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Volume 8 ; Book 15

TOMBSTONE

Mining District

Cochise County

ARIZONA

1984 Lease Documents
Walnut Creek Joint Venture

WESTERN STATES

RALPH W. BILBY
T. K. SHOENHAIR
HAROLD C. WARNOCK
W. E. DOLPH
DAVID W. RICHTER
CLAGUE A. VAN SLYKE
EUGENE C. GIESELER
JOHN E. LINDBERG
WILLIAM H. TINNEY
JOHN A. ROBERTSON
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TUCSON, ARIZONA 85702

August 30, 1984

KNAPP, BOYLE, BILBY & THOMPSON
1946-1954
BOYLE, BILBY, THOMPSON & SHOENHAIR
1954-1968
BILBY, THOMPSON, SHOENHAIR & WARNOCK, P. C.
1968-1975
BILBY, SHOENHAIR, WARNOCK & DOLPH, P. C.
1975-1984

OUR FILE NO. 91-145-003

Mr. William Hight
President
Tombstone Development Company
P. O. Box 1445
Grand Island, Nebraska 68801

Re: Draft of proposed Walnut Creek Joint Venture

Dear Bill:

In line with your request, I have made proposed revisions in the following sections: 1.19, 3.02, 3.03, 3.04, 4.03, 4.04, 4.05, 11.01, 11.07, 15.01 and 16.01.

My proposed revision of section 16.01, I believe, incorporates all of 16.02, which is necessary to retain. Therefore, 16.02 could be eliminated if my proposed revisions are adopted.

Enclosed is a copy of the sections listed above with my proposed revisions. I have marked them so that you can easily tell what changes have been made if you will get a copy of the previous draft in front of you. I have indicated with a carat (^) at the points where something has been removed, and I have underlined the materials which have been added.

These proposed revisions, I believe, will take care of the matters enumerated in my letter to you dated August 16, 1984. As I pointed out in that letter, I have not attempted to comment on a number of details which may need some discussion if the parties basically have a meeting of the mind on the basic joint venture agreement. I believe that the revisions I have suggested, if acceptable to Western, would mean that you do have a meeting of the mind, assuming that I have properly understood the desires of Tombstone Development Company.

Mr. William Hight
Re: Walnut Creek Joint Venture
August 30, 1984
Page Two

A copy of this letter and a copy of the proposed revisions have been furnished to Jim Briscoe. I have furnished Jim one clean copy of the revisions and a marked up copy, the same as yours. This is done in order that, if the proposed revisions are acceptable to Tombstone Development Company, Jim can simply forward a clean copy to the representative of Western with whom he has been negotiating.

I will be out of my office during the week of September 3. However, my secretary will know how to reach me if that should become necessary.

Very truly yours,

W. E. Dolph

for Bilby & Shoenhair, P.C.

WED:bac
Enclosure

cc: Mr. James A. Briscoe (w/enc.)

1.19 "Property" shall mean the unpatented lode mining claims, state prospecting permits, and applications for state prospecting permits more particularly described in Exhibit A to this Exploration Agreement and any right or interest in or affecting Valuable Minerals within those claims and the lands covered by such permits and applications for permits, together with any rights thereto to which either Party may become entitled during the term of this Exploration Agreement, and together with any and all water and water rights used on or for the benefit of such claims and lands. As used herein, Property shall include any and all lands or interests in lands acquired by the Venture within the Area of Interest pursuant to this Exploration Agreement, but it shall not include any rights to claims, leases, or permits now owned by TDC but not described in Exhibit A. Any lands which are included within a Development Block pursuant to Section 9.01 hereof, thereby becoming subject to an Operating Agreement, shall be immediately excluded from the Property.

