

1677



**DEPARTMENT: MINERAL RESOURCES
REPUBLIC OF SOUTH AFRICA**

PROSPECTING RIGHT

Granted in terms of section 17(1) of the Mineral and Petroleum Resources Development Act, 2002
(Act No. 28 of 2002)

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1677
Protocol No: /2018
File Ref No (NC) 11530 PR
Application No

LET IT HEREBY BE MADE KNOWN:

THAT on this 18th day of **May** in the year **2018**, before me, **Izak Cornelius Potgieter** notary public, duly sworn and admitted, residing and practising at **Kimberley** , in the **Northern Cape** Province of South Africa, and in the presence of the subscribing competent witnesses, personally came and appeared:

Pieter Frederik Swart, the Regional Manager, **Northern Cape** Region of the Department of Mineral Resources, and as such in his/her capacity as the duly authorised representative of:

THE MINISTER OF MINERAL RESOURCES

The said Regional Manager, being duly authorised thereto under and by virtue of a Power of Attorney granted by the Deputy Director General: Mineral Regulation of the Department of Mineral Resources on the 29th day of **September** in the year **2015**, as amended on the 9th day of **March** in the year **2018** in terms of the powers delegated to him by the Minister on the 12th day of **May** 2004 in terms of section 103 (1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002),

AND

Mrs Anette Basson in her capacity as the duly authorised representative of De Beers Consolidated Mines (Pty) Ltd, Registration number:

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(Hereinafter together with his/her/its successors in title and assigns referred to as "the Holder", he/she, the said representative, being duly authorised thereto under and by virtue of a power of attorney/resolution of directors/members of the Holder, signed or passed at Kimberley on the 14th day of December in the year 2017, which power of attorney or a certified copy of a resolution has this day been exhibited to me, the notary, and remain filed of record in my protocol with the minutes hereof.)

AND THE MINISTER AND HOLDER DECLARED THAT:

WHEREAS The State is the custodian of the nation's mineral and petroleum resources in terms of section 3 of the Act,

AND WHEREAS The Holder has applied for a prospecting right in terms of section 16 of the Act,

AND WHEREAS The Deputy Director-General: Mineral Regulation has by virtue of the powers delegated to him granted to the Holder a prospecting right in terms of Section 17 of the Act.

NOW THEREFORE THE MINISTER GRANTS A PROSPECTING RIGHT TO THE HOLDER SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

Definitions

In this prospecting right, unless the context indicates otherwise, the following words and expressions shall have the meanings assigned to them:

'**Act**' means the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) and includes the Regulations, guidelines, directives and orders made in terms of this Act;

'**Effective date**' means **18th** day of **May** in the year **2018** (being the date on which the Environmental Management Plan is approved in terms of section 39(4) of the Act);

'**Holder**' is as defined in the Act, and specifically in relation to this right, means **De Beers Consolidated Mines (Pty) Ltd**, Registration No /Identification No. **188800000707**;

'**Mineral**' is as defined in the Act, and specifically in relation to this right means **Diamond (General, in Kimberlite and alluvial)**;

'**Minister**' means the Minister of Mineral Resources and includes the successors in title, the assignee or any person duly authorised to act in the Minister's place and stead;

'**Prospecting Area**' is as defined in the Act and includes any additional area of environmental liability as may be reflected on the Environmental Management Plan relating to this right;

'**Prospecting right**' is as defined in the Act and includes all the Annexures to it, Agreements and inclusions by reference;

'**Prospecting Work Programme**' is defined in the Act and is as reflected in **Annexure A** to this prospecting right; and

'**Regional Manager**' is as defined in the Act and specifically in relation to this right means the Regional Manager for the **Northern Cape** Region of the Department of Mineral Resources.

1. Description of the Prospecting Area

The Prospecting Area shall comprise the following:

Certain: **Portion of the Remaining extent of the Farm Greeffputs No.169 and Portion of Portion 1 (Victoria) of the Farm Greeffputs No. 169**

Situated: **in the, Magisterial/Administrative District of Barkley West**

Measuring: **1548.5600 hectares in extent.**

(In the case of various farms being involved, a list can be attached and referred to as **Annexure N/A**);

Which Prospecting Area is described in detail on the attached Diagram/plan marked **Annexure B**.

