

ALEKKOR LIMITED

and

**THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA**

CB

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J. S. A.E.

IN THE LAND CLAIMS COURT OF SOUTH AFRICA
(HELD AT CAPE TOWN)

Case No: LCC 151/1998

In the matter between:

THE RICHTERSVELD COMMUNITY

Plaintiff

and

ALEKKOR LIMITED

First Defendant

**THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA**

Second Defendant

DEED OF SETTLEMENT

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I. **RECORDAL**

1.1 WHEREAS under case no. LCC 151/1998 before the Land Claims Court, by agreement between the parties, the Land Claims Court confined itself to deciding the question whether the Richtersveld Community met the requirements of section 2(1) of the Restitution of Land Rights Act, 1994 (Act 22 of 1994), and in particular whether it constituted a community or a part of a community dispossessed of a right in land after 19 June 1913 as a

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result of past racially discriminatory laws or practices, and the Richtersveld Community claimed that it was dispossessed of ownership (by common law or by indigenous law) and the right to exclusive beneficial occupation and use of the claimed land, including the exploitation of its natural resources; and

1.2 WHEREAS the Land Claims Court held in 2001 that the Richtersveld Community constituted a community for the purposes of the Restitution of Land Rights Act, 1994 (Act 22 of 1994) and the Constitutional Court, on appeal, made an order as follows:

"(a) It is declared that, subject to the issues that stand over for later determination, the first plaintiff [the Richtersveld Community] is entitled in terms of s 2(1) of Restitution of Land Rights Act 22 of 1994 to restitution of the right to ownership of the subject land (including its minerals and precious stones) and to the exclusive beneficial use and occupation thereof.";

1.3 WHEREAS the proceedings in the said case no. LCC 151/1998 thereafter resumed in the Land Claims Court on the issue of the appropriate nature and form which restitution of the said rights should take; and on 29 April 2004 the Land Claims Court

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ordered as follows with regard to preliminary issues:

"(a) It is declared that the orders claimed by the plaintiff for both restoration and compensation in satisfaction of its right to restitution in terms of section 2(1) of the Restitution Act, are competent in terms of section 35 of the Restitution Act, (b) It is declared that the orders claimed by the plaintiff for repair of and/or compensation for the environmental damage to the subject land, are competent in terms of section 35 of the Restitution Act";

and

1.4 WHEREAS the Richtersveld Community, in the resumed proceedings, claimed:

- restoration to it of the right to ownership of the claimed land and of the mineral rights in respect thereof, alternatively of rights to prospect and mine in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);
- compensation for minerals extracted from the claimed land by the State and Alexkor since dispossession of the claimed land

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from the Richtersveld Community, in an amount not less than R1,500,000,000.00;

- repair of the environmental disturbance caused by the said extraction of minerals from the claimed land by the State and Alexkor, alternatively compensation in respect thereof in an amount not less than R1,067,814,014.00; and
- a *solatium* for the said dispossession of R10,000,000.00; and

1.5 WHEREAS the Government of the Republic of South Africa, in the resumed proceedings:

- admitted that restoration of the claimed land should be ordered, subject thereto that formal township establishment in respect of the Alexander Bay township take place and that disruption of governmental functions and of the social fabric in Alexander Bay should be prevented by the restoration of only certain erven in the established township;

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- disputed that, with effect from 1 May 2004, restoration of mineral rights in respect of the claimed land was possible in law and that the Land Claims Court had the power or jurisdiction to order restoration of any rights to prospect and/or mine as contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

- denied that the Richtersveld Community was entitled to an order for repair of the environmental disturbance caused by the said extraction of minerals and pleaded that the obligation of the State and Alexkor extended no further in this regard than the obligation to rehabilitate the said environmental disturbance in terms of successive mining and mineral laws and regulations;

- denied that the Richtersveld Community was entitled to any compensation in respect of environmental disturbance as claimed and in any event entitled to compensation exceeding the difference between the market value of the environmentally disturbed land and the market value thereof in an undisturbed

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state;

- offered, by way of equitable relief, the alternative State land set out in this agreement;
- denied that the Richtersveld Community was entitled to any compensation in respect of the minerals extracted from the claimed land since the dispossession thereof from the Richtersveld Community;
- denied that the Richtersveld Community was entitled to any *solatium*; and
- pleaded that in determining appropriate restitution, the Richtersveld Community may not receive more in value by way of restoration and equitable relief than the past value of the land and mineral rights which had originally been dispossessed from them, expressed in present-day monetary value and that the Richtersveld Community was not entitled to profit through the restitution process; and

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- 1.6 WHEREAS it was Alexkor's case that restoration should take place without social disruption, and in a way that would enable it to continue with its marine prospecting and mining operations whilst using the relevant infrastructure and facilities on land; and
- 1.7 WHEREAS the parties have decided to settle the restitution claim under case no. LCC151/1998 and have agreed to a restitution order by the Land Claims Court on the terms set out in this agreement; and
- 1.8 WHEREAS the Richtersveld Community is in the process of establishing a company holding structure containing the entities set out in annexure "A" hereto in order to hold the various restoration and compensation components set out in this agreement; and
- 1.9 WHEREAS the State is obliged to acquire the relevant land, rights in land and assets vesting in Alexkor for the purposes of restitution to the Richtersveld Community and has by agreement with Alexkor provided for the transfer thereof directly to the

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Richtersveld Community;

NOW THEREFOR THE PARTIES AGREE AS FOLLOWS:

2. **DEFINITIONS**

In this agreement, unless the context indicates otherwise, the following words or expressions shall have the meaning assigned thereto, namely:

2.1 "Alexkor" means Alexkor Ltd;

2.2 "court" means the Land Claims Court;

2.3 "CPA" means the Richtersveld Sida !hub Communal Property Association (in Afrikaans "die Richtersveld Sida !hub Vereniging vir Gemeenskaplike Eiendom"), a communal property association established by the Richtersveld Community and registered in terms of the Communal Property Associations Act, 1996 (Act 28 of 1996) and as reflected in annexure "A";

2.4 "CPA Act" means the Communal Property Associations Act, 28

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of 1996;

- 2.5 "DME" means the Department of Minerals and Energy;
- 2.6 "effective date" means the date upon which this agreement is made an order of the Land Claims Court;
- 2.7 "EMP" means the Environmental Management Plan pertaining to the mining area of Alexkor approved under the provisions of the Minerals Act, 50 of 1991;
- 2.8 "land claim" means the claim in case no. 151/1998 before the Land Claims Court;
- 2.9 "MOU" means the Memorandum of Understanding signed by and on behalf of the Richtersveld Community, Alexkor and the State on 26 October 2006 in Cape Town;
- 2.10 "Minister" means the Minister of Public Enterprises;

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- 2.11 "MPRDA" means the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);
- 2.12 "parties" means Alexkor, the RVC, the CPA and the State;
- 2.13 "RVC" means the Richtersveld Community;
- 2.14 "signature date" means the date upon which the last signing party signs this agreement;
- 2.15 "State" means the Government of the Republic of South Africa and/or the Executive Council of a province of the Republic of South Africa, as circumstances may require.

3. **AGREEMENT TO BE MADE ORDER OF COURT**

Each party will cooperate and take all reasonable steps to have this agreement made an order of court as soon as possible after the signature date, but in any event by not later than 3 (three) months thereafter or such extended date as the parties may agree in writing.

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4. **FULL AND FINAL SETTLEMENT**

This agreement is in full and final settlement of the land claim: Provided that the parties will have no further claims against each other in respect of the land claim, save as is expressly provided for in this agreement.

5. **ENTITIES ESTABLISHED BY THE RVC**

5.1 By agreement between the parties, the RVC is in the process of establishing the entities reflected and defined in annexure "A" for purposes of the implementation of this agreement. Such entities are referred to herein as defined in annexure "A".

5.2 Before the effective date, the parties must be satisfied that such entities comply, insofar as practicable, with section 35(3) of the Restitution Act, read with the CPA Act.

5.3 Before the effective date and subject to clauses 12.2 and 18, the RVC must submit the founding documents of Devco and the

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Investment Holding Co, as well as the trust deeds of the Richtersveld Community Trust and the Richtersveld Investment Trust respectively, for approval to the State.

6. **RESTORATION OF LAND RIGHTS AND RELATED MATTERS**

6.1 Subject to clause 7 below, the following land must be transferred to the CPA as soon as possible after the effective date:

6.1.1 by Alexkor, the land in respect of which the RVC claimed restoration as described in annexure "B" hereto;

6.1.2 by the State, as alternative State land, the land as described in annexure "C" hereto;

6.1.3 by the State in its Provincial Government of the Northern Cape, as alternative State land, the land as described in annexure "D" hereto, subject to any existing leases (if any) to be ceded to the CPA; and

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6.1.4 by Alexkor, Portion 3 (Beauvallon) of the farm Groot Derm no. 10, held in terms of Deed of Transfer no. 43637/92 in lieu of monetary compensation as equitable relief.

6.2 Save for the land upon which the Alexander Bay township is to be established, all land transferred to the CPA in terms of clause 6.1 above, will remain subject to the mining rights of Alexkor until the said rights are dealt with as set out in clauses 8 and 10 below and the CPA consents to the said land being used in terms of the said mining rights for mining purposes.

6.3 On the transfer of the Remainder of Farm 1, Alexkor shall be entitled to reserve in its favour, as transferor, and in favour of its successors in title, the servitudes described in annexure "E" hereto, to use the facilities and land on the Remainder of Farm 1 necessary for the reasonable conduct of its activities with respect to the exercise of its prospecting and mining rights in respect of marine diamonds, including activities related to the processing of

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diamonds, as defined in the MPRDA.

- 6.4 Registration of transfer of the land mentioned in clauses 7.1 and 7.7 as well as the registration of all relevant servitudes, all conveyancing work necessary in connection with the township establishment set out in clause 7, including the opening of the township register and consolidation of the portion of the Remaining Extent of Farm 1 and Farm 625 on which the township of Alexander Bay is to be established, the subdivision of the Remaining Extent of Farm 1 for or in connection with the harbour, the border post and the airport, shall be done by the State Attorney, Cape Town at the cost of the State: Provided that the RVC shall be entitled at its own cost, if it so desires, to appoint Mallinicks Incorporated to assist the State Attorney in respect of the aforesaid attendances and to comment on, vet and approve all documentation prepared by the State Attorney for the aforesaid purpose.

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7. TOWNSHIP ESTABLISHMENT

7.1 The parties agree to formal township establishment in terms of the Northern Cape Planning and Development Act, 1998 (Act 7 of 1998) in respect of the existing Alexander Bay Village on a portion of the Remaining Extent of Farm 1 and a portion of Farm 625, which portions will be subdivided from the said properties and consolidated into a new cadastral unit on which the formal township of Alexander Bay is to be established, all at the costs of the State through Alexkor.

7.2 It is recorded that to enable such township establishment to take place, municipal engineering services have to be upgraded to municipal standards and that the Richtersveld Local Municipality is to take over such services and to fulfil all functions which a local authority has to fulfil in law and in practice in respect of the provision of engineering services and other public services in the formally established township of Alexander Bay.

7.3 It is further recorded that the following matters have been agreed

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upon between Alexkor and the RVC:

7.3.1 the township boundaries or outline of the portions of land on the said properties on which the township of Alexander Bay is to be established, as indicated in the plan "Alexander Bay Town: Figure 5 (Revised June 2006): Subdivision Plan and Zoning" a copy of which is attached as annexure "F" hereto; and

7.3.2 the township layout of Alexander Bay township as indicated on annexure "F" hereto.

7.4 It is recorded that a township application has been submitted by Alexkor to the Richtersveld Local Municipality for its consideration, who has approved thereof in principle.

7.5 The parties further agree that certain erven within the established township of Alexander Bay will be transferred by Alexkor as owner to various social institutions and government authorities and bodies in order to normalize social and governmental

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structures within the township of Alexander Bay, which include the following:

7.5.1 Land which will vest in the Richtersveld Local Municipality by virtue of section 52 of the said Act 7 of 1998, namely public streets and public places;

7.5.2 Erven which will be needed by the Richtersveld Local Municipality for municipal purposes;

7.5.3 Erven on which schools and educational amenities are situated to the Northern Cape Department of Education, or relevant department empowered to hold such land;

7.5.4 Erven on which churches are situated to the relevant church institutions; and

7.5.5 Erven on which houses or buildings or amenities of Government departments are situated to such Government departments such as the Northern Cape

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Department of Education, South African Police Service
(or relevant departments empowered to hold such land)
and Eskom.

- 7.6 The parties have agreed, with reference to annexure "F" hereto, that restoration of the erven as per annexure "G" hereto, with the houses or other improvements thereon, will take place to the RVC and that such erven are to be transferred by Alexkor to, and held by, Property Holding Co.
- 7.7 The parties further agree that in order for future mining activities to take place on the present land and sea mining areas it is necessary that security of accommodation be created for Alexkor and to that end the parties agree that the residential erven indicated on annexure "G" as read with annexure "F" hereto within the formally established Alexander Bay township, will be transferred to Property Holding Co subject to the retention by Alexkor of the right of occupation of the properties in question for a period of 10 years against the payment of an award of compensation as contemplated in item 64A of Schedule 8 to Act

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58 of 1962, in an amount of R45-million, which right retained by Alexkor will be to use and let the properties as though it were the owner thereof for the said period, the said right in favour of Alexkor to be reserved in the title deed or title deeds on transfer of the said properties to Property Holding Co, or endorsed against the said title deed or title deeds, whichever method may be appropriate. Alexkor will undertake as against the Richtersveld Local Municipality to pay such property taxes with respect to the said properties and for the said period, as though it were the owner of the said properties. Alexkor undertakes as against the Property Holding Co to pay and shall be liable for all expenses, maintenance and repairs with respect to the said properties for the aforesaid period, including without limitation, both the interior and exterior of the buildings on the properties, it being the intention of the parties that Alexkor shall bear all costs and/or expenses in respect of the properties and the management thereof as if it were the owner thereof.