3.02 Western's Earning Obligation. Upon the execution of this Exploration Agreement, Western shall pay to TDC five thousand dollars (\$5,000). Thereafter, subject to the satisfaction of the conditions set forth in Section 11.01 and at the time set forth for such payment in Section 11.01, Western shall pay to TDC twenty thousand dollars (\$20,000). Western may terminate this Agreement, in its sole discretion,

at any time during the Earning Period. Unless this Exploration Agreement has been previously terminated, Western shall fulfill its Earning Obligation by contributing four hundred thousand dollars (\$400,000) to the Venture during the two-year period after the effective date of this agreement, provided that the payments referred to above in this Section 3.02 in the aggregate amount of twenty-five thousand dollars (\$25,000) and payments in connection with title curative work pursuant to the provisions of Section 11.01 shall be credited toward the satisfaction of Western's Earning Obligation. Payment of the Earning Obligation shall be made to the Operator on behalf of the Venture pursuant to Cash Calls by the Operator and shall be used by the Operator to satisfy [^]the costs incurred by the Venture in performing Operations upon the Property and evaluating and acquiring other lands within the Area of Interest. [^]

3.03 Cash Contributions. During the Earning Period, TDC shall not be obligated to make cash contributions to the Venture. Subsequent to the Earning Period, the Parties shall be obligated to make cash contributions and share in the expenditures of the Venture in accordance with their respective Participating Interests and in accordance with the Budgets and Work Plans approved by the Management Committee. Subject to Section 3.04, each Party shall remit to the Operator its respective share of each Cash Call from the Operator

within ten (10) days after receipt of notice of such Cash Call. Should either Party fail to make payment to the Operator of its share of a Cash Call as provided in the preceding sentence, the amount due shall thereafter bear interest at the rate of Valley National Bank Prime plus four (4) percentage points per annum until paid and all interest accruing on such past due payments shall be paid directly to the other Party for the sole benefit of such other Party. Western hereby agrees, upon the written request of TDC, to make up to two million dollars (\$2,000,000) of such payments on behalf of TDC (Western's "Special Contribution") to the Venture, which contributions would otherwise be required to be made by TDC to the Venture pursuant to Cash Calls from the Operator. Any such Special Contribution, together with an additional amount with respect thereto computed as if it were interest at the Prime rate plus four (4) percentage points per annum (the "Additional Amount"), shall be recoupable by Western as provided in Section 13.02 hereof; Section 13.02 shall be the sole method of recouping the Special Contribution and the Additional Amount.

3.04 Failure to Make Cash Contributions. In the event either Party fails to make any cash contribution required to be made by such Party pursuant to a Cash call from the Operator within the time provided therefor, the Operator shall give prompt notice of such fact to each Party and the Manage-

ment Committee. Any Party not having remitted its cash contribution shall have an additional period of ten (10) days from the receipt of notice of non-payment from the Operator in which to make its required cash contribution plus interest thereon. ^ The failure of Western to make a cash contribution pursuant to a Cash Call from the Operator within the time provided herein shall be deemed a default by Western. Any provision in this Exploration Agreement to the contrary notwithstanding, Western shall have no right, subsequent to the expiration of the ten-day period following notice from the Operator, to cure or remedy a default of its obligation to make a cash contribution during the Earning Period, unless TDC expressly agrees to the cure or remedy of such default in writing. Upon the default of Western to make a required cash contribution, ^ this Exploration Agreement shall be terminated pursuant to Section 16.01 hereof, unless otherwise agreed by TDC. ^ If TDC fails to make payment of its required cash contribution, plus interest, within the period provided herein, the Participating Interests of the Parties shall be adjusted in the manner provided in Section 4.03 hereof. While Western is the Operator, Western shall be deemed to have received notice of any Cash Call at the same time notice of such Cash Call is given to TDC, and Western shall be deemed to have received notice of non-payment ten (10) days thereafter if it has not made the required payment.