2. Granting of Prospecting Right

2.1 Without detracting from the provisions of sections 5 and 19 of the Act, the Minister grants to the Holder, the sole and exclusive right to:

2.1.1 Prospect for the Holder's own account, the mineral/s in, on and under the Prospecting Area,

[Where the right to remove has not been granted, Clause 2.1.2, and its sub-clauses above are not applicable and should be deleted and the rest of clause 2 should be amended accordingly before execution].

3. Commencement, Duration and Renewal

3.1. This prospecting right shall commence on **09th March 2018** and, unless cancelled or suspended in terms of section 47 of the Act, will continue in force for a period of **5 (Five) years** ending on **08th March 2023**.

3.2. The Holder must commence with the prospecting operations within 120 days from the date on which the prospecting right becomes effective in terms of section 17 (5) of the Act or any later date as may, upon a written request by the Holder, be authorised in writing by the Minister in terms of the Act, failing which this right may be cancelled or suspended.

3.3. Any application for a renewal of this prospecting right shall be submitted to the office of the Regional Manager not later than 60 working days prior to the date of expiry of this right.

4. Amendments, Variation and Abandonment

- 4.1 The terms of this right may not be amended or varied (including by extension of the area covered by it or by the addition of minerals or a share or shares or seams, mineralized bodies, or strata, which are not at the time the subject thereof) without the written consent of the Minister.
- 4.2 The Holder shall be entitled to abandon or relinquish the right or the area covered by the right entirely or in part. Upon abandonment or relinquishment of the prospecting area or any portion thereof, the Holder must:
- 4.2.1 Furnish the Regional Manager with all prospecting results and/or information, as well as the general evaluation of the geological, geophysical and borehole data in respect of such abandoned area in so far as it applies to the mineral or any other mineral/s obtained in respect of this right, and
- 4.2.2 Apply for a closure certificate in terms of section 43 (3) of the Act.
- 4.3 With effect from the date the Holder has abandoned or relinquished a portion/s of the Prospecting Area, and subject to section 43 of the Act, the Minister is entitled to grant any prospecting rights or mining rights or any right or permit referred to in the Act in, on, or under the portion/s, so abandoned or relinquished, to any person/s.

5. Payment of Prospecting Fees and Royalties

- 5.1 Prospecting fees as contemplated in section 19(2)(f) of the Act are payable to the State by the Holder from the commencement of this right in accordance with Regulation 76 of the Regulations to the Act.
- 5.2 Royalties as contemplated in section 19(2) (g) are payable to the State by the Holder for the sale and/or disposal of the mineral in terms of and upon the implementation by the Minister of Finance of a relevant Act of Parliament or an amendment of an Act of Parliament which provides for such payment.

6. Payment of Interest

If the prospecting fees and royalties referred to in clause 5 above are not paid punctually, the Holder shall be in mora and shall pay interest thereon at the rate prescribed in terms of section 80 of the Public Finance Management Act, 1999 [Act 1 of 1999] reckoned from the date on which payment becomes due and payable, to the date of actual payment.

7. Restrictions and Obligations Imposed on the Holder

- 7.1. The Holder is entitled to the rights referred to in sections 5(2), (3) and 19 of the Act, and such other rights as may be contained in this prospecting right or such other rights as may be granted to, acquired by or conferred upon it by any other applicable law.
- 7.2. Prospecting operations in the prospecting area must be conducted in accordance with the Prospecting Work Programme and the approved Environmental Management Plan and any amendment thereof.
- 7.3. The Holder shall not trespass or enter into any homestead, house or its curtilage nor interfere with or prejudice the interests of the occupiers and/or owners of the surface of the Prospecting Area except to the extent to which such interference or prejudice is necessary for the purposes of enabling the Holder to properly exercise the Holder's rights under this prospecting right.