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7.8 For purposes of clause 7.7:

7.8.1 "expenses" shall mean all those disbursements and operating expenses, charges and fees in respect of the properties which are occasioned by the ownership, possession or operation of the property, including but not limited to, maintenance, rates, levies and any other charges levied in respect of the properties by any government, provincial, municipal or other local or statutory authority, any interest or penalty due for the late payment of any of the foregoing (hereafter collectively referred to as "rates and taxes"), insurance of the properties; electricity, water and service charges and the like; all amounts charged in connection with the supply of any of the foregoing, including but not limited to payment of connection fees, deposits and the like;

7.8.2 "maintenance" means everything which is required to be done in order to enable Alexkor to return the properties to Property Holding Co on the termination of the said ten

year period in the condition they were in at the date of transfer thereof to Property Holding Co, fair wear and tear excepted. This includes, but is not limited to, making good any structural or other defects in the properties which may manifest themselves after the final settlement has been made an order of court and thereafter during the currency of the ten year period, and general daily upkeep, that is, everything short of "repairs" as defined hereunder;

7.8.3 "repairs" means everything which is required to be done in order to achieve the same goal as that envisaged in the definition of "maintenance", but which requires more labour and more expense than maintenance.

7.9 The parties furthermore agree that the commercial or retail or industrial properties within the township of Alexander Bay, indicated on annexure "G" as read with annexure "F" hereto, will be transferred by Alexkor to Property Holding Co subject to existing contracts of lease so as to avoid commercial disruption, but that at the termination of such leases, Property Holding Co

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will be free to let such properties at its discretion.

7.10 The State through Alexkor undertakes, at its cost, within the period set out in the services agreement with the Richtersveld Local Municipality, to upgrade the municipal engineering services in the township of Alexander Bay to such municipal standards as are agreed upon between Alexkor and the Richtersveld Local Municipality in a services agreement to be entered into between them as part of the township establishment process.

7.11 Alexkor agrees to transfer such equipment as is presently used for the maintenance and upkeep of the Alexander Bay Village to the Richtersveld Local Municipality on such terms and conditions as may be agreed upon in the said services agreement and to render such assistance to the Richtersveld Local Municipality during a transition period, as may be agreed upon in the said services agreement.

7.12 The parties agree that after subdivision, the harbour (as indicated

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on annexure "H1" with the letters A, B, C, D and E) and the Old HMS Plant (as indicated on annexure "H2" with the letters A, B, C, D, E and F) will be transferred to Alexkor, and the airport (as indicated on annexure "H3") and border post (as mentioned on annexure "H4") will be transferred to the appropriate authority together with such equipment as may be agreed upon between such authority and Alexkor.

- 7.13 The land upon which the Alexander Bay township is established will be excised from the mining area of Alexkor.
- 7.14 The parties further agree that all mining infrastructure, buildings, offices, residential complexes or compounds, structures, workshops, roads, pipelines, electrical and water reticulation lines and pipelines, fences, substations, equipment, pumps and everything erected or to be erected for or in connection with marine and land mining activities, on the land to be transferred to the CPA or Property Holding Co, as the case may be, and situated within the mining area of Alexkor (and on transfer of the land mining rights as contemplated in clause 8 below, on the

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mining area of RMC) may be used:

7.14.1 by Alexkor as part of its land mining activities and marine mining activities, pending the transfer of the mining rights with respect to the land, to RMC;

7.14.2 by Alexkor as part of its marine mining activities in the Pooling and Sharing Joint Venture (PSJV) referred to in clause 8 with RMC after transfer of the land mining rights to RMC;

7.14.3 by Alexkor as part of its marine mining activities after dissolution of the PSJV;

7.14.4 by RMC and Alexkor in the PSJV; and

7.14.5 by Alexkor should the PSJV fail as contemplated in clause 8.4.5 and transfer of the land mining rights not take place,

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without payment of any rental or other compensation for the use thereof, to the CPA or Property Holding Co or RMC, as the case may be.

8. MINING RIGHTS

8.1 The parties agree that the RVC, through its shareholding in RMC should acquire the mining rights pertaining to the exploitation of diamonds on land in the mining area of Alexkor and in addition that Alexkor grants a right of pre-emption in respect of the mining rights pertaining to the exploitation of diamonds in the marine areas which vest in Alexkor, all on the basis as set out hereunder.

8.2 It is recorded that Alexkor holds an old order mining right as contemplated in the MPRDA on the land in respect of which mining authorisation ML33/93 was granted to it by the Minister of Minerals and Energy in terms of section 9 of the Minerals Act, 50 of 1991, and in respect of which it held the common law rights to precious stones under Certificate of Mineral Rights

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K365/95, which has to be converted to a mining right in terms of the MPRDA in order for it to be transferred to RMC with the permission of the Minister of Minerals and Energy in terms of section 11 of the MPRDA.

8.3 The parties agree to form a PSJV between Alexkor and RMC as follows:

8.3.1 Alexkor will remain the holder of its marine mining rights and RMC will remain the holder of its land mining rights;

8.3.2 Alexkor and RMC will respectively put their marine mining rights and their land mining rights under the full control of a Joint Board of the Joint Venture for purposes of mining both the marine mining resources and the land diamond resources;

8.3.3 Alexkor will furthermore put its land and marine mining assets under the control of the said Joint Board and

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certain of its personnel under the control of the Executive Committee referred to in clause 8.3.10. The PSJV shall provide that such personnel shall remain employees of Alexkor but will be made available to render services to the pooled operations under the control of the Executive Committee. The parties shall procure that funds be made available to Alexkor from the pooled income of the PSJV to discharge all its obligations in respect of such personnel as part of the operating expenditure of the PSJV. For avoidance of doubt, the parties agree that all such employees shall remain in the service of Alexkor who shall directly discharge all its obligations towards such personnel whilst such personnel are under the control of the PSJV. A tripartite agreement shall be entered into between each such employee, Alexkor and RMC which puts it beyond doubt that such employee is and remains an employee of Alexkor despite the fact that such employee will be under the control of the PSJV through its Executive Committee. Further for avoidance of doubt, all existing obligations owed by Alexkor and

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actual or contingent liabilities of Alexkor to any personnel so put under the control of the PSJV, in respect of the period prior to any specific employee having been put under the control of the PSJV (including but not limited to any liabilities of Alexkor to its personnel in respect of post-retirement funding) shall remain with and be discharged by Alexkor. RMC shall not acquire any ownership in the Alexkor pooled assets and Alexkor shall not acquire any ownership in RMC's pooled assets (if any);

8.3.4 Any assets acquired out of the pooled income from the mining operations shall be jointly owned by the parties in undivided shares in proportion to their participation interest;

8.3.5 Alexkor shall initially have a 51% interest in the PSJV and RMC a 49% interest;

8.3.6 All diamonds won from land operations shall, on being

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won, be jointly owned by RMC and Alexkor in the proportion of 51% by Alexkor and 49% by RMC. The same principle applies with respect to diamonds won from Alexkor's offshore mining area in respect of which RMC acquires ownership as to a 49% undivided share therein and Alexkor retains ownership as to a 51% undivided share therein;

8.3.7 The pooled EBITDA from the sale of diamonds (being revenue less operational expenditure derived from the pooled operations and being assessed before reduction of interest, taxes, depreciation and amortisation) will be paid out as to 49% to RMC and as to 51% to Alexkor subject to the policy of the Joint Board which will be dealt with more fully in the PSJV;

8.3.8 The Joint Board shall have the overall supervision of the activities of the pooled operations and shall be the sole representative of the parties in respect of the pooled operations, unless otherwise determined by the Joint

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Board by resolution. Each of the parties shall be entitled to appoint, remove and replace 3 (three) members to the Joint Board, who shall be duly authorised to represent that party in respect of all matters relating to the pooled operations. The members of the Joint Board appointed by Alexkor shall have 51% vote at meetings of the Joint Board and those appointed by RMC 49%. The Chairman of the Joint Board shall be a member of the Joint Board and shall not have a casting vote in addition to his deliberative vote;

8.3.9 All decisions of the Joint Board shall be decided by majority vote provided that unanimous decisions are required with respect to –

8.3.9.1 the appointment of the Executive Committee;
and

8.3.9.2 any deviation from the resource development
plan and programme and mining plan

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approved by the Joint Board

(hereinafter referred to as "reserved matters"). In the event that RMC refuses to approve any reserved matter, any of the parties may refer that reserved matter for determination to a suitably qualified expert agreed by Alexkor and RMC, or failing their agreement, appointed by the chairperson for the time being of the South African Institute of Mining and Metallurgy, provided that the chairperson shall appoint the expert from an aggregate of four experts, two of whom shall be nominated by Alexkor and two of whom shall be nominated by RMC. The parties shall be bound by such expert's appointment and determination;

8.3.10 There shall be an Executive Committee, appointed and removed by the Joint Board from time to time. The Executive Committee will comprise persons who have appropriate operational, technical and financial expertise and experience. The Executive Committee shall consist

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of at least the following posts:

8.3.10.1 a General Mine Manager (Chief Executive Officer);

8.3.10.2 a Financial Manager;

8.3.10.3 a Mineral Resource Manager;

8.3.10.4 a Metallurgy Manager;

8.3.10.5 a Security Manager;

8.3.10.6 such further managers as the Joint Board may decide.

The Executive Committee shall procure the appointment of such staff as will have the necessary expertise to supervise, manage, plan and implement all stages of the prospecting and mining process.

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Any member of the Joint Board shall be entitled to attend and ask questions at monthly meetings of the Executive Committee, but such member shall not be entitled to interfere with the affairs of the Executive Committee;

8.3.11 The management structure of the PSJV shall consist of the Executive Committee together with all the persons reporting to it, responsible for the management of the pooled operations;

8.3.12 The Executive Committee has to put a development plan and programme in place for approval by the Joint Board, in order to upgrade the land and sea diamond resources. The development plan and programme in respect of the land diamond resource must adhere to the following principles:

8.3.12.1 The overriding objective and principle is that the resource must be explored and ultimately

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mined to the full potential of the resource;

8.3.12.2 The exploration target is an Indicated Resource of 1,5-million carats which, for purposes hereof, is based on the Inferred Resource Statement of Mineral Services (3,5-million carats) as at 31 August 2004 at a cut-off grade (COG) of 4.6 carats per hundred cubic metres;

8.3.12.3 The perceived Life of Mine (LOM) is 10 years at an annual production rate of 150,000 carats;

8.3.12.4 The exploration target is to be divided up into unique self-contained mining cells of sufficient size to sustain exploration and mining at the envisaged annual rate of 150,000 carats. The location and size of these mining cells will determine the infrastructure to be developed within these cells, but must

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ensure optimal best mining practice;

8.3.12.5 Before mining may commence in any mining cell, a three year resource (450,000 carats) needs to be established in that cell on the basis of one year of Probable Reserve and two years of Indicated Resource;

8.3.12.6 Exploration must be conducted at the average resource grade, i.e. a balanced exploration programme developing both high grade and low grade resource blocks;

8.3.12.7 Mining operations have to take place at the average resource grade so as to prevent the "high grading" of the resource;

8.3.12.8 After commencement of mining further exploration must be conducted concurrently with mining so as to continuously maintain a

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resource inventory in each operating mining cell of at least three years of resource on the basis of one year of Probable Reserve and two years of Indicated Resource;

8.3.12.9 A primary exploration plan must be implemented to target new resource areas outside of what is already defined by the inferred resource;

8.3.12.10 The references herein to "Inferred Resource", "Indicated Resource" and "Probable Resource" have the meaning as defined in the SAMREC-code.

The Executive Committee shall also be responsible for the preparation, maintenance and execution of a mining plan, for a viable mining operation on the land and sea resources to be approved by the Joint Board from time to time. A viable mining operation on the land resource will

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be one at least capable of generating sufficient EBITDA to Alexkor for Alexkor to recover 51% of the financial contribution to land operations mentioned in clause 8.3.14 within five years of commencement of mining operations and if further finance as contemplated in 8.3.15 is made available, to recover such finance from the pooled income before EBITDA, within the same five-year period;

8.3.13 Prospecting and mining of land resources will take place under the direct supervision and control of the Executive Committee by means of an independent contractor or contractors to be appointed on recommendation of the Executive Committee by the Joint Board on a basis other than a share of the proceeds of recovered diamonds. The responsibilities and functions of the independent contractor shall stop at the delivery of gravel to the DMS plants and the recovery and sale of diamonds shall be conducted by the Joint Venture. The Joint Board shall not unreasonably refuse to appoint a contractor so

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recommended by the Executive Committee. Should the Joint Board refuse such appointment the matter shall be referred back to the Executive Committee with reasons for such refusal. The Executive Committee shall thereupon reconsider its recommendation and if the Executive Committee again recommends the appointment of the same contractor, the Joint Board shall appoint such contractor unless financial constraints dictate otherwise;

8.3.14 Alexkor shall contribute the necessary finance and capital up to a maximum of R200-million for the joint operations of the Joint Venture, which shall be expended both with respect to the land and the sea operations according to the development plan and programme including the mining plan approved by the Joint Board on recommendation by the Executive Committee. The allocation of the maximum amount of R200-million between land and sea operations shall be made with due regard to the maintenance of an income stream from sea operations in order to subsidize the land operations during its

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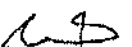
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development phase, but also with due regard to the principles set out in clause 8.3.12.

Thereafter RMC and Alexkor will, subject to 8.3.15.4, contribute towards expenses according to their respective participation interest.