4.03 Adjustment of Participating Interests. ^ If ^

delete them pay

TDC (the "Diluted Party") fails to make a cash contribution payment pursuant to a Cash Call from the Operator within the time provided therefor pursuant to Section 3.04 above, Western shall promptly make such contribution and the respective Participating Interests of both Parties shall be automatically adjusted to a fraction, the numerator of which shall be the amount of the contributions each Party has made to the Venture (taking into account, in the case of the Property, its agreed value under Section 3.05) and the denominator of which shall be the total contributions of both Parties to the Venture.

^ Western shall ^ advance to the Venture the cash contribution required of ^ TDC, and such advance shall be treated as a contribution by ^ Western for purposes of determining the adjustment of Participating Interests described above. ^ TDC shall have no right whatsoever to recoup any portion of its Participating Interest lost or reduced hereunder by subsequent repayment of an amount which it failed to contribute in a timely manner to the Venture. Any interest paid by either Party to the other Party as a result of the failure of such Party to make ^{a timely} payment of its cash contributions within ^ ten (10) days after the service of notice of a Cash Call shall not be included in the calculation of either Party's Participating Interest pursuant to any provision of this Agreement.

Western

4.04 Continuing Liabilities Following Adjustments

not clear }
to Participating Interests. Any adjustment to or reduction of a Party's Participating Interest under the terms of this Exploration Agreement shall ^{not} relieve such Party of its share of the unsatisfied liability ^{not} resulting in such adjustment or reduction. ^{not} For purposes of this Exploration Agreement, each Party shall share in the liability of the Venture in proportion to its respective Participating Interest at the time such liability was incurred by or on behalf of the Venture. The increased Participating Interest accruing to a Party as a result of the reduction of the other Party's Participating Interest shall be free of any royalties, liens or other encumbrances arising by, through or under the Party whose Participating Interest has been reduced. An adjustment or reduction of a Party's Participating Interest shall be evidenced during the term of this Exploration Agreement by the execution and recording of appropriate instruments.

at Cash Call

4.05 Transfer of Working Interest. If and when the Participating Interest of either Party (hereinafter the "Transferor") is equal to or less than ten percent (10%) as a result of dilution pursuant to Section 4.03 above, the Transferor shall be deemed to have transferred its entire Participating Interest to the other Party (hereinafter the "Transferee") and the Transferor shall be entitled thereafter to ten percent (10%) of the net profits, as determined in the manner

set forth in Exhibit E hereto, derived by the Transferee from the operation of the Property. This Exploration Agreement shall terminate immediately upon the transfer of the Transferor's Participating Interest to the Transferee; provided, however, that any debts or obligations incurred by Transferor prior to the termination of this Exploration Agreement shall not be diminished or affected in any manner by such termination of this Exploration Agreement. The entire Participating Interest of Transferor shall automatically be deemed to belong and to have been transferred to the Transferee without the necessity of any further acts by the Parties; provided that Transferee shall promptly execute any and all documents deemed advisable by Transferee for purposes of terminating and dissolving the Venture, [^]conveying the Property and the Joint Assets from the Venture to Transferee, and the ten percent (10%) net profits interest of the Transferor shall be documented and recorded in the appropriate offices. The provisions of this Section 4.05 shall not apply in the event the Participating Interest of a Party is reduced, in whole or in any part, by an assignment or transfer thereof. In the event the Participating Interest of a Party is reduced by an assignment or conveyance, the provisions of Section 4.04 shall continue to apply to the Participating Interest of such Party and the Participating Interests of the successor or successors of such Party without regard to a reduction of all or any of such Participating Interests to less than ten percent (10%).