8. Mortgage, Cession, Transfer, and Alienation.

This prospecting right, a shareholding, an equity, an interest or participation in the right or joint venture, or a controlling interest in a company, close corporation or joint venture, may not be encumbered, ceded, transferred, mortgaged, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister, except in the case of a change of controlling interest in listed companies.

9. Protection of Boreholes, Shafts, adits and Excavations.

All boreholes, prospecting shafts, adits, excavations, sunk or made, by the Holder during the currency of this prospecting right shall be sealed, closed, fenced, made safe by the Holder in accordance with the approved Environmental Management Plan, the Mine Health and Safety Act, 1996 or any other applicable laws and regulations.

10. Holder's Liability for payment of Compensation for Loss or Damage

- 10.1. The Holder shall, during the tenure of this right while carrying out the prospecting operations under this prospecting right, take all such necessary and reasonable steps to adequately safeguard and protect the environment, the prospecting area and any person/s using or entitled to use the surface of the prospecting area from any possible damage or injury.
- 10.2. Should the holder fail to take reasonable steps referred to above, and to the extent that there is legal liability, the holder shall compensate such person or persons for any damage or losses, including but not limited to damage to the surface, to any crops or improvements, which such person or persons may suffer as a result of, arising from or in connection with the exercise of his/her rights under this prospecting right or of any act or omission in connection therewith;

- 10.3. Neither the Minister, nor the State, shall be liable for any damage or loss of whatsoever nature that may occur or result from any prospecting activities in terms of this Prospecting Right.

11. Inspection of Prospecting Area

The Minister and/or any person duly authorised thereto in writing by the Minister shall be entitled to inspect the prospecting area, the Holder's prospecting operations and the execution of the approved Environmental Management Plan on the Prospecting Area as provided for in the Act, and any instruction conveyed in writing by the Minister to the Holder requiring the proper performance by the Holder of the Holder's obligations under this prospecting right shall be put into effect by the Holder in terms of the Act.

12. Cancellation or Suspension

- 12.1. Subject to section 47 of the Act, the Minister may cancel or suspend this right if the Holder:
- 12.1.1 Submits inaccurate, incorrect and or misleading information in connection with any matter required to be submitted under the Act;
- 12.1.2 Fails to honour or carry out any agreement, arrangement, or undertaking, including, where applicable, the undertaking made by the Holder in terms of the Broad Based Socio Economic Empowerment Charter ~~and Social and Labour plan~~, on which the Minister relied for the granting of this right;
- 12.1.3 Breaches any material term and condition of this prospecting right;
- 12.1.4 Conducts prospecting operations in contravention of the provisions of the Act;
- 12.1.5 Contravenes the requirements of the approved Environmental Management Plan; or
- 12.1.6 Contravenes any provisions of this Act in any other manner.
- 12.2 Before the Minister cancels or suspends this right, the Minister must:
- 12.2.1 Give a written notice to the Holder indicating the intention to suspend or cancel this right;
- 12.2.2 Give reason/s why the Minister is considering the suspension or cancellation of this right;
- 12.2.3 Give the Holder 30 days to show reasons why the right should not be suspended or cancelled;
- 12.2.4 Notify the mortgagee, [if any] of the intention to suspend or cancel this prospecting right; and
- 12.2.5 Direct the holder, where it is possible to remedy a contravention, breach or failure, to take specified measures to remedy such contravention, breach or failure to comply.
- 12.3. If the Holder does not take the measures as specified by the Minister to remedy a contravention, breach or failure, and after having considered any representations by the holder in terms of clause 12.2.3, the Minister may suspend or cancel this right.

13. Records and Returns

- 13.1. The Holder shall maintain all such books, plans and records in regard to prospecting operations on the Prospecting Area as may be required by the Act and shall furnish to the office of the Regional Manager such reports and documents as may be relevant under this right.
- 13.2. The Holder shall annually furnish to the Regional Manager progress reports contemplated in section 21 (1) (b) of the Act in such a manner and on such timeframes as prescribed by Regulation 8.
- 13.3. The Holder shall furthermore at the end of each year following commencement of this prospecting right, inform the Regional Manager in writing of any new developments and of the future prospecting activities of the mineral/s on the Prospecting Area.

