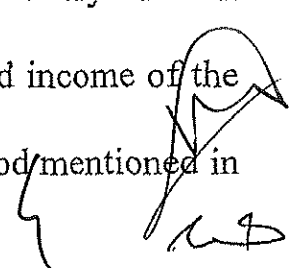


development phase, but also with due regard to the principles set out in clause 8.3.12.

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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as contemplated in clause 8.4.3 of the Deed of Settlement;
BE SUCH UNANIMITY RECORDED AS FOLLOWS:

1.

UNANIMOUS ACCEPTANCE OF THE PRINCIPLES OF PSJV

Subject to the clarifications and additions set out hereunder and the agreements reached between the principals which are also recorded herein, the principles of the Pooling and Sharing Joint Venture to be entered into between Alexkor and the RMC are unanimously accepted.

2.

DEFINITIONS

Unless the context clearly indicates a contrary intention, the following expressions used in clause 8 of the Deed of Settlement and herein, shall bear the meanings set out below and cognate expressions shall have corresponding meanings:

2.1 *Alexkor Initial Cost Contribution* means the necessary finance and capital up to a maximum of R200-million for the preliminary establishment of the PSJV and thereafter for the joint operations of the PSJV as provided

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any other expenditure which is generally regarded in the mining industry in South Africa as a replacement and/or ongoing and/or renewal capital expenditure, all in accordance with the accounting principles and the policies layed down by the Joint Board from time to time;

2.6 *effective date* means the date upon which the last of Alexkor and the RMC append their signature to this document, thereby respectively accepting the contents of this document and the provisions of the Deed of Settlement and thereby enter into an agreement on the basis set out therein;

2.7 *improvement capital expenditure* means -

2.7.1 expenditure relating to an item of property, plant or equipment, which expenditure is added to the carrying amount of the asset when it is probable that future economic benefits, in excess of the originally assessed standard of performance of the existing asset, will flow to the pooled operation; and

2.7.2 where there are major components of items of property, plant and equipment which have different useful lives from the assets by which they are replaced, the replacement or renewing cost is accounted for as the acquisition of a separate asset and the replacement asset is written off (i.e. expenditure which is generally regarded in the mining industry in South Africa as expenditure that will contribute to a modest increase in the capacity or improvement in the efficiency of an existing plant

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used in the pooled operations);

2.8 *land and marine mining assets* as used in clause 8.3.3 of the Deed of settlement, means -

2.8.1 in relation to Alexkor's land mining assets, such prospecting and mining assets, resource information, infrastructure, contracts, arrangements, plant, equipment and operations as the Executive Committee may request Alexkor to put under the control of the Joint Board;

2.8.2 the marine mining rights; and

2.8.3 in relation to Alexkor's marine mining assets, such prospecting and mining assets, resource information, infrastructure, contracts, arrangements, operations, plant and equipment as the Executive Committee may request Alexkor to put under the control of the Joint Board;

2.9 *land mining rights* means -

2.9.1 in relation to the land mining rights presently held by Alexkor, the old order mining right as contemplated in clause 8.2 of the Deed of Settlement; and

2.9.2 in relation to the RMC, the mining right after it has been transferred to the RMC with the permission of the Minister or

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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

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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(Act No 89 of 1998), all on an unconditional basis or under circumstances where any conditions are attached to any of such approvals, that such conditions are reasonably acceptable to Alexkor and the RMC;

3.1.2 The Land Claims Court grants an order confirming or noting the Deed of Settlement and, to the extent necessary, the terms, provisions and conditions of the PSJV;

3.1.3 The existing Environmental Management Plan of Alexkor is amended as contemplated (in clause 9) of the Deed of Settlement; and

3.1.4 The land mining rights are transferred to RMC with the permission of the Minister of Minerals and Energy, as contemplated in clause 8.2 of the Deed of Settlement.

3.2 The RMC and Alexkor shall use reasonable endeavours to procure the fulfilment of the suspensive conditions as soon as reasonably possible after the effective date.

3.3 The suspensive conditions are for the benefit of both parties and may only be waived by written agreement between both of them.