8.3.15 Should the aggregate of the financial and capital contribution mentioned in clause 8.3.14 above and the pooled income from the operations not be enough for the purposes of the execution of the development plan and programme mentioned in the said clause 8.3.14 as well as the establishment of a viable mining operation, then –

8.3.15.1 the Joint Board may present the State with a business plan in which the reasonable necessity for further finance in that regard is motivated and the intended recovery of such further finance from the pooled income of the PSJV within the five-year period mentioned in



clause 8.3.12 is demonstrated, requesting the State to make such further finance available;

8.3.15.2 should the State be satisfied with the reasonable necessity and business rationale for such further finance, the State shall facilitate further finance for such purpose on commercial terms to the Joint Venture parties, the repayment of which will be guaranteed by the State;

8.3.15.3 RMC may not sell, let, transfer or in any manner dispose of its interest in the PSJV or of its mining rights or any portion thereof, nor may any shares in RMC in any manner be disposed of, before such additional finance and interest thereon has been fully repaid, nor may it exercise the mentioned in clause 8.3.16 below before the additional finance and the interest thereon has been repaid in full, unless

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the written consent of the State has been obtained;

8.3.15.4 repayment of such additional finance and interest shall be made from the pooled income of the PSJV before calculating the EBITDA and, should the PSJV be dissolved for any reason other than the exercise of the options mentioned in clauses 8.3.16 and 8.3.17, the balance of such additional finance and interest shall be paid as a debt from the pooled income and assets acquired from the pooled income, available before distribution to the parties. RMC shall not be obliged to contribute to the repayment of the said additional finance other than through its share in the pooled income or assets acquired from the pooled income;

8.3.15.5 should the State not be satisfied with the reasonable necessity for such further finance

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on the basis of the said business plan or otherwise, then the reasonability of the need for such further finance will be referred to an independent mining and financial expert for a decision and the parties will be bound by such decision;

8.3.16 Alexkor will withdraw from the PSJV on the exercise of a call option to be given to RMC to buy the 51% interest of Alexkor in the land mining operation of the PSJV, which option will be on the following basis:

8.3.16.1 The purchase price of the 51% participation interest of Alexkor in the land mining operations will be such balance of 51% of the expenditure invested by Alexkor in the land mining project, as has at that stage not been recouped from the EBITDA earnings, as described above, received by Alexkor from the pooled land mining operations;

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8.3.16.2 The option may be exercised at any time after the land mining rights have been transferred to RMC and the conditions set out in either subparagraph (a) or subparagraph (b) hereunder have been fulfilled, namely:

- (a) If, **firstly**, a land resource status has been achieved of a two-year Indicated Resource and one-year Probable Reserve in the first mining cell as contemplated in clause 8.3.12 and if, **secondly**, RMC has entered into a binding written agreement with a mining entity with the necessary technical competency and financial resources to continue the prospecting and mining in the manner contemplated in clause 8.3.12, or if RMC has entered into a binding written contract with a

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mining contractor with the necessary expertise to continue the prospecting and mining in the manner contemplated in clause 8.3.12, and if, **thirdly**, all additional finance made available as contemplated in clause 8.3.15 has been repaid; or

(b) If the said land resource status has not been achieved:

a. when RMC has entered into a binding written contract with a mining entity with the technical competency and financial resources to achieve the said resource status and prospect and mine as contemplated in clause 8.3.12; and

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b. the terms and conditions of the said contract:

i. facilitate the future participation of RMC in the land mining operation on reasonable commercial terms as though the said resource status has been achieved in the first mining cell as contemplated in clause 8.3.12;

ii. provide for the repayment of the further finance (if any) contemplated in clause 8.3.15 within the five year period from commencement of mining operations in the first mining cell as contemplated

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**UNANIMOUS RESOLUTION OF INTERIM JOINT BOARD
APPOINTED IN TERMS OF CLAUSE 8.4 OF THE DEED OF
SETTLEMENT DATED 22 APRIL 2007**

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**UNANIMOUS RESOLUTION OF INTERIM JOINT BOARD
APPOINTED IN TERMS OF CLAUSE 8.4 OF THE DEED OF
SETTLEMENT DATED 22 APRIL 2007**

RESOLVED THAT:

WHEREAS the Richtersveld Mining Company (RMC) is not yet legally in a position to enter into an agreement with Alexkor Limited (Alexkor);

and

WHEREAS the Interim Joint Board appointed in terms of clause 8.4 of the Deed of Settlement has as purpose to take a unanimous resolution to agree on the formulation of a Pooling and Sharing Joint Venture between Alexkor and the RMC (PSJV) on the basis agreed to between the parties to the Deed of Settlement;

and

WHEREAS certain matters have been referred to the principals of the members of the Interim Joint Board as contemplated in clause 8.4.4.2 of the Deed of Settlement, who have reached agreement on certain of those matters and have advised the members of the Interim Joint Board of their agreement in that regard;

and

WHEREAS the members of the Interim Joint Board have reached unanimity

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for in clause 8.3.14 of the Deed of Settlement and 4.1, 6.2.3 and 14.1 hereof;

- 2.2 *Alexkor Initial Cost Contribution recovery amount* means for purposes of the option granted to the RMC in 19.1, the balance of 51% of the Alexkor Initial Cost Contribution relating to the joint operation in respect of the RMC land area, not recouped by Alexkor from that part of the EBITDA earnings derived from the joint operation in the RMC land area; provided that in calculating what proportion of the Alexkor Initial Cost Contribution has been applied towards the joint operation in the RMC land area, 50% of the operational expenditure relating to costs of salaries and remuneration of members of the Executive Committee and the Management Structure paid from the Alexkor Initial Cost Contribution, shall be allocated to the joint operation in the RMC land area (apart from other relevant operational and capital expenditure);
- 2.3 *Alexkor marine area* means the area to which the marine mining rights apply;
- 2.4 *Alexkor pooled assets* means the land and marine mining assets as contemplated in clause 8.3.3 of the Deed of Settlement and which have been pooled as contemplated in 5.2.1;
- 2.5 *capital expenditure* means all expenditure which is generally regarded in the mining industry in South Africa as expenditure of a capital nature and, without limiting the generality of the foregoing, shall include maintenance capital expenditure, improvement capital expenditure and

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Minerals and Energy in terms of section 11 of the MPRDA, as contemplated in clause 8.2 of the Deed of Settlement;

2.10 *maintenance capital expenditure* means expenditure that restores or maintains the future economic benefits that the pooled operations can expect from the originally assessed standard of performance of the asset used in the pooled operations, recognised as an expense in the period in which it is incurred (i.e. expenditure which is generally regarded in the mining industry in South Africa as a replacement and/or an ongoing and/or a renewal capital expenditure and it does not increase the capacity or efficiency of the existing plant used in the pooled operations);

2.11 *marine mining rights* means -

2.11.1 the unused old order right which Alexkor holds and which was granted to Alexkor pursuant to the provisions of section 9 of the Minerals Act, 1991 (Act No 50 of 1991) and the consents of the Minister of Minerals and Energy under section 9(2) of the said Minerals Act, and in respect of which Alexkor has applied for mining rights in terms of item 8(2) of the Transitional Provisions of the MPRDA prior to 30 April 2005, namely:

(a) ML2/95 for sea concession area 4(a); and

(b) ML7/94 for sea concession area 4(b);

2.11.2 the old order mining right which Alexkor holds comprising the

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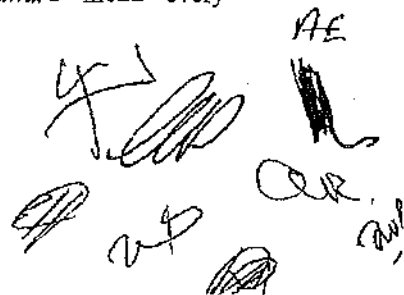
areas to which the following mining authorisations, granted to Alexkor pursuant to the provisions of section 9 of the said Minerals Act and the consents by the Minister of Minerals and Energy under section 9(2) of the said Minerals Act apply, namely:

- (a) ML34/93 for the seashore between the high- and low-watermarks and the area from the low-watermark to 31.49 metres below the said low-watermark and parallel thereto, all opposite Farm No 1 and Farm No 155; as well as sea concession areas 1(a) and 3(a);
- (b) ML17/94 for the area of sea concession 1(b); and
- (c) ML9/95 for the area of sea concession 2(a);

2.11.3 the prospecting right granted to Alexkor in terms of item 6(3) of the Transitional Provisions of the MPRDA in respect of the area of sea concession 1(c), in consequence of the conversion of its old order prospecting right which consisted of Prospecting Permit PP21/2001 and the consent of the Minister of Minerals and Energy in respect thereof;

2.12 *MPRDA* means the Mineral and Petroleum Resources Development Act, 2002 (Act No 28 of 2002);

2.13 *operational expenditure* and *operating expenditure* mean every

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expenditure of any kind other than capital expenditure, lawfully incurred in the management and administration, working capital financing, operation and rehabilitation of disturbances caused by the pooled operations, including all obligations to pay any and all royalties (including in respect of royalties pertaining to mining rights) and all accruals and provisions for maintenance capital expenditure and further which would be deemed to be operating expenditure in conformity with good mining practice in South Africa, all in accordance with the accounting principles as well as the policies laid down by the Joint Board from time to time, but specifically excluding any existing rights of the parties' respective employees under any share incentive, option or accruals to date under senior management bonus schemes as at the commencement date of the PSJV;

2.14 *participation interest* means the ratio, from time to time, expressed as a percentage, in which Alexkor and the RMC shall participate in the pooled EBITDA, which has been agreed to be as follows:

2.14.1 Alexkor: 51%; and

2.14.2 RMC: 49%;

2.15 *pooled income* means the income derived from the prospecting and mining operations and business of the PSJV;

2.16 *pooled operations* means the prospecting and mining operations conducted by Alexkor and the RMC in Joint Venture under the full

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control and overall supervision of the Joint Board on the basis set out herein and in the Deed of Settlement, utilising the Alexkor pooled assets, the RMC pooled assets and the RMC land area;

2.17 *RMC land area* means the area to which the land mining rights contemplated in clause 2.5.2 of the Deed of Settlement apply;

2.18 *RMC's pooled assets* means -

2.18.1 the RMC's land mining rights; and

2.18.2 such assets (if any) which the Executive Committee may request the RMC to put under the control of the Joint Board and have been pooled as contemplated in 5.2.1.

3.

COMMENCEMENT OF THE PSJV

3.1 Subject to the preliminary establishment phase set out in 4, the PSJV is subject to the fulfilment of the suspensive conditions set out hereunder within a period of 18 months calculated from the effective date or such longer period as Alexkor and the RMC may agree in writing, namely:

3.1.1 To the extent necessary, the RMC and Alexkor must obtain the required approvals to implement the pooling transaction from the Competition Authorities under the Competition Act, 1998

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agree to extend the date of fulfilment of the conditions to such a later date as may be reasonably necessary in order to obtain the fulfilment thereof.

3.5 If any suspensive condition is not fulfilled for any reason whatever and is not waived in terms of 3.3 above, then the agreement (other than this clause 3, 18, 24, 25, 27, 28 and 29 by which the parties shall remain bound) shall be of no force or effect:

3.5.1 Alexkor and the RMC shall be restored as near as possible to the positions in which they would have been, had this agreement not been entered into; and

3.5.2 Neither Alexkor nor the RMC shall have any claim against each other, except for such claims (if any) as may arise from breach of this clause 3 or from any other provision of the agreement by which the parties remain bound, or such claims as are provided for in clause 17.2 of the Deed of Settlement.

4.

PRELIMINARY ESTABLISHMENT PHASE OF THE PSJV

4.1 The preliminary establishment of the PSJV commences on the effective date and terminates on fulfilment of the suspensive conditions set in 3 and the provisions set out below apply during this period. Alexkor shall finance the preliminary establishment of the PSJV in terms of this clause

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4 from the Alexkor Initial Cost Contribution. All such financing and consequential payments to be made from the Alexkor Initial Cost Contribution by Alexkor, shall be subject to the prior approval of the Joint Board.

4.2 Within fourteen days of the effective date, Alexkor and the RMC shall appoint and constitute the Joint Board as contemplated in 9.1.

4.3 During the period in 4.1, the Joint Board so appointed shall be a committee of the Board of Alexkor and Alexkor shall effect the delegations of powers and functions to the extent necessary for the Joint Board to carry out its business and activities during the various stages of the preliminary establishment of the PSJV independently and without interference by Alexkor, to the extent that such delegations can be effected in terms of the National Treasury Regulations.

4.4 Upon constitution of the Joint Board, it shall without delay, draft a business plan for the process of the appointment of the Executive Committee, which shall include a full description of such process and a detailed budget for the execution of such process and the appointment of the Executive Committee, so as to enable Alexkor to provide the necessary finances from the Alexkor Initial Cost Contribution in respect of the said process and the appointment of the Executive Committee.

4.5 After the Deed of Settlement has been confirmed or noted by the Land Claims Court, the Joint Board shall without delay, commence and conclude the process of the appointment of the Executive Committee, as

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contemplated in clause 8.3.10 of the Deed of Settlement and as expanded on below in 10.1 read with 9.3.1 and 9.4.

4.6 After appointment of the Executive Committee, the Executive Committee shall without delay, commence with -

4.6.1 identification and earmarking of the Alexkor land and marine assets to be pooled under the control of the Joint Board on commencement of the PSJV: provided that any contracts or arrangements of Alexkor with a third party or third parties from which Alexkor cannot resile without incurring penalties, must be so identified and earmarked, but without any obligation to renew any such contract or arrangement;

4.6.2 identification of such personnel of Alexkor, if any, as are contemplated in clause 8.3.3 of the Deed of Settlement, to be put under the control of the Executive Committee as provided for in that clause;

4.6.3 a technical revision of -

(a) the resource statement and indicated resource target of 1.5-million carats and applicable cut-off grade as contemplated in clause 8.3.12.2 of the Deed of Settlement;

(b) the perceived Life of Mine and annual production rate

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commence operations once the suspensive conditions in clause 3 have been fulfilled in order for the PSJV to be constituted.

4.8 No prospecting or mining operations may be conducted by the Joint Board through the Executive Committee before commencement of the PSJV, unless -

4.8.1 the Minister of Public Enterprises and the Board of Alexkor have consented thereto;

4.8.2 Alexkor is in the position to fund such prospecting and mining from the Alexkor Initial Cost Contribution with the necessary consent of Treasury; and

4.8.3 an independent contractor or contractors for such prospecting or mining are appointed in accordance with the National Treasury Regulations on Procurement as applicable to a major public entity listed in Schedule II to the Public Finance Management Act, 1999 (Act No 1 of 1999).

4.9 The revenue from such prospecting or mining accrues to Alexkor to be dealt with as follows:

4.9.1 Such revenue must be applied towards operational expenditure in respect of the Joint Board and Executive Committee as from commencement of the period in 4.1 and towards operational and capital expenditure of such prospecting or mining;

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4.9.2 Any EBITDA shall be allocated to a reserve fund to be paid over to the pooled account mentioned in 14.7.1 when the suspensive conditions in 3.1 have been fulfilled.

4.10 All monies expended by Alexkor in respect of the preliminary establishment of the PSJV, form part of the Alexkor Initial Cost Contribution contemplated in 14.1 and shall be reflected as such on fulfilment of the suspensive conditions in the books of the PSJV.

4.11 For purposes of clarity, it is recorded that Alexkor is listed in Schedule II to the Public Finance Management Act 1 of 1999 as a major public entity which is subject to the provisions of the said Public Finance Management Act, and that the preliminary establishment of the PSJV in this clause 4 is subject to section 54(2) of that Act, whereby the accounting authority for Alexkor must in writing inform the Treasury of Alexkor's role in the preliminary establishment of this clause 4, and must submit it to the Minister of Public Enterprises for approval of the transaction, being the participation of Alexkor in an arrangement similar to an unincorporated joint venture.

4.12 The members of the Executive Committee appointed during the preliminary establishment as aforesaid, shall be appointed on the following basis to be agreed with each of them:

4.12.1 During the period in 4.1, such members shall be in the service of Alexkor, but under the control of the Joint Board, acting as a

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committee of the Board of Alexkor;

4.12.2 On commencement of the PSJV, the members of the Executive Committee shall be in the joint service of Alexkor and the RMC under the control of the Joint Board;

4.12.3 During the period in 4.1, the salaries and remuneration of the members of the Executive Committee and such employees of Alexkor as are required by the Executive Committee to render services to the interim operations under the control of the Executive Committee, shall be paid by Alexkor, but shall be operational expenditure of the PSJV and reflected as such in the books of the PSJV.

5.

POOLING AND SHARING IN THE JOINT VENTURE

5.1 As soon as the PSJV commences, the Joint Board and the Executive Committee appointed during the interim period shall be the Joint Board and the Executive Committee of the PSJV.

5.2 As from the commencement of the PSJV, the pooled operations shall be constituted by Alexkor and the RMC by:-

5.2.1 placing the land and marine mining assets of Alexkor and of RMC, and as identified and earmarked by the Executive

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Committee during the period in 4.1, under the control of the Joint Board as the Alexkor pooled assets and as the RMC pooled assets;

5.2.2 sharing in the pooled EBITDA in accordance with their respective participation interest from time to time. In giving effect to the foregoing, *inter alia*, the EBITDA generated from the RMC pooled assets shall accrue to RMC, up to a maximum of RMC's participation interest, provided that where RMC's participation interest is more than the ratio which the EBITDA generated from the RMC pooled assets bears to the aggregate (100%) EBITDA generated from the RMC pooled assets and the Alexkor pooled assets collectively, the balance shall accrue to the RMC out of the EBITDA generated from the Alexkor pooled assets, and where the RMC's participation interest is less, the balance of the EBITDA generated from the RMC pooled assets shall accrue to Alexkor. The foregoing provisions will apply *mutatis mutandis* to EBITDA generated from the Alexkor pooled assets; and

5.2.3 sharing in the capital expenditure (to the exclusion of the Alexkor Initial Cost Contribution) in accordance with their respective participation interest from time to time. In giving effect to the foregoing, each party will, subject to the provisions of 14, incur the capital expenditure in respect of their own pooled assets, provided that in the event that the capital expenditure incurred by Alexkor in respect of the Alexkor

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undistributed share in the pooled EBITDA and the parties hereby irrevocably consent thereto that in such an event, the Joint Board shall pay the amount of such liquidated loss or damages from the relevant undistributed share of the EBITDA to the party so entitled thereto.

5.4 Alexkor and the RMC undertake to act with the utmost good faith towards each other in giving effect to the terms of this agreement and to do all such things and sign all such documents as may be necessary to place the Alexkor pooled assets and the RMC pooled assets under the control of the Joint Board and to enable the Joint Board to manage and administer such assets as herein provided for.

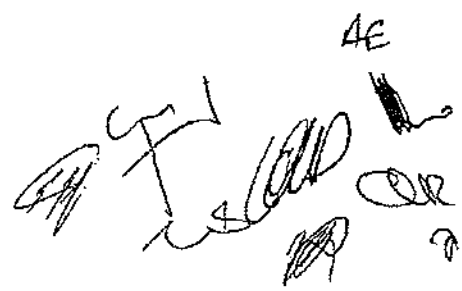
5.5 The respective participation interests of the parties as set out in 2.14, shall not be altered or adjusted in any way or manner whatsoever, other than as provided for in this agreement or by written agreement between the parties.

6.

ELEMENTS AND EFFECT (to supplement clauses 8.3.1 to 8.3.5 of the Deed of Settlement)

6.1 The effect of the pooling transaction shall be to make the Joint Board ultimately responsible for the -

6.1.1 the prospecting and mining for precious stones in and on the pooled operations area (utilising the pooled assets);

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6.1.2 carrying out of all such ancillary and incidental activities from time to time in order to facilitate the activities contemplated in 6.1.1;

6.1.3 carrying out of the recovery and sale, at the highest price possible, of precious stones produced from the pooled operations areas; and

6.1.4 carrying out of all such ancillary and incidental activities from time to time in order to facilitate the recovery and sale as contemplated in 6.1.3, in terms of and subject to the provisions of this agreement.

6.2 Therefore, with effect from the commencement of the PSJV -

6.2.1 Alexkor shall place under the control of the Joint Board (with full retention of its rights of ownership) -

(a) the right of use of the Alexkor pooled assets;

(b) all precious stones produced from the exercise of the marine mining rights which contribution will be made free of charge to carry out the pooled operations; and

(c) certain of its employees in accordance with clause 8.3.3 of the Deed of Settlement.

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6.2.2 The RMC shall place under the control of the Joint Board (with full retention of its rights of ownership) -

- (a) the right of use of the RMC pooled assets;
- (b) the RMC land;
- (c) all precious stones produced from the exercise of the RMC's mining rights, which contribution will be made free of charge to carry out the pooled operations.

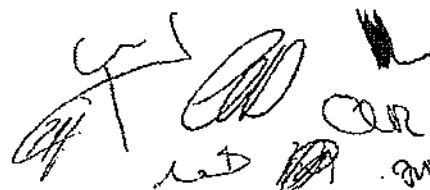
6.2.3 Subject to 4 and from the commencement of the PSJV, Alexkor shall contribute to the pooled operations the Alexkor Initial Cost Contribution.

7.

OWNERSHIP OF ASSETS (to supplement clause 8.3.3 of the Deed of Settlement)

7.1 For the avoidance of doubt it is recorded that -

7.1.1 the RMC shall not acquire any ownership interest in the Alexkor pooled assets, including in any mining right granted to Alexkor by the Minister of Minerals and Energy pursuant to any conversion of the Alexkor offshore old order mining right to a

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mining right in accordance with the provisions of Item 7 of the transitional arrangements of the MPRDA; and

7.1.2 Alexkor shall not acquire any ownership interest in the RMC pooled assets;

7.1.3 the ownership of the Alexkor pooled assets and the RMC pooled assets shall for the duration of the conduct of the pooled operations and after its termination, be retained in full by Alexkor and the RMC respectively, provided however that the Joint Board and the Executive Committee, acting through the Management Structure shall, with effect from commencement of the PSJV, be responsible for prospecting and mining in the pooled operations in terms of 13.1 and by means of independent contractors appointed for that purpose, the conduct of all production activities relating to the pooled operations in terms of 13.2 and the supervision of marketing as contemplated in 13.3.

7.2 Any assets acquired out of the pooled EBITDA shall be jointly owned by the parties in undivided shares in proportion to their participation interest subject to any of the provisions of this agreement which expressly provides otherwise.

7.3 Save as expressly provided in this agreement, neither party will have the right to in any way deal with any of its assets forming part of the pooled operations (and therefore being under the control of the Joint Board)

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without the prior written consent of the other party.

8.

OWNERSHIP OF PRECIOUS STONES (to supplement clause 8.3.6 of the Deed of Settlement)

Notwithstanding the provisions of 7 and with respect to precious stones recovered from the exercise of the RMC mining rights (the RMC precious stones) and the exercise of the Alexkor marine mining rights (Alexkor precious stones), the parties agree that with effect from the commencement of the PSJV -

8.1 such percentage undivided share in all the Alexkor precious stones as is equal to the RMC's participation interest for the time being (RMC share) shall, as soon as those precious stones become movables capable of separate ownership (delivery moment), become the property of RMC and shall be delivered by Alexkor to RMC by *constitutum possessorium*. Accordingly, the parties agree that on the delivery moment, Alexkor changes its intention insofar as the RMC share is concerned and Alexkor shall no longer own the RMC share, but the parties shall be co-owners in undivided shares of the Alexkor precious stones in proportions equal to their respective participation interests; and

8.2 such percentage undivided share in all the RMC precious stones as is

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equal to Alexkor's participation interest for the time being (Alexkor share) shall, on the delivery moment, become the property of Alexkor and shall be delivered by RMC to Alexkor by *constitutum possessorium*. Accordingly, the parties agree that on the delivery moment, RMC changes its intention insofar as the Alexkor share is concerned and RMC shall no longer own the Alexkor share but the parties shall be co-owners in undivided shares of the RMC precious stones in proportions equal to their respective participation interests.

9.

JOINT BOARD (to supplement clauses 8.3.8 and 8.3.9 of the Deed of Settlement)

9.1 The overall supervision of the activities of the pooled operations shall vest in a Joint Board which shall be constituted and established as follows -

9.1.1 the Joint Board shall, subject to 13, be the sole representative of the parties in respect of the pooled operations, unless otherwise determined by the Joint Board by resolution. No person shall in any manner whatsoever represent the parties in relation to the pooled operations, save to the extent such person may be expressly authorised by a resolution of the Joint Board;

9.1.2 in the event that the conduct of the pooled operations is terminated for any reason whatsoever, the existence of the Joint

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Board shall continue but only for as long as and for the purpose of giving effect to the provisions of this agreement and to administer the discharge by the parties of any obligations or liabilities relating to the pooled operations which may survive its termination;

9.1.3 the members of the Joint Board shall discharge their functions and responsibilities in relation to the pooled operations in the same manner and with the same fiduciary duty and duty to act with care and skill, as would be expected of the directors of a company incorporated under the Companies Act;

9.1.4 each of the parties shall be entitled to appoint, remove and replace three members to the Joint Board, who shall be duly authorised to represent that party in respect of all matters relating to the pooled operations;

9.1.5 at any meeting of the Joint Board, each member shall have that percentage of the total votes of all members which corresponds to the percentage participation interest of the party which nominated such member, divided by the number of members nominated by such party; subject to the provisions of clause 9.3, all decisions of the Joint Board shall be by majority vote;

9.1.6 the chairman of the Joint Board shall be a member of the Joint Board, to be appointed from time to time by the Minister of Public Enterprises as executive authority for Alexkor in terms

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of the Public Finance Management Act 1 of 1999 and duly authorised by Alexkor to do so. The chairman shall not have a casting vote in addition to his or her deliberative vote;

- 9.1.7 the quorum at meetings of the Joint Board shall be at least two representatives from each of Alexkor and RMC;
- 9.1.8 if no quorum is present at any duly convened meeting of the Joint Board within thirty minutes after the scheduled time for commencement of that meeting, the meeting shall be adjourned to the same day seven days later at the same time and venue, or if that day is not a business day to the next succeeding business day. Written notice of each adjournment shall be given by one of those representatives present at the meeting to each of the representatives not present at the meeting forthwith after such adjournment. If at such adjourned meeting a quorum is not present within thirty minutes after the scheduled time for commencement of that meeting then, notwithstanding anything to the contrary herein contained, the representatives present thereat shall constitute a quorum. The representatives of each party present at the adjourned meeting shall exercise their voting rights collectively as a single unit on the same basis *mutatis mutandis* as set out in 9.1.5;
- 9.1.9 meetings of the Joint Board shall take place in accordance with the requirements of the pooled operations: Provided that at least one meeting shall take place once a calendar quarter for the

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duration of the period of conduct of the pooled operations. Any member shall be entitled to call a meeting of the Joint Board by giving not less than ten days written notice (or where the matter to be discussed is urgent, not less than five days written notice) to the other members, which notice shall set out the time and place for such meeting. Where the matter to be discussed is urgent and no quorum is present at such urgent meeting called in terms of this clause within thirty minutes after the scheduled time for commencement of that urgent meeting, the meeting shall be adjourned to the same day two days later on *mutatis mutandis* the same basis as set out in 9.1.8;

9.1.10 the resolutions of the Joint Board shall be recorded in minutes to be circulated to each member within ten days of any meeting. Receipt of the minutes shall be acknowledged in writing and any minutes so received shall be deemed to have been approved by each member, within ten days after receipt of such minutes, if that member does not raise any objections in writing to the minutes;

9.1.11 Joint Board members shall be entitled to participate in the meetings of the Joint Board through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other: Provided however that any such decision made at a meeting held in such a manner, is ratified in writing by each member who participated in the meeting within seventy-two

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9.2 The Joint Board shall be responsible for, *inter alia* -

9.2.1 determining the business objectives and strategies (including hedging strategies) of the pooled operations from time to time;

9.2.2 approving the operating and capital expenditure budgets for the pooled operations;

9.2.3 supervising and engaging with the Executive Committee in the decision-making process relating to the management of the pooled operations as provided for herein;

9.2.4 information sharing and skills transfer/management training;

9.2.5 establishing, *inter alia*, the following committees (which will include at least one RMC representative in each committee) and their terms of reference -

(a) audit and risk;

(b) governance and remuneration, which includes the subjects of transformation and charter compliance; and

(c) environment and rehabilitation;

9.2.6 subject to 12, appointing on recommendation of the Executive

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cannot be passed within the discussion period, the parties shall, for a further period of five business days, attempt to agree upon the identity of a third party consulting mining engineer to resolve the dispute between the parties ("the expert");

9.4.3 if the parties cannot within the expert identification period agree upon the identity of the expert, either of the parties ("the referring party") shall be entitled to request the Chairman for the time being of the South African Institute of Mining and Metallurgy ("the Chairman") to so appoint the expert on behalf of the parties, provided that the Chairman shall be instructed to appoint the expert from an aggregate of four experts nominated by the parties for that purpose. Each party undertakes in favour of the other to promptly forward to the Chairman and/or the referring party, two nominations for the expert; and

9.4.4 the expert shall act as an expert and not an arbitrator and his or her appointment and his or her determination of whether any person nominated for appointment to the Executive Committee has the necessary operational, technical or financial experience for the management of the pooled operations and/or whether any deviation from the development plan and programme insofar as it relates to the land mining development component is warranted, shall be final and binding on the parties, except in the case of manifest error.

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10.

THE EXECUTIVE COMMITTEE (to supplement clauses 8.3.10 and 8.3.11 of the Deed of Settlement)

10.1 The Executive Committee shall oversee the conduct of the day-to-day operations of the pooled operations. The members of the Executive Committee shall, subject to the provisions of 9.3.1, be appointed and removed by the Joint Board from time to time. The Executive Committee will comprise persons who have operational, technical and financial experience and expertise for the management of the pooled operations. The Executive Committee will, unless the Joint Board otherwise resolves, at all times comprise of at least the following positions:

10.1.1 a General Mine Manager (Chief Executive Officer);

10.1.2 a Financial Manager;

10.1.3 a Mineral Resource Manager;

10.1.4 a General Manager: Metallurgy;

10.1.5 a Security Manager;

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10.1.6 a Manager: Rehabilitation and Environment; and

10.1.7 such further managers as the Joint Board may decide.

10.2 Members of the Joint Board shall be entitled to attend and ask questions at monthly meetings of the Executive Committee but shall not be entitled to interfere in or direct any meeting of the Executive Committee where they are present. The Executive Committee will meet at least once per month in order to discuss the monthly management accounts referred to in 15.2 and will otherwise regulate the frequency and conduct of its own meetings.

10.3 The Executive Committee and the Management Structure shall report to and be accountable to the Joint Board. The Joint Board shall ensure that Executive Committee and members of the Management Structure shall at all times perform their obligations under this agreement and perform their duties to manage the pooled operations solely in the interests of both the parties.

11.

FORMULATION OF DEVELOPMENT PLAN AND PROGRAMME (to supplement clause 8.3.12 of the Deed of Settlement)

11.1 For the purposes of this clause 11, *viable land mining operation* shall comprise the conduct of diamond mining activities in and on the RMC

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and conditions to be agreed between Executive Committee and the independent contractor as approved by the Joint Board, provided however that it shall be an expressed term of any such contract that -

12.2.1 except where it is customary in the case of marine mining, the independent contractor will be remunerated on a basis which specifically excludes the independent contractor acquiring or participating in a share of the proceeds of diamonds recovered in the pooled operations areas and sold by the parties; and

12.2.2 the activities to be undertaken by the independent contractor pursuant to the contract, shall not include operation of any DMS plants and the recovery and sale of diamonds by the parties, unless the Joint Board on recommendation of the Executive Committee otherwise decides.

12.3 The Joint Board shall not unreasonably refuse to appoint a contractor identified by the Executive Committee, neither shall the Joint Board unreasonably refuse to approve of any terms and conditions of such a contract recommended by the Executive Committee. In the event that the Joint Board should refuse such appointment and/or the terms and conditions of any such contract, the matter shall be referred back to the Executive Committee by the Joint Board, together with reasons for the refusal, for reconsideration by the Executive Committee. In the event that the Executive Committee reconsiders the appointment of the contractor or any of the aforementioned terms and conditions and resubmits to the Joint Board the same recommendations, the Joint Board

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shall be obliged to accept those recommendations and appoint the contractor on the terms and conditions recommended by the Executive Committee, provided however that the Joint Board shall not be obliged to accept such a recommendation if the appointment of the contractor and/or any of the terms and conditions of the contract, will be to the financial prejudice of the pooled operations.

13.

MINING, FACILITY MANAGEMENT AND MARKETING (to supplement clause 8.3.12 at page 37 of the Deed of Settlement)

13.1 Prospecting and mining

13.1.1 Subject to 9.2.2, the Executive Committee, acting through the Management Structure, shall be responsible for the conduct and management of all prospecting and mining activities of the pooled operations on the basis set out in 10.3. The Executive Committee, acting through the Management Structure, will perform its management obligations acting as the representative of the parties. Without limiting the generality of the foregoing, the overall day to day management operation and administration of the prospecting and mining activities shall include B

- (a) management of all health and safety responsibilities and mine safety standards as required by the Mine Health and

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Safety Act, 1996 (Act No 29 of 1996) and the Regulations thereto;

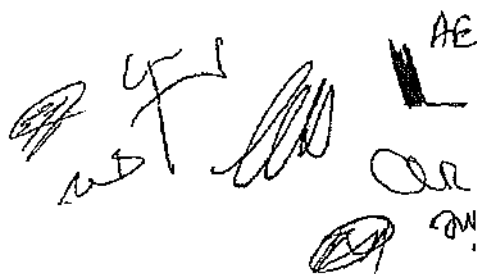
- (b) appointment of all such competent persons in accordance with the provisions of the Mine Health and Safety Act, 1996 (Act No 29 of 1996) and the Regulations thereto to perform any functions of the Management Structure;
- (c) the procurement of consumables and equipment;
- (d) the procurement of electricity, water and other utilities and services and the negotiation and conclusion of the terms and conditions of such procurement;
- (e) the temporary suspension and subsequent resumption of prospecting and mining activities for good reason;
- (f) the control, selection, hiring and dismissal of employees and/or secondees: provided that employees of Alexkor seconded to the joint operations shall not be dismissed by the Executive Committee, but by Alexkor alone, whilst the Executive Committee may instruct Alexkor to repeal the secondment of such employee: provided further that the tripartite agreement entered into between such employee, Alexkor and the RMC as envisaged in clause 8.3.3 of the Deed of Settlement, shall provide for such

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account of and paid from the pooled income,

whilst the conversion of the land mining rights prior to transfer thereof to the RMC as well as the conversion of the marine mining right, will be at the cost of Alexkor;

- (i) the development, implementation and overseeing of the necessary financial, accounting, administrative, indirect tax, operating and secretarial controls and processes;
- (j) complying with the duties imposed by all relevant labour, mine, health and safety legislation;
- (k) complying with the duties imposed by all relevant environmental legislation;
- (l) carrying out closure of any mining area and obtaining a closure certificate pursuant to the provisions of section 43 of the MPRDA, as the case may be, upon cessation of such prospecting and mining activities, by utilising the funds in the relevant rehabilitation trust, for such closure;
- (m) the effecting and maintaining of insurance and the processing of any insurance claims;
- (n) negotiating, conducting and settling any disputes or litigation arising from or attributable to the conduct by the

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- (s) ensuring that proper books of account and records are kept in connection with the prospecting and mining activities to the extent required by legislation and by good management accounting and secretarial practice;
- (t) taking responsibility for asset management by maintaining and writing up an asset register, and taking all reasonable steps to ensure that through preventative maintenance all assets used in relation to the conduct of the prospecting and mining activities are preserved in good working order and condition, fair wear and tear excepted, as well as the managing of compliance with all relevant quality standards;
- (u) preparing operating and capital budgets for the prospecting and mining activities of the pooled operations, to be presented to the Joint Board for its approval;
- (v) suspending activities from time to time for good reason;
- (w) concluding and/or amending any contracts in relation to the foregoing in the name of either party, the name of the contracting party being a decision of the Executive Committee generally having regard to the site to which the contract relates, i.e. if the contract relates to an Alexkor site, such contract will be concluded in the name

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of Alexkor, and if it relates to an RMC site, it will be concluded in the name of the RMC;

- (x) managing the independent prospecting and mining contractor to be appointed by the Joint Board in accordance with any contract concluded with such an independent contractor and the parties as participants in the pooling transaction;
- (y) the rehabilitation of the surface of land concerned in any prospecting or mining -
 - (i) in accordance with the approved environmental management programme or plan in place from time to time for that area and the rehabilitation protocol;
 - (ii) as an integral part of the prospecting or mining operations concerned;
 - (iii) simultaneously with such operations;
 - (iv) by, insofar as it may be necessary, regularly updating the environmental management programme or plans;
 - (v) ensuring that adequate funds are set aside to fund in full the rehabilitation measures set out in the

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environmental management programme or plans and the rehabilitation protocol, as may be amended from time to time;

- (vi) generally taking all such steps and doing all such things as may be necessary or requisite for the effective management of the prospecting and mining activities of the pooled operations.

13.1.2 The Executive Committee, acting through the Management Structure, shall subject to the confirmation by the Joint Board, be entitled to appoint additional sub-contractors in order to conduct such prospecting and mining activities.

13.2 Facility management

13.2.1 Subject to 9.2.2, the Executive Committee, acting through the Management Structure, shall be responsible for the conduct and management of all precious stones recovery facilities relating to the pooled operations on the basis set out in 10.3. Without in any way limiting the generality of the foregoing, the Executive Committee's responsibilities and obligations, acting through the Management Structure, in relation to the conduct and management of all prospecting and mining activities relating to the pooled operations as set out in 13.1 above (other than 13.1.1(b)) shall apply, *mutatis mutandis*, in relation to its responsibilities pertaining to the management of all precious

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stones recovery facilities and related infrastructure of the pooled operations on the basis that references in 13.1 to prospecting and mining activities shall be construed as references to precious stones recovery and related activities.

13.2.2 Subject to 9.2.2, the Executive Committee, acting through the Management Structure, shall be entitled to appoint sub-contractors in order to conduct such facility management activities.

13.3 Marketing

Marketing of precious stones produced from the pooled operations areas by the Joint Board shall take place in accordance with a marketing protocol to be developed by the Joint Board, which marketing protocol shall ensure that such precious stones are marketed and sold in a manner which will at all times achieve the highest possible prices for the precious stones. In the event that any marketing arrangements are in existence as at the effective date, such existing marketing arrangements may be included in the aforementioned marketing protocol in the event that they have been ratified and accepted for such inclusion by the Joint Board.

14.

FINANCING OF THE POOLED OPERATIONS (to supplement clause 8.3.14 and 8.3.15 of the Deed of Settlement)

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14.1 **Alexkor Initial Cost Contribution**

Alexkor shall contribute to the pooled operations all costs required by the pooled operations for the conduct of prospecting and mining activities in the pooled operations areas, provided that the Alexkor Initial Cost Contribution, shall not exceed an amount of R200-million. After the Alexkor Initial Cost Contribution has been exhausted by the conduct of the pooled operations,, the remaining provisions of this clause 14 providing for the financing of the pooled operations, shall apply.

14.2 **Additional funding support**

14.2.1 In the event that the Alexkor Initial Cost Contribution and the revenue generated from the pooled operations be insufficient for the purposes of the implementation of the development plan and programme and the establishment of a viable land mining operation, then the Joint Board shall compile a presentation to the state with a business plan motivating the reasonable necessity for further financing of the pooled operations, provided that such additional financing will be recovered from the revenue generated by pooled operations within a period of five years calculated from the commencement date.

14.2.2 In the event that the State is in its discretion satisfied with the

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assisted financing and/or any amounts of the Alexkor Initial Cost Contribution remaining at the date of such dissolution, shall be repaid to the State and/or Alexkor prior to the payment to the parties of any of the proceeds arising from such a dissolution.

14.4 Operational expenditure

The parties undertake, to the extent that the operational expenditure exceeds the revenue of the pooled operations, to contribute to the operational expenditure of the pooled operations in proportion to their respective participation interests on *mutatis mutandis* the same basis as provided for in 14.5.

14.5 Maintenance capital expenditure

14.5.1 The maintenance capital expenditure relating to the pooled operations shall be incurred by the Executive Committee in accordance with the applicable annual budget and shall be funded out of the provision for maintenance capital expenditure.

14.5.2 Under circumstances where the provision for maintenance capital expenditure is inadequate, the parties shall make up the shortfall by contributing the maintenance capital expenditure requirements of the pooled operations pro rata to their participation interest for the time being.

14.5.3 Should any party ("unable party") be unable to so contribute to

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such maintenance capital expenditure requirements of the pooled operations, the other party ("lending party") shall be entitled to contribute the unable party's shortfall on the unable party's behalf. Such contribution shall be deemed to be a loan from the lending party to the unable party. The amount of such loan shall bear interest 3% over the Prime Rate charged by First National Bank in respect of the accounts held by the PSJV in that bank. The lending party shall be entitled to claim repayment of the loan, and any interest thereon, by way of deduction from the unable party's cash distributions made in terms of 16. It is recorded that the unable party shall not be entitled to receive any cash distribution until such time that the aforesaid loan by the lending party to the unable party and the interest thereon has been repaid in full, unless the parties agree otherwise in writing.

14.6 Improvement Capital Expenditure

Improvement Capital Expenditure relating to the pooled operations shall be incurred by the Executive Committee as provided for in the annual budget or as may be requested by the Executive Committee from the Joint Board. The Joint Board shall, if the pooled EBITDA is insufficient to fund such Improvement Capital Expenditure, in turn request the parties to contribute pro rata to their participation interest from time to time.

14.7 Cash management (to supplement clause 8.3.7 of the Deed of

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Settlement)

- 14.7.1 All of the proceeds and all other revenue of the pooled operations will be paid by the Executive Committee on behalf of the parties into a bank account(s) held in the name of the pooled operations ("the pooled account(s)"), with First National Bank.
- 14.7.2 The Executive Committee shall operate the pooled account(s) for and on behalf of the parties, and the Financial Manager and one other member of the Executive Committee decided upon by the Joint Board will be authorised by the Joint Board to be signatories on the account(s).
- 14.7.3 Operational expenditure of the pooled operations shall be paid for by the Executive Committee when incurred, out of the pooled account(s) for and on behalf of the parties in the ratio of their respective participation interests.
- 14.7.4 The Executive Committee shall retain from the pooled EBITDA, as separate reserve accounts, sufficient funds in the pooled account(s) to fund -
- (1) working capital of the pooled operations required for operational expenditure of the pooled operations in an amount to be determined by the Executive Committee, subject to approval or variation by the Joint Board at any

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14.7.6 Should the funds in the pooled account(s) be insufficient to pay for the expenditure requirements of the pooled operations referred to in 14.7.4, the Executive Committee shall attempt to obtain funding from a third party financial institution by way of commodity finance. Any interest incurred in this regard shall be treated as a cost for purposes of calculating the pooled EBITDA. If such funding cannot be obtained within a reasonable period, a cash call shall be made by the Executive Committee to the parties to fund their share of such expenditure requirements and the provisions of 14.5.3 shall apply to such cash call *mutatis mutandis*.

14.7.7 Subject to 14.7.6, each party shall be individually responsible for raising its share of funding set out in this agreement.

15.

BOOKS, RECORDS AND INFORMATION (to supplement clauses 8.3.5 and 8.3.7 of the Deed of Settlement)

15.1 The Executive Committee, acting through the Management Structure, shall cause books of account and records to be kept relating to the pooled operations and which books of account shall be kept up-to-date to accurately reflect the pooled EBITDA and its components from time to time.

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reasonably possible after becoming aware of an unexpected event which is likely to have a materially adverse effect on cash distributions in terms of 16.

16.

CASH DISTRIBUTIONS

16.1 Subject to the provisions of 14.7.4 and 16.2, the Executive Committee shall distribute the pooled EBITDA, pro rata to the participation interests of RMC and Alexkor, respectively, on a quarterly basis, within one month of the end of that quarter, after making provision for any future maintenance capital expenditure as contemplated in the relevant budget(s), as more fully detailed in 16.2 below. Any amounts retained that are not utilised for Capital Expenditure shall accrue interest for the benefit of the parties.

16.2 Notwithstanding anything to the contrary in this agreement, but subject to 14.5.3, and in addition to the provisions of 14.7.4 -

16.2.1 for the first six months from the date upon which prospecting or mining activities commence in the pooled operations areas pursuant to the completion of the development plan and programme and in accordance with the development plan and programme ("the initial period"), a monthly amount equal to one-sixth of the next six months' maintenance capital expenditure of the pooled EBITDA shall be retained in the

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pooled account(s) as a reserve fund to provide for the maintenance capital expenditure relating to the initial period;

16.2.2 after the expiry of the initial period, such amount as provided for in the relevant budget relating to the forecasted maintenance capital expenditure for the next six months shall be retained in the pooled account(s) as a reserve fund;

16.2.3 if, at the end of each month after the expiry of the initial period, the amount in the reserve fund is in excess of, or insufficient to cover, the budgeted maintenance capital expenditure for the next six months, then such excess or shortfall (as the case may be) shall be -

(a) distributed to the parties in proportion to their participation interest for the time being, together with any payments in terms of 16.1;

(b) contributed by the parties in proportion to their participation interests for the time being on the same basis *mutatis mutandis* as 14.5.2.

17.

ASSIGNMENT

17.1 Subject to 19.1.1(b), neither party shall -

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17.1.1 have the right to cede, assign, delegate or in any other way alienate any of its rights, entitlements or obligations under this agreement without the prior written consent of the other party having been obtained;

17.1.2 be entitled to sell and/or transfer and/or distribute its participation interest or any part of the pooled operations to any third party without first obtaining the prior written consent of the other party,

provided that the written consent mentioned in this 17.1.1 and 17.1.2 shall not be unreasonably withheld, and that such a cession, assignment, sale, transfer or distribution, shall be permissible by Alexkor (without the prior written consent of the RMC) to any organ of State.

17.2 Subject to the provisions of 17.1 and in the event that any party ("the offering party") should at any time receive a bona fide offer in writing from a third party which it wishes to accept ("a third party offer") for the purchase by such a third party of any of the offering party's rights, entitlements, obligations or its participation interest in or any part of the pooled operations ("the offered assets"), then -

17.2.1 the offering party shall deliver to the other party ("the acquiring party"), a copy of the third party offer; and

17.2.2 the acquiring party shall be entitled, within a period of ninety

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days calculated from the date of the receipt by the acquiring party of the third party offer, to acquire from the offering party the offered assets on the terms and conditions of the third party offer; or may require from the offering party to procure that the third party offer be extended to include the corresponding assets of the acquiring party proportionately on the same terms and conditions as the original third party offer ("tag along right"); and

17.2.3 in the event that the acquiring party does not exercise its right to acquire the offered assets from the offering party or does not exercise its tag along right within the abovementioned ninety day period, the offering party shall be entitled to dispose of the offered assets to the third party offeror on the terms and conditions of the third party offer within a further period of ninety days; and

17.2.4 in the event that the tag along right is exercised within the applicable ninety day period, then --

17.2.4.1 the offering party must use his best endeavours to procure that the third party offeror extends the offer to the acquiring party within thirty days after the exercise of the tag along right;

17.2.4.2 in the event that the offering party is unable to procure the extension of the third party offer by the

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third party offeror to the acquiring party pursuant to the exercise of the tag along right within the thirty day period as provided for in 17.2.4.1, then the offering party shall not be entitled to accept the third party offer;

17.2.4.3 should the acquiring party not accept the extended offer from the third party offeror within the period for such acceptance, or within thirty days, whichever is the shorter, then the offering party will be entitled to accept the third party offer without further reference to the acquiring party.

17.3 In the event of the implementation of any transaction which leads to the restructuring of either of the parties and provided that such a restructuring does not involve a change of control, the restructured party shall be entitled, with the prior written consent of the other party, which shall not be unreasonably withheld or delayed, to cede, assign, delegate or in any other way alienate its rights and obligations hereunder, in order to give effect to such restructuring.

17.4 Any permitted cession, assignment, sale or transfer taking place in terms of 17.1, 17.2 or 17.3 shall be conditional on -

17.4.1 the transferor binding itself as surety for and co-principal debtor *in solidum* with the assignee for the fulfilment of the obligations of the transferee towards the remaining party, unless the

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remaining party agrees to waive the giving of such a suretyship;
and

17.4.2 the transferee binding itself to the terms of this agreement in the place of the transferor, and by doing so the pooled operations shall automatically be reconstituted insofar as it may have dissolved.

18.

BREACH

18.1 Should either party commit a material breach which goes to the root of this agreement and fail to remedy such breach within fourteen days of receiving written notice from the other party requiring it to do so, or within such further period as may be reasonable in the circumstances, then such other party shall be entitled, without prejudice to its other rights in law, to claim specific performance or an interdict, in either event without prejudice to the aggrieved party's right to claim damages.

18.2 This agreement shall not be cancellable by either party under any circumstances.

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19.

WINDING-UP OF THE POOLED OPERATIONS

19.1 Exit by Alexkor (to supplement clause 8.3.16 to 8.3.19 of the Deed of Settlement)

19.1.1 Alexkor will withdraw from the PSJV on the exercise of the call-option hereby granted to the RMC to buy the 51% interest of Alexkor in the land mining operation of the PSJV, which option is on the following basis:

(a) The purchase price of the 51% participation interest of Alexkor in the land mining operations is the Alexkor Initial Cost Contribution recovery amount, as at the date upon which the call-option is exercised in writing;

(b) The option may be exercised at any time after the land mining rights have been transferred to RMC and the conditions set out in either 19.1.1(b)(i) or 19.1.1(b)(ii) hereunder have been fulfilled, namely:

(i) If, firstly, a land resource status has been achieved of a two-year Indicated Resource and one-year Probable Reserve in the first mining cell as contemplated in clause 8.3.12 of the Deed of Settlement and if, secondly, the RMC has entered

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into a binding written agreement with a mining entity with the necessary technical competency and financial resources to continue the prospecting and mining in the manner contemplated in clause 8.3.12 of the Deed of Settlement, or if the RMC has entered into a binding written contract with a mining contractor with the necessary expertise to continue the prospecting and mining in the manner contemplated in clause 8.3.12 of the Deed of Settlement, and if, thirdly, all additional finance made available as contemplated in 14.2 has been repaid; or

(ii) If the said land resource status has not been achieved:

1) when RMC has entered into a binding written contract with a mining entity with the technical competency and financial resources to achieve the said resource status and prospect and mine as contemplated in clause 8.3.12 of the Deed of Settlement; and

2) the terms and conditions of the said contract:

- facilitate the future participation of RMC in the land mining operation on

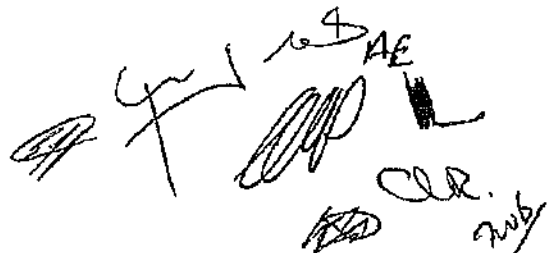
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reasonable commercial terms as though the said resource status has been achieved in the first mining cell as contemplated in clause 8.3.12 of the Deed of Settlement;

- provide for the repayment of the further finance (if any) contemplated in 14.2 within the five year period from commencement of mining operations in the first mining cell as contemplated in clause 8.3.12 of the Deed of Settlement.

If dispute arises between RMC and Alexkor as to whether the conditions for exercise of the option have been met, or the purchase price has been correctly calculated, such dispute must be referred to a suitably qualified independent expert whose decision shall be final.

- (iii) The appointment of an objective expert consultant as contemplated in 19.1.1(a) shall be made by agreement between Alexkor and RMC, or failing their agreement, shall be made by the chairman for the time being of the South African Institute of



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Mining and Metallurgy, provided that the chairperson shall appoint the expert from an aggregate of four experts, two of whom shall be nominated by Alexkor and two of whom shall be nominated by RMC. The parties shall be bound by such expert's appointment and determination.

- (c) Alexkor will retain control of the mining operation after the exercise of the call-option and until such time as the mining partner or mining contractor has taken control of prospecting and mining operations.
- (d) Any reference to clause 8.3.12 of the Deed of Settlement in this 19.1.1 and 19.1.2, is a reference to the said clause 8.3.12 after technical revision unanimously accepted by the Joint Board in terms of 4.6.

19.1.2 If the call-option has not been exercised within five years after commencement of mining operations in the first mining cell as contemplated in clause 8.3.12 of the Deed of Settlement, the parties hereby agree to a put-option in favour of Alexkor to sell the said 51% interest at the Alexkor Initial Cost Contribution recovery amount to the RMC, which may be exercised by Alexkor at any time after the said five-year period has elapsed, in writing.

19.1.3 On the exercise of the said call-option or the put-option, the

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PSJV will dissolve, the RMC will retain the land mining operations, land mining rights and resources, including Alexkor pooled assets (excluding marine mining assets) and all land mining plant and equipment acquired from the earnings of the pooled operations, and Alexkor will retain the marine mining operations, marine mining rights and resources including marine mining assets (which includes tailings dumps derived from marine mining operations) and marine mining infrastructure whether acquired from the earnings of the pooled operations or not, and the RMC binds itself to clause 6.3 of the Deed of Settlement, whilst Alexkor will have the use of the existing land infrastructure to enable Alexkor to proceed with its marine mining operations in the Alexkor marine area.

19.1.4 On dissolution of the PSJV, the RMC will have a right of first refusal with respect to the marine mining business of Alexkor, or such portion thereof as Alexkor may wish to sell, including such prospecting rights and mining rights with respect to the sea concessions, as Alexkor may then have.

19.2 **Winding-up of the pooled operations**

Upon termination of the conduct of the pooled operations other than as provided for in 19.1 and pursuant to this agreement, the pooled operations shall, subject to clause 8.3.15.4 of the Deed of Settlement, be wound up as follows -

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- 19.2.1 any pooled EBITDA available for distribution shall be distributed to the parties in accordance with their participation interest;
- 19.2.2 the RMC shall continue to retain the RMC pooled assets. Alexkor shall continue to retain the Alexkor pooled assets;
- 19.2.3 the rights of use of the RMC pooled assets shall revert to the RMC and the right of use of the Alexkor pooled assets shall revert to Alexkor;
- 19.2.4 any other assets acquired after the commencement date funded out of the pooled EBITDA or provisions contained in the account of the pooled operations and therefore jointly owned by the parties in proportion to their participation interest shall be released from the control of the Joint Board and be shared and distributed by the Joint Board to the parties in proportion to their participation interest for the time being;
- 19.2.5 Alexkor shall be entitled to use the existing land infrastructure to enable Alexkor to proceed with its marine mining operations in the marine area and clause 6.3 of the Deed of Settlement shall apply.

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DISTRIBUTION OF ASSETS UPON TERMINATION

Upon the termination of the pooled operations, the parties shall, unless otherwise agreed, appoint a member of any reputable auditing firm in South Africa (other than the auditors of the Joint Venture, RMC or Alexkor) at the date of termination to act as the liquidator of the pooled operations to give effect to the provisions of 19.

21.

FURTHER CALL-OPTIONS

21.1 Alexkor shall under the following circumstances have the option ("call-option") to acquire the RMC's participation interest in the pooled EBITDA and the RMC pooled assets, if -

21.1.1 the RMC is liquidated, whether provisionally or finally, in which instance Alexkor's rights in terms of this call option shall be deemed to take effect from the day prior to such liquidation;

21.1.2 the RMC for reasons within its control, undergoes a change of control which results in the continued exploitation of the mining rights being utilised by the pooled operations being prejudiced.

21.2 The call option shall be on the following terms and conditions -

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21.2.1 it shall be exercisable by Alexkor giving notice in writing to the RMC to that effect within sixty days after the happening of the event giving rise to the call option becoming exercisable;

21.2.2 it shall be in respect of the whole of the RMC's participation interest and the RMC pooled assets and not part only;

21.2.3 the price to be paid by Alexkor to the RMC for the RMC's participation interest and the other assets referred to in 21.2.2 shall be the price determined pursuant to the provisions of 21.4, which price shall be paid by Alexkor to the RMC within thirty days of it being determined ("the payment date");

21.2.4 all right, title and interest including risk and benefit in the RMC's participation interest and other assets referred to in 21.2.2 shall vest in Alexkor from the payment date and RMC will do all such things and sign all such documents to give effect to such transfer.

21.3 Under circumstances where Alexkor is liquidated whether provisionally or finally, the RMC shall have the option to acquire Alexkor's participation interest in the pooled EBITDA and the Alexkor pooled assets on *mutatis mutandis* the same basis as the call option as provided for in this clause 21.

21.4 The purchase price payable for each party's participation interest and pooled assets, shall be:

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- 21.4.1 if the event giving rise to the call option was an event described in 21.1.1 or 21.3, the fair market value thereof; or
 - 21.4.2 if the event giving rise to the call option was an event described in 21.1.2, the fair market value thereof, less 15%.
- 21.5 For purposes of 21.4, the term "fair market value" shall mean the present value of the future net after-tax cash flows of the pooled operations using a model which has as real term inputs in respect of the main assumptions
- 21.5.1 a discount rate fixed at the cost of the capital for a diamond resources company for the time being operating in South Africa;
 - 21.5.2 costs for the pooled operations as used in determining the EBITDA, for the preceding twelve month period (ie preceding the time of the valuation);
 - 21.5.3 production volume for the pooled operations equal to the average actual production volume of the preceding twelve month period (ie preceding the time of the valuation);
 - 21.5.4 average current precious stones prices over the immediately preceding twelve months (ie preceding the time of the valuation) having regard to the prices for the period quoted by the Rapaport diamond index after taking into account volume

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and grade discounts; and

21.5.5 the average Rand/US Dollar exchange rate over the preceding twelve months (i.e. preceding the time of the valuation),

as determined by an appropriately qualified independent expert, qualifying as such in terms of the Listings Requirements of the JSE, appointed by the parties (or if the parties are unable to agree within ten days, appointed by the chairman of the Bar Council of Johannesburg for the time being), who shall act as an expert and not as an arbitrator and whose determination shall be final and binding on the parties, save for manifest error.

22.

REHABILITATION (to clarify clause 9 of the Deed of Settlement)

For purposes of clarity, it is recorded that the liability of the RMC as holder of the land mining rights in respect of rehabilitation of disturbances caused by the joint operation on the RMC land area, shall be funded as operational cost from the pooled income and Clause 9 of the Deed of Settlement must be so interpreted.

23.

LITIGATION

The Joint Board shall exercise control over any litigation of whatever nature

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corresponding extent;

26.1.2 the affected party shall promptly notify the unaffected party in writing of such event of force majeure and such notice shall include an estimation of the approximate period for which the suspension in terms of 26.1.1 will endure; such estimate shall not be binding on the affected party; and

26.1.3 the duration of this agreement as well as each period within which and each date by which any obligation is required to be performed in terms of this agreement shall be extended or postponed, as the case may be, by the period of suspension arising in terms of 26.1.1.

26.2 Should the affected party partially or completely cease to be prevented from fulfilling its obligations by the event of force majeure, the affected party shall immediately give written notice to the unaffected party of such cessation and the affected party shall, as soon as possible, fulfil its obligations which were previously suspended; provided that in the event and to the extent that fulfilment is no longer possible or the other party has given written notice that it no longer requires such fulfilment, the affected party shall not be obliged to fulfil its suspended obligations and the unaffected party shall not be obliged to fulfil its corresponding obligations.

26.3 An "event of force majeure" shall mean any event or circumstance whatsoever which is not objectively within the reasonable control of the

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contemplated in this agreement and for facilitating the attainment by the of its objectives;

27.2.2 to keep that confidential information confidential and to disclose it only to officers, employees, consultants and professional advisors of the recipient who -

- (a) have a need to know (and only to the extent that each has a need to know);
- (b) are aware that the confidential information should be kept confidential;
- (c) are aware of the recipient's undertakings in relation to that information in terms of this agreement;
- (d) have been directed by the recipient, and have undertaken in writing, to keep the confidential information confidential.

27.3 Each recipient shall, at its own cost, in relation to the confidential information of the owner -

27.3.1 ensure that each person to whom it discloses the confidential information in accordance with 27.2.2 gives the undertaking contemplated in 27.2.2(d);

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27.3.2 notify the owner immediately upon it becoming aware of a suspected or actual breach of confidentiality;

27.3.3 immediately take reasonable steps at its own cost to prevent or stop any suspected or actual breach.

27.4 The provisions of this 27 shall survive termination of this agreement for any reason whatsoever.

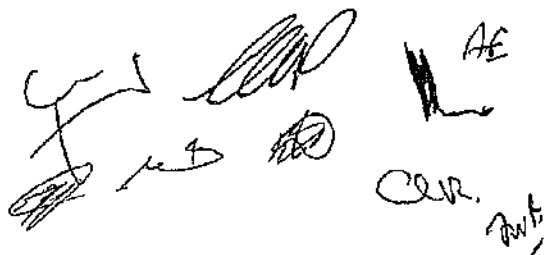
27.5 The provisions of this clause do not and are not intended to preclude any of the parties complying with applicable laws, regulations, rules and directives to which they are subject, or to provide such information to its advisors, stakeholders or investment analysts.

27.6 Notwithstanding the above, the RMC shall be obliged to submit to Alexkor for its approval any presentation it intends making for the purpose of raising capital or addressed to investors or analysts, which approval shall not be unreasonably withheld or delayed, taking into account the RMC's obligations in terms of the listing requirements of the JSE.

28.

DOMICILIUM AND NOTICES

28.1 The parties choose *domicilium citandi et executandi* for all purposes of the giving of any notice, the payment of any sum, the serving of any

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process and for any other purpose arising from this agreement, as follows

28.1.1 Alexkor - The State Attorney, Pretoria

8th Floor, Old Mutual Centre

167 Andries Street, Pretoria

Attention: Mr D Burger

RMC - c/o Bisset Beehuke McBlain Attorneys

11th Floor, Safmarine House, 22 Riebeck Street

Cape Town

Attention: Mr Henning Pieterse

28.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its *domicilium* to any other physical address within the Republic of South Africa and/or its facsimile number.

28.3 Any notice given and any payment made by either party to the other which -

28.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be rebuttably presumed to have been received by the addressee at the time of delivery;

28.3.2 is posted by prepaid registered post from an address within the RSA to the addressee at the addressee's *domicilium* for the time

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being shall be rebuttably presumed to have been received by the addressee on the seventh day after the date of posting.

28.4 This 28 shall not invalidate any notice actually given or payment actually made otherwise than as specified in 28.3.

29.

GENERAL

29.1 This agreement and the Deed of Settlement constitutes the sole record of the agreement between the parties in regard to the subject matter thereof.

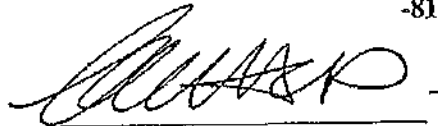
29.2 Neither party shall be bound by any representation, express or implied term, warranty, promise or the like not recorded herein or in the Deed of Settlement or reduced to writing and signed by the parties or their representatives.

29.3 No addition to, variation, or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.

29.4 No indulgence which either party may grant to the other shall constitute a waiver of any of the rights of the grantor.

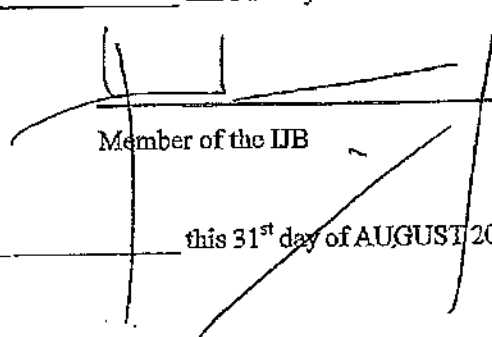
29.5 If any provision of this agreement should be wholly or partly invalid, unenforceable or unlawful, then this agreement shall be severable in

Handwritten signatures and initials at the bottom right of the page. There are several distinct signatures, including one that appears to be 'AE' and another that looks like 'AE' with a checkmark. There are also some scribbles and other initials.



Member of the IJB

Signed at PRETORIA this 31st day of AUGUST 2007



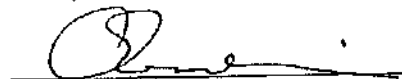
Member of the IJB

Signed at _____ this 31st day of AUGUST 2007

Member of the IJB

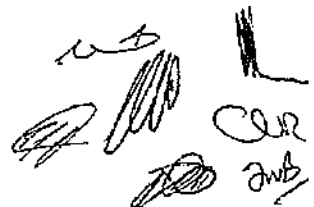
Confirmed in terms of clause 8.4.5 by the undermentioned principals:

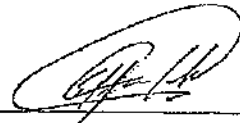
Signed at PRETORIA this 31st day of AUGUST 2007



FOR AND ON BEHALF OF Alexkor
and the Government of the Republic of
South Africa

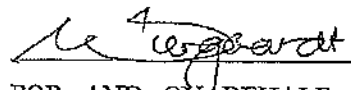
Signed at CAPE TOWN this 31st day of AUGUST 2007





FOR AND ON BEHALF OF the
Richtersveld Community

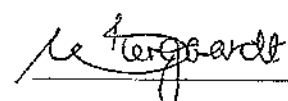
Signed at CAPE TOWN this 31st day of AUGUST 2007




FOR AND ON BEHALF OF the
Richtersveld Sida! Hub Communal
Property Association

The contents of this document and the Deed of Settlement are accepted as a
binding agreement between Alexkor and the Richtersveld Mining Company (Pty)
Ltd.

ALEXKOR
Date: _____



RMC
Date: 31.08.2007



Handwritten notes and signatures including 'AE', 'CR', and 'Zmb'.

~~GC10~~
"MC4"



REPUBLIC OF SOUTH AFRICA

Vol. 592 Pretoria, 31 October 2014 No. 2845

This document is also available on the Internet on the following web sites:

1. <http://www.treasury.gov.za>
2. <http://www.info.gov.za/documents/tenders/index.htm>

PART 1 OF 2

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AIDS HELPLINE 0800 123 22 Prevention is the cure

2. Terms of Reference

Alexkor RMC JV intends to leverage its position as a primary producer of diamonds to participate in post extraction treatment, processing and beneficiation of its produce that will deliver additional benefits to the Company and the Richtersveid community.

As a minimum requirement, Proposals must demonstrate the Bidders ability to:

- (i) Provide all resources including premises, legal entities including permits and licences to conduct the business of trading in and/or processing of rough diamonds and/or polished diamonds, technical personnel, administrative personnel and/or financial administration personnel to facilitate the sorting, valuation, transportation, safe custody, secure viewing and insurance of the produce and payment of proceeds from sales
- (ii) Implement processes that mitigate any risk of conflicts of interest in terms of achieving maximum pricing for Alexkor RMC JV produce
- (iii) Implement processes that achieve continuous improvements of prices for Alexkor RMC JV produce
- (iv) Originate all funding for capital investments required to implement a Proposal

3. Indicative time frames

- a. Interested parties should formally submit an Expression of Interest to participate in this process by 13h00, Friday, 7 November 2014 by email to Raygen Phillips (psjvtenders@alexkor.co.za). Late Expressions of Interest will not be considered.
- b. A compulsory briefing session will be conducted by the mine management at the mine during the week of the 10th November 2014.
- c. Submission of a formal written proposal to Alexkor RMC JV by Monday, 24 November 2014.

4. Correspondence

All queries in relation to this Request for Proposal must be directed in writing to Raygen Phillips (psjvtenders@alexkor.co.za).

"MCS"

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From: Roger Paul [<mailto:rlpaul.rsa@gmail.com>]
Sent: 30 January 2015 09:36 AM
To: 'Mervyn Carstens'; rbaqus@morning-tide.co.za; Zarina Kellerman; John Bristow
Cc: 'Raygen Phillips'
Subject: RE: Tender Award- PSJV/Scarlet Sky

All,

In order to finalise the award of the tender for the sale of the PSJV's diamonds, I requested Mervyn to circulate the results of the Due Diligence that he conducted on Scarlet Sky Investments (SSI) – see correspondence below.

I am happy with the outcome, and the concerns raised in my message of 17 December 2014 have been addressed. I therefore support the award of the tender to SSI. I request everyone to "Reply to All" indicating their support, or rejection, of SSI.

Subject to a positive response, Mervyn has indicated that he would still appreciate the input of the Committee in finalising the terms of the actual contract with SSI, and he will circulate the draft contract for comments before he signs it with SSI.

Regards, Roger

From: Mervyn Carstens [<mailto:mervync@alexkor.co.za>]
Sent: 29 January 2015 14:18
To: RLPaul.rsa@gmail.com; rbaqus@morning-tide.co.za; Zarina Kellerman (zarinak@alexkor.co.za); John Bristow
Cc: Raygen Phillips
Subject: Tender Award- PSJV/Scarlet Sky

Dear Dr Paul

Subsequent to our due diligence process on Scarlet Sky Investment I can confirm the following:

1. Beneficiation

Scarlet Sky will select stones ranging between 1 and 4 carats (+- 15 % of our run of mine production) for cutting and polishing. These stones will be valued by an independent valuator after which they will pay us valuation price plus a premium of 5% upfront. They will further pay us 30% of the upside from prices fetched post cutting and polishing. Any other single stone/stones selected to be cut and polished would be dealt with on the same basis.

2. Tender Process

The remainder of the run of mine production would be sold on an open or closed tender process (agreeing that we would alternate between the two models until such time as we are in agreement on what the best option is for achieving maximum prices for the diamonds).

3. Bank Guarantee

Scarlet Sky has a bank guarantee of R50 million with Investec.

4. Training

They will train 4 community members per year for a period of 5 years in cutting and polishing.

5. Legal compliance

They confirmed and will provide copies of valid licences required by the Diamond Regulator(DMR) for diamond dealing and selling at their premise and would offer the required 10% of run of mine production to the State Diamond Trader as required by law.

Regards
Mervyn

From: Roger Paul [<mailto:rlpaul.rsa@gmail.com>]
Sent: 17 December 2014 05:43 PM
To: Mervyn Carstens; rbaqus@morning-tide.co.za; 'Duncan Korabie'; 'Zarina Kellerman'
Cc: Raygen Phillips
Subject: RE: Alexkor RMC JV Proposal

Dear All,

I support conditional approval subject to "a full due diligence and verification process to be conducted by us after Mine opening in January 2015". I take it as a given that Mervyn is satisfied that the proposed selling price of Valuation + 5% provides fair value for the PSJVs diamonds.

My conditional approval is also subject to the terms of the final contract. I note with some concern that the attached response from SSI contains a number of important targets that contain ranges or are open to interpretation, such as:

- Clause 1.2.2: "Valuation plus (up to) 5% premium on that valuation". What that means is that the premium paid will be zero!
- Clause 2: "Our intention is to increase our training programme to produce between 12 and 16 individuals ... over a five year period. I am not interested in intentions – I want a commitment to produce a specified number of skilled individuals with **annual** targets.
- Clause 3 (iv): "The Richterveld beneficiation factory ... will only be doneonce it is economically viable." No indication is given as to which party will be responsible for providing the seed capital for the factory, or who decides on the economic viability of the factory.

Finally, the contract should contain both a termination date (such as 3 years) **and** early termination conditions if SSI does not meet the contractual targets during the 3 years.

I voice my concern over the very optimistic "indicative value sharing example".

I remain very cautious over SSI's claims, but give my support nonetheless subject to my comments above.

Regards, Roger

 **From:** Mervyn Carstens [<mailto:mervync@alexkor.co.za>]
Sent: 17 December 2014 15:56
To: rbaqus@morning-tide.co.za; RLPaul.rsa@gmail.com; Duncan Korabie (duncan@korable.co.za); Zarina Kellerman (zarinak@alexkor.co.za)
Cc: Raygen Phillips
Subject: FW: Alexkor RMC JV Proposal

Dear All

Attached please find correspondence from Scarlet Sky Investments in response to our queries and concerns raised after their proposal and presentation to the Tender committee on 11 December 2014. I am happy with their responses and guarantees offered and would like to give them conditional approval subject to a full due diligence and verification process to be conducted by us after Mine opening in January 2015.

Please advise whether you are in agreement.