14. Minister's Liability for Payment of Compensation

The Minister shall not at any time be liable or responsible for the payment of compensation of whatever nature to the Holder, the Holder's successors-in-title or assigns, or any other person, as a result of the granting of this prospecting right.

15. Compliance with the laws of the Republic of South Africa

The granting of this right does not exempt the Holder and its successors in title and/or assigns from complying with the relevant provisions of the Mine Health and Safety Act, 1996, (Act no.29 of 1996) and any other relevant law in force in the Republic of South Africa.

16. Provisions relating to section 2(d) of the Act

In the furthering of the objects of this Act, the Holder is bound by, where applicable, the provisions of an agreement or arrangement dated **29th September 2016** entered into between the Holder/ empowering partner and **Ponahalo Investments (RF) Proprietary Limited with 26% and De Beers Consolidated Mines (Pty) Ltd 74%** (the empowerment partner) which agreement or arrangement was taken into consideration for purposes of compliance with the requirements of the Act and or Broad Based Economic Empowerment Charter developed in terms of the Act and such agreement shall form part of this right.

17. Severability

Notwithstanding anything to the contrary, any provision of this prospecting right which is contrary to any provision of the Act or which is otherwise ultra vires, null and void, voidable, or unenforceable, shall be severable from the rest of this Right, such rest thus being and remaining of full force, effect and enforceability.

18. Domicilia citandi et executandi

18.1. The parties hereto choose the following addresses as their *domicilia citandi et executandi* and for all purposes arising from this prospecting right, in particular for the purposes of serving of any notice in terms of this prospecting right, and any notice properly addressed to the under-mentioned postal addresses of the parties shall be deemed to have been received by the addressee within 14 days if given in writing and posted by registered post addressed to the addressee at the relevant postal address:

18.1.1. In the case of the Minister.

Physical Address	Postal Address
65 Phakamile Mabija Street, Kimberley Code 8301 Tel 053 807 1700 Fax 053 832 5631	Private Bag X 6093 Kimberley 8300

18.1.2. In the case of the Holder.

Physical Address	Postal Address
36 Stockdale Street Kimberley Code 8300 Tel 053 839 4243 Fax 053 839 4880	P.O Box 616 Kimberley 8300

18.2. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party at any place other than the chosen *domicilia citandi et executandi* shall constitute adequate notice or communication to the party notwithstanding that it was not sent to or delivered at such party's chosen *domicilium citandi et executandi*.

18.3. Either party shall be entitled from time to time to change the *domicilia citandi et executandi* or postal address furnished above after giving at least 14 days prior *written* notice of such change to the other party, failing which the above-mentioned addresses will remain in force.

18.4. Any written notice or communication contemplated in this clause which is forwarded by one party to the other by registered post will be presumed to have been received by the addressee on the fourteenth [14] day following the date of posting from an address within the Republic of South

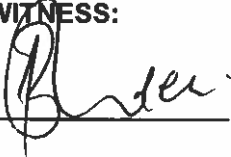
Africa to the addressee at the postal address of the addressee for the time being as determined in accordance with the provisions of this clause.

19. Costs


The Holder shall pay all costs and charges incurred in connection with the execution and registration of this prospecting right.

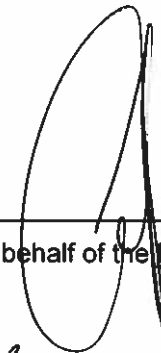
Thus done and signed at **Kimberley** on the **18th** day of **May** in the year **2018** in the presence of the undersigned witnesses:

AS WITNESS:

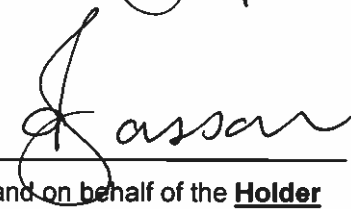


AS WITNESS:





For and on behalf of the **Minister**



For and on behalf of the **Holder**