3.4 Where any of the conditions referred to above are not fulfilled within the eighteen month period provided for in 3.1 above, then Alexkor and the RMC shall meet in good faith and use their respective best endeavours to

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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

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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stated in clause 8.3.12.3 of the Deed of Settlement;

(c) the three year resource caratage stated in clause 8.3.12.5 of the Deed of Settlement; and

(d) the question whether the three year resource contemplated in clauses 8.3.12.5 and 8.3.12.8 of the Deed of Settlement should be on the basis of three years of Indicated Resource;

4.6.4 drafting of a prospecting plan and work programme;

4.6.5 drafting of an interim mining plan if deemed desirable under the circumstances;

4.6.6 drafting of an accounting policy for the PSJV on the basis of the International Accounting Standards and the National Treasury Regulations,

all for submission and acceptance by the Joint Board: provided that the technical revision in 4.6.3 has to be accepted by the unanimous resolution of the Joint Board on any aspect which would have the effect of amending any provision in clauses 8.3.12.2, 8.3.12.3, 8.3.12.4, 8.3.12.5 or 8.3.12.8 of the Deed of Settlement.

4.7 The Joint Board and the Executive Committee, after its appointment, must diligently do all preparatory work necessary for the PSJV to

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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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pooled assets during a particular year of assessment (as a percentage of the aggregate capital expenditure incurred in that year by both parties) exceeds Alexkor's participation interest for that year (the excess capital expenditure percentage), then Alexkor will on the last day of that year sell a portion (equal to the excess capital expenditure percentage) of each of the assets acquired by it during the year of assessment and on which such capital expenditure was expended, to the RMC for an amount equal to the proportionate cost of such assets. The foregoing provisions will apply *mutatis mutandis* to capital expenditure incurred in respect of the RMC pooled assets in excess of the RMC's participation interest. For the purpose of this 5.2.3, capital expenditure shall exclude maintenance capital expenditure.

5.3 The relationship between the parties as participants in the pooled operations, shall be governed exclusively by the Deed of Settlement as herein supplemented, and is not intended to create and shall not constitute a partnership. Save as may be expressly provided for in this agreement, neither of the parties shall be entitled to represent or hold itself out as being the partner or agent of the other party or as being able to bind the credit of such other party. Each party hereby indemnifies the other against any losses or damages of whatever nature which that other party may suffer as a result of a breach of the provisions of this clause. As security for their respective obligations towards each other as provided for in this agreement, each party will be entitled to recover such loss or damages after liquidation thereof, from the other party's

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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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hours from the decision having been made. The ratification shall be communicated to all members forthwith upon having been reduced to writing;

9.1.12 decisions of the Joint Board may also be arrived at in writing by telefacsimile or electronic mail;

9.1.13 no remuneration shall be payable to the members of the Joint Board by the PSJV and from the pooled income. The pooled operations shall also not be liable for the costs incurred by any member attending any Joint Board meeting unless otherwise agreed. Each party shall be responsible for the remuneration and costs of the members of the Joint Board nominated by it;

9.1.14 the administrative and secretarial functions of the Joint Board shall be carried out by its members or such third parties as determined by the Joint Board;

9.1.15 all costs of the pooled operations incurred by the Joint Board relative to its functioning and which are approved by it shall be paid for out of the pooled EBITDA;

9.1.16 the individual members of the Joint Board shall not be entitled to issue any instructions to, or exercise any authority over, any employee, agent or counter party involved in the pooled operations unless they have been expressly authorised by the Joint Board to do so;

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Committee, an independent contractor or contractors; and

9.2.7 preparing such quarterly reports as would enable Alexkor to comply with its reporting obligations under the Public Finance Management Act 1 of 1999.

9.3 Notwithstanding the provisions of 9.1.5, the following decisions of the Joint Board will only be implemented if the members of the Joint Board representing the RMC and Alexkor have unanimously resolved to implement such a decision at a meeting of the Joint Board where such a decision is submitted to the Joint Board for resolution, namely -

9.3.1 the appointment of the Executive Committee as contemplated in clause 8.3.9.1 of the Deed of Settlement;

9.3.2 any deviation from the development plan and programme insofar as it relates to the land mining and prospecting.

9.4 In the event that any decision as referred to in 9.3.1 and/or 9.3.2 cannot be implemented due to a failure by the Joint Board to reach a unanimous resolution for such a decision, then -

9.4.1 the parties shall consult for a period of ten business days (discussion period) to attempt to reach a unanimous resolution for the decision in question through amicable discussion;

9.4.2 in the event that the resolution for the decision in question

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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;

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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land area in a manner which is capable of generating sufficient EBITDA to enable Alexkor to recover 51% of the Alexkor Initial Cost Contribution in respect of land prospecting and mining operations, within a period of five years calculated from the commencement of mining and to in addition, recover any additional finance made available to the pooled operations in the manner contemplated in 14.2 below within the same five year period.