P:Postnet Suite 147
Private Bag X1
Melrose Arch
2076

Begin forwarded message:

From: Mervyn Carstens <mervync@alexkor.co.za>
Date: 12 December 2014 at 12:56:45 SAST
To: "daniel@danielnathan.co.za" <daniel@danielnathan.co.za>
Cc: "marc@intergratedcapital.co.za" <marc@intergratedcapital.co.za>
Subject: Alexkor RMC JV Proposal

Dear Daniel

Thank you for tender proposal presentation yesterday. The tender committee would like to further engage with you regarding your broad but innovative proposal in the marketing of our diamonds and your ideas around local beneficiation.

In order for the tender committee to further evaluate your proposal we need to urgently get clarity, confirmation and proper guarantees on the following aspects.

1. Upfront guarantee of funding available for the outright purchasing of our rough diamonds and confirmation of the premium to be paid after the valuation by an independent and reputable diamond valuator.
2. We need to get confirmation on the number of Richtersveld people to be trained in cutting and polishing of diamonds from the various towns in the Richtersveld.
3. We need to clearly understand your local beneficiation strategy in terms of time frames, scale and the potential for outsourcing of it in the interim.
4. We need an upfront and guaranteed undertaking that the Mine will financially benefit from the value adding of our diamonds post extraction.

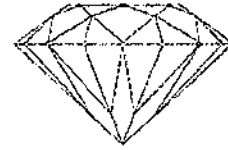
I would appreciate it if we can get this information and guarantees as soon as possible. Please contact me directly should you need any information or further clarity in this regard.

Sincerely
Mervyn Carstens

Sent from my iPad

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SCARLET SKY INVESTMENTS



Dear Sirs:

We refer to your e-mail correspondence received on 12 December 2014 and wish to respond as follows:

1.1. Funding Facility Letter

Attached, please find a funding facility letter in the amount of ZAR 50m Issued by **Integrated Capital Management (Pty) Ltd ("ICM")**

1.2. Independent Valuator Model

In terms of the regulations introduced in 2014, by the Department of Mining and Energy ("DME"), the number of participants licensed to participate in the tender (auction) process was significantly reduced from an estimated 100 participants to estimated 20 participants.

In SSI's analysis of the impact on PSJV's auction sale revenue, the new regulations would have the effect of significantly reducing PSJV's historical tender income by a significant percentage (estimated to be as much as 20%).

Should PSJV continue to utilize the auction process, its revenue realization resulting from the new regulations will be significantly curtailed.

SSI is also of the opinion that the propensity for price collusion amongst a reduced number of market participants will further adversely impact PSJV's revenue.

In order to counteract these factors, and as a mechanism to reduce the impact of these external macro factors, SSI detailed in its tender proposal a proprietary "independent valuator" model which would produce a greater, enhanced financial result for PSJV.

In summary, the independent valuator model process operates as follows:

1.2.1. SSI and PSJV agree on the appointment of a qualified, registered, independent, valuator.

1.2.2. The Valuator will produce an independent valuation taking the above market factors into consideration and which will be utilized for insurance purposes.

To reiterate, in SSI's opinion the reduced number of market participants, and the risk of collusion would have impacted significantly on PSJV's 2015 Tender ("Auction") Revenues.

The SSI independent valuator Model ("the model") will realise a more stable (favourable) valuation, plus (up to) 5% premium of that valuation, and will generate the PSJV invoice amount, payable by SSI, on a monthly basis.

- 1.2.3. Because the model allows an effective arbitration process it will create an inherent valuation that is fair to both parties and will allow for a robust appeal process to be contracted for in further detail in the event that SSI is successful in being awarded the tender.

The independent valuator will have representation made by both parties justifying their valuation expectations, on an ongoing basis.

1.2.4. Conclusion

As a result of this process, PSJV realises optional pricing for its production and participates in further beneficiation detailed in paragraph 4 below participates

2. We understand the need for PSJV to create upskilling and local participation as a concomitant to the delivery of the requirements for the community and as SSI articulated in its Tender Proposal. SSI proposed a training programme in the event of being awarded the Tender. You have asked us to clarify the number of participants we anticipate being able to train and our intention is to increase our training programme to produce between 12 and 16 individuals from the Richtersveld area with the appropriate aptitude to be fully trained in the cutting and polishing of rough diamond production over a five year period in a process more fully detailed in point 3 below.

PSJV must be cognisant of the fact that in order to sustain an economically viable local beneficiation programme, which will create economies of scale inherently required in an industry of this nature, individuals with appropriate temperament and aptitude will have to be identified, who will stay committed to the training process for its entirety.

SSI will ensure, if chosen as the preferred bidder, to launch the process to advertise for local interns. They will then be placed in the initial stage of the programme. Due to the unique nature and end goal of this programme, SSI commits to continually modify and optimise the programme to ensure a growing number of students are placed in the programme so as to allow for a full team to return to the Richtersveld within 5 years to launch the local factory.

3. The Local Beneficiation strategy will be achieved as follows:

- i. Potential candidates recruited from local Richtersveld towns will be interviewed for 16 places on the training course
- ii. Appropriate recruitment processes will be communicated and advertised to potential candidates
- iii. Based on their enthusiasm, skill-set and aptitude, 16 candidates will be selected initially. They will attend the **Harry Oppenheimer Diamond Trading School** as detailed on page 68 of the SSI Tender Submission. For ease of reference we quote the relevant section below:
 - "The training programme will run on yearly cycles and candidates will receive consultative training for a total of 5 years
 - The candidates will start their training by attending the Entrepreneurial Valuation and Polishing Course at the Harry Oppenheimer Diamond Training School
 - o The duration of the course is 6 months- Monday to Friday 07h30-15h00
 - o The course provides a practical introduction to the diamond industry, from understanding rough diamond evaluation and planning to diamond polishing basics
 - o This will give the selected candidates the necessary foundation to further their training
 - Once the 6 month intense training programme has been completed, the candidates will receive training for 1 week per month at the **Joe Gaddie Diamond Cutting Works** [and/or other appropriate facilities where candidates will receive appropriate training and education] where they will be guided in the art of cutting and polishing rough diamonds as well as the valuation process that goes with it.
 - This will continue for another 10 months in the year
 - From year 2 - 5 the candidates will receive quarterly training from **Joe Gaddie** to ensure that their skills are up to date and being honed further."
- iv. **At the end of the 5 years it is envisaged that the trained people will be returned to the Richtersveld to work in the newly created beneficiation factory.** This will only be done once their on the job skillset is up to a standard that will allow efficient beneficiation of the stones and also only once it is economically viable to do set up the factory, as not to disrupt the Richtersveld community.
- v. As more people finish the training, they will be integrated into the factory. It is expected that the above process will continue for 5 years.
- vi. It is envisaged that **a fully functional factory in the Richtersveld will be in place after year 5** and will reach maximum capacity after 10 years.

Local beneficiation through training as mentioned above will not necessary be correlated with the financial benefit mentioned in point 4 below. Both processes will result in benefit to PSJV independently.

4. Financial benefit to the mine post extraction

SSI will ensure that PSJV will benefit financially from post extraction through the production of the mine and will allow PSJV to participate in the profits of beneficiation of its production.

Currently, the tender process realizes approximately 10% above the valuator's valuation. Even without taking in account the factors mentioned in point 1 above which are expected to negatively impact on the realised prices per tenders, the SSI proposal will result in a substantial benefit to PSJV, as illustrated below.

PSJV and SSI will share the value of the benefit post extraction on stones between 1 and 4 carats as per the following indicative example detailed below. Full details of the production will be tracked for PSJV.

INDICATIVE VALUE SHARING EXAMPLE

4 carat stone at \$500 per carat		\$2 000.00	("Stone 1")
Valuation premium paid by SSI	5%	\$100.00	

Purchase price from PSJV \$2 100.00 (a)

Assuming Stone 1 gets split in 2 stones of 1 carat each:

Selling price of each 1 carat stone after beneficiation	\$5 100.00	each
Total revenue	\$10 200.00	(b)
Cost of sales	\$-2 100.00	(a)
Assumed beneficiation cutting costs	\$-600.00	(c)
Net profit	<u>\$7 500.00</u>	(b)-(a)-(c)

Split 3 ways- 33.33% each

SSI	\$2 500.00
Beneficiator	\$2 500.00
PSJV	\$2 500.00 (d)

In this example, the current realisation for PSJV is \$2 200 for Stone 1 (namely a 10% premium above the valuation)

RV

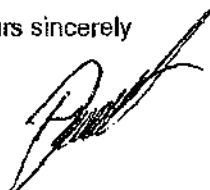
Under the SSI beneficiation proposal the Alexkor/RMC JV will realise \$4 600 broken down as follows:

Total value for Alexkor/RMC JV		
Selling price	(a)	\$2 100.00
Profit share	(d)	\$2 500.00
Total value		<u>\$4 600.00</u>

This results in more than a double premium over the current value achieved to PSJV! (\$4600 vs \$2200).

We trust this resolves your queries. Please don't hesitate to contact me with any queries on the above.

Yours sincerely



DANIEL NATHAN
DIRECTOR

"MC6"

ANNEXURE "Y"

Raygen Phillips

From: Mervyn Carstens
Sent: 26 November 2015 08:57
To: Raygen Phillips
Subject: FW: TENDER AWARD - PSJV / SCARLET SKY

From: Mervyn Carstens
Sent: 24 August 2015 12:36 PM
To: Mervyn Carstens <mervync@alexkor.co.za>
Subject: FW: TENDER AWARD - PSJV / SCARLET SKY

From: Zarina Kellerman [mailto:zarinak@alexkor.co.za]
Sent: 23 January 2015 03:09 PM
To: daniel@danielnathan.co.za; mark.phillips@rhp.co.za; stan@integratedcapital.co.za
Cc: Mervyn Carstens <mervync@alexkor.co.za>
Subject: TENDER AWARD - PSJV / SCARLET SKY

Dear all

Thank you for what we believe was a very fruitful meeting. I confirm that we have agreed on the following:-

1. An agreement to be prepared between your attorneys and ourselves to encapsulate the terms and conditions of the award as per the tender documents but with specific clarity on the following:
 - a. as regards the beneficiation, specific stones will be chosen by you for the process of cutting and polishing and on these stones we would enjoy the valuation price plus 5% as well as 30% of the upside;
 - b. the remainder of the stones would be sold on an open and closed tender process (agreeing that we would alternate between the two until such time as we are in agreement on what the best option is for all but which should ideally not exceed a year);
 - c. on the CSI side, training of 4 community members per year for a period of 5 years. On a possible beneficiation factory, this will depend on whether it would be economically viable the such time it is to be built, depending on market factors.

Finally, you will make available a data room for us to consider your original documents which will include:-

- a. Tender document;
- b. BEE certificate;
- c. Tax clearance certificate;
- d. Register of directors and directors IDs;
- e. Bank guarantees;
- f. Insurance confirmations;
- g. Confirmation of permits and licences including the licences for the tender house.

I would be available on Monday to do the inspection of the documents. Please let me know if this is suitable.

"Y"

Have a super weekend.

Sincerely
Zarina Kellerman

Zarina Kellerman
Chief Legal Officer
M +27 82 219 4152 | T +27 11 788 8809 | F + 27 011 788 8869
E Zarinak@alexkor.co.za | www.alexkor.co.za |



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**UNDER THE AUSPICES OF THE JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC
SECTOR INCLUDING ORGANS OF STATE**

HELD AT JOHANNESBURG

Re:

MERVYN CARSTENS

Person called upon to provide an explanation in terms of Rule 3.3

CONFIRMATORY AFFIDAVIT – RAYGEN PHILLIPS

I, the undersigned,


RAYGEN PHILLIPS

do hereby make oath and swear that:

1. I am an adult female Company Secretary with identity number 791111 0152 080.
2. I am the former Company Secretary of the Alexkor/RMC Joint Venture ("the PSJV").
3. I reside at 1843 Saltpan Road, Port Nolloth, Northern Cape.
4. The facts herein contained are within my own personal knowledge and belief unless the context indicates otherwise and are both true and correct.
5. I have read the replying affidavit of Mervyn Carstens and can confirm the correctness thereof in so far as it relates to me.
6. I especially wish to confirm that:



- 6.1 I am now aware of any conspiracy to capture Alexkor. I was an employee of the PSJV and not Alexkor.
- 6.2 If there was such a conspiracy, I was not a part thereof and had no knowledge thereof.
- 6.3 I am not and have never been a shareholder of SSI or any of its associate companies.
7. I also wish to confirm that I specifically advised the Gobodo representatives via email correspondence that a due diligence exercise was done prior to the appointment of Scarlet Sky Investments ("SSI"). On 03 October 2019 I sent the due diligence report to Gobodo.
8. The due diligence exercise was conducted by Mr Mervyn Carstens and was distributed to all the members of the PSJV Tender Committee and the PSJV Board.
9. I am aware that a verification exercise was undertaken by Ms Kellerman, the Chief Legal Officer of Alexkor.
10. I confirm having advised the Gobodo representatives on 08 October 2019 via email that there was no due diligence exercise undertaken in respect of the second tender where SSI was once again the preferred bidder.
11. I confirm that the Board's decision was based on the fact that 12 months prior thereto, a due diligence exercise had been conducted. In addition SSI, at that stage, had been operating in terms of the first tender to the satisfaction of the PSJV Board.
12. Mr Bishop has not mentioned me at all in his affidavit.
13. It is also my intention to ensure that there is a full response to the affidavit of Mr Torres of Gobodo.
14. With my limited resources and the limited amount of time available to me, I have not been able to collate a complete response and must ask for additional time to complete that process.



Page 2 of 3

15. I do apologise for any inconvenience that this may cause but do believe that I have information which will help this Commission come to a proper conclusion.

16. It is not my intention to delay the important work of this Commission and as such I confirm once again that I associate myself completely with the response by Mr Mervyn Carstens who was the Chief Executive Officer of the PSJV Board during the period that I was the Company Secretary.



RAYGEN PHILLIPS

I certify that the above signature is the true signature of the deponent and that she has acknowledged to me that she knows and understands the contents of this affidavit, which affidavit was signed and sworn to before me, in my presence at _____ (place) on this _____ day of **JANUARY 2021**, in accordance with the requirements of Government Notices No. R1258 dated 21 July 1972 and as amended by Government Notices No. R1648 dated 19 August 1977 and R1428 dated 11 July 1980.

COMMISSIONER OF OATHS