11.01 Title Examination. Western shall have the right, for a period of 120 days commencing on the date of the execution of this Exploration Agreement, to review and examine title to the Property. Western shall have the right, at its sole option, to terminate this Exploration Agreement in the event that Western determines, in its sole discretion, that title to the Property is not satisfactory for the purposes of the Venture. Western shall have the option, but not the duty, to undertake any and all title curative work that it reasonably determines to be necessary in connection with the Property. Any and all costs incurred by Western in connection with such title curative work shall be credited toward the satisfaction of Western's Earning Obligation described in Section 3.02. Within ten (10) business days following the expiration of the 120-day period described above, Western shall either notify TDC in writing of its election to terminate this Exploration Agreement as provided in this Section 11.01 or shall notify TDC in writing of its election to proceed with the Operations and shall pay to TDC twenty thousand dollars (20,000) as provided in Section 3.02. In the event Western elects to terminate the Exploration Agreement as provided herein, such termination shall be accomplished in accordance with the provisions of Section 16.01.

11.07 Representations of Title. TDC represents, warrants and covenants that, which representations, warranties

and covenants shall survive the expiration of the 120-day period described in Section 11.01 above and the execution of one or more Operating Agreements as provided in Section 9.04 above:

^
^ (a) There are no outstanding judgments, claims, demands, actions, proceedings or litigation pending or, to the knowledge of TDC, its agents, officers or representatives, threatened against the Property or against TDC, its officers, principals or agents, regarding its operation on, or interests in, the Property;

^ (b) There are no liens, encumbrances, assessments, charges or penalties against or upon the Property;

^ (c) The ^ annual assessment work indicated in affidavits of labor or notices recorded or filed by TDC has been duly and adequately performed with respect to all unpatented mining claims included within the Property; ^

^ (d) TDC ^ has not transferred any of its ownership of any of the unpatented mining claims included within the Property;

^ (e) TDC ^ has not transferred any of its ownership of the state prospecting permits and applications for state prospecting permits included within the Property;

^ (f) ^ TDC ^ does not know of any valid mining claims or locations that are adverse to or in conflict with any significant portion of the Property;

^ (g) ^ The state prospecting permits included

within the Property can be assigned to the Venture and the Venture shall be entitled to all rights, title and interest of TDC thereunder;

^ (h) TDC believes it is in full compliance with all applicable federal, state and local laws, rules and regulations pertaining to its operations upon the Property.

15.01 Event of Default. In the event any Party (the "Defaulting Party") commits or suffers one of the specific events of default listed below, the other Party (the "Non-Defaulting Party"), may serve upon the Defaulting Party notice of default, alleging the specific event or events of default. The Defaulting Party shall have twenty (20) days from receipt of notice of default in which to cure or commence and diligently proceed to cure the events of default listed in subparagraphs (a), (b) and (h) below and sixty (60) days from receipt of notice of default in which to cure, by obtaining a dismissal, discharge or stay, as appropriate, the events of default listed in subparagraphs (c), (d), (e), (f) or (g) below. If the Defaulting Party fails to cure or, with respect to the events listed in subparagraphs (a), (b) or (h), commence and diligently proceed to cure a default for which notice has been given within the period provided for such purpose herein, the Non-Defaulting Party may elect to terminate this Exploration Agreement without diminishing any other remedy the Non-Defaulting Party may have against the Default-

ing Party at law or in equity, and the Non-Defaulting Party shall, if it desires, choose a new Operator. In addition to the foregoing, the Defaulting Party shall lose its right to vote on decisions by the Management Committee until the default has been cured. Events of default shall include, but shall not be limited to, the following:

(a) the violation by a Party of any of the restrictions upon that Party's right to transfer its Participating Interest;

(b) the failure of a Party's transferee to assume in writing and agree to be bound by the transferor's obligations as provided in Section 14.02;

(c) institution by a Party of proceedings of any nature under any laws of the United States or any state relating to the relief of debtors wherein such Party is seeking relief as a debtor;

(d) a general assignment by a Party for the benefit of its creditors;

(e) the appointment of a trustee or receiver to take possession of substantially all of a Party's assets;

(f) the entry by any court of a charging order with respect to a Party's interest in the Venture;

(g) a petition to have a Party adjudged bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy, is filed by or against such Party; and