11.2 The Executive Committee and the Management Structure shall formulate a development plan and programme to provide for the manner in which the upgrading of the marine and land diamond resource will occur and the manner in which prospecting and mining activities shall take place in the Alexkor marine area and the RMC land area, with the overriding objective to ultimately prospect and mine those areas to the full potential of the resource in those areas. The development plan and programme must be submitted to the Joint Board for approval and must be updated from time to time as prospecting and mining progresses.

11.3 The Executive Committee and the Management Structure shall in formulating the development plan and programme, include in the development plan and programme all activities related and incidental to prospecting and mining which are customary for the prospecting and mining of alluvial diamond deposits and marine diamond deposits to facilitate the optimum prospecting and mining, including, without limiting the generality of the foregoing -

11.3.1 incorporation of the terms and conditions of the mining work

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programme relevant to the RMC land mining right;

11.3.2 providing for rehabilitation of prospecting and mining disturbances in accordance with the amended EMP;

11.3.3 complying with the principles set out in clause 8.3.12 of the Deed of Settlement, after such revision thereof as may be accepted unanimously by the Joint Board in accordance with the provisions of 4.6.3;

11.3.4 compilation of a mining plan to achieve a viable land mining operation;

11.3.5 appointment of an independent contractor in accordance with the provisions of 12; and

11.3.6 allocation of the Alexkor Initial Cost Contribution as between the marine and land components of the pooled operations in order to facilitate the implementation of the development plan and programme and to achieve the objectives of the development plan and programme, while simultaneously maintaining revenue from the offshore operations to subsidise the land operations during development phases.

11.4 The Executive Committee and the Management Structure shall, in the conduct of prospecting and mining activities in the pooled operations areas, at all times comply with the development plan and programme as

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approved by the Joint Board.

12.

APPOINTMENT OF INDEPENDENT CONTRACTOR (to supplement clause 8.3.13 of the Deed of Settlement)

12.1 The Executive Committee shall, as a component of the development plan and programme and subject to the provisions of this clause 12, recommend to the Joint Board an independent contractor or contractors for appointment by the Joint Board, to carry out the pooled operations for and on behalf of the parties in the pooled operations areas. All independent contractors appointed with regard to pooled operations in respect of the RMC land area, shall be appointed on behalf of the RMC and all independent contractors appointed with regard to pooled operations on the Alexkor marine area, shall be appointed on behalf of Alexkor. Where independent contractors are appointed with respect to pooled operations pertaining to both the RMC land area and the Alexkor marine area, the Joint Board shall decide on whose behalf such contractors will be appointed. For purposes of clarity, it is recorded that all monies paid to such independent contractors, shall be regarded as operational expenditure.

12.2 The appointment of the independent contractor, shall take place on terms

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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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eventuality;

- (g) the negotiation and conclusion of arrangements with trade unions and other employee representatives;
- (h) applying for all consents, approvals, licences and permits as may be required in terms of the MPRDA, in order to conduct the prospecting and mining activities: provided that the Executive Committee will do all such things and take all such steps as may be required by the Transitional Arrangements of the MPRDA and within the time frame prescribed by the Transitional Arrangements, to convert the Alexkor marine mining right in 2.11.2 to a mining right in accordance with the provisions of Item 7 of the Transitional Arrangements and to furthermore apply for all such extensions of the land mining right of the RMC and of the marine mining rights in terms of the MPRDA in order to conduct the pooled operations: provided that all costs directly involved in -
 - (i) the application processes contemplated above;
 - (ii) the payment of any royalties to the State pursuant to the issue of any mining rights under the MPRDA and in any way related to the utilisation of the land mining rights of the RMC and the marine mining rights by the pooled operations, will be for the

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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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Management Structure of the prospecting and mining activities in terms hereof;

- (o) fulfilling all statutory obligations as an employer and operator of the prospecting and mining activities;
- (p) implementing a skills transfer programme (as prepared by the Management Structure and as agreed by the Joint Board) in respect of the technical skills relating to the conduct of the prospecting and mining activities pertaining to the pooled operations;
- (q) disposing of pooled assets having an individual value of less than R5-million or a cumulative value in any given year of less than R50-million (having regard to the pooled operations from time to time), which amount shall escalate annually from the execution date by the same percentage increase as the percentage increase in the PPI for the previous accounting period;
- (r) procuring the services of such experts, consultants and contractors as are necessary in regard to the mining, engineering, design, legal, accounting or other professional services required in connection with the prospecting and mining activities in an economically viable and efficient manner;

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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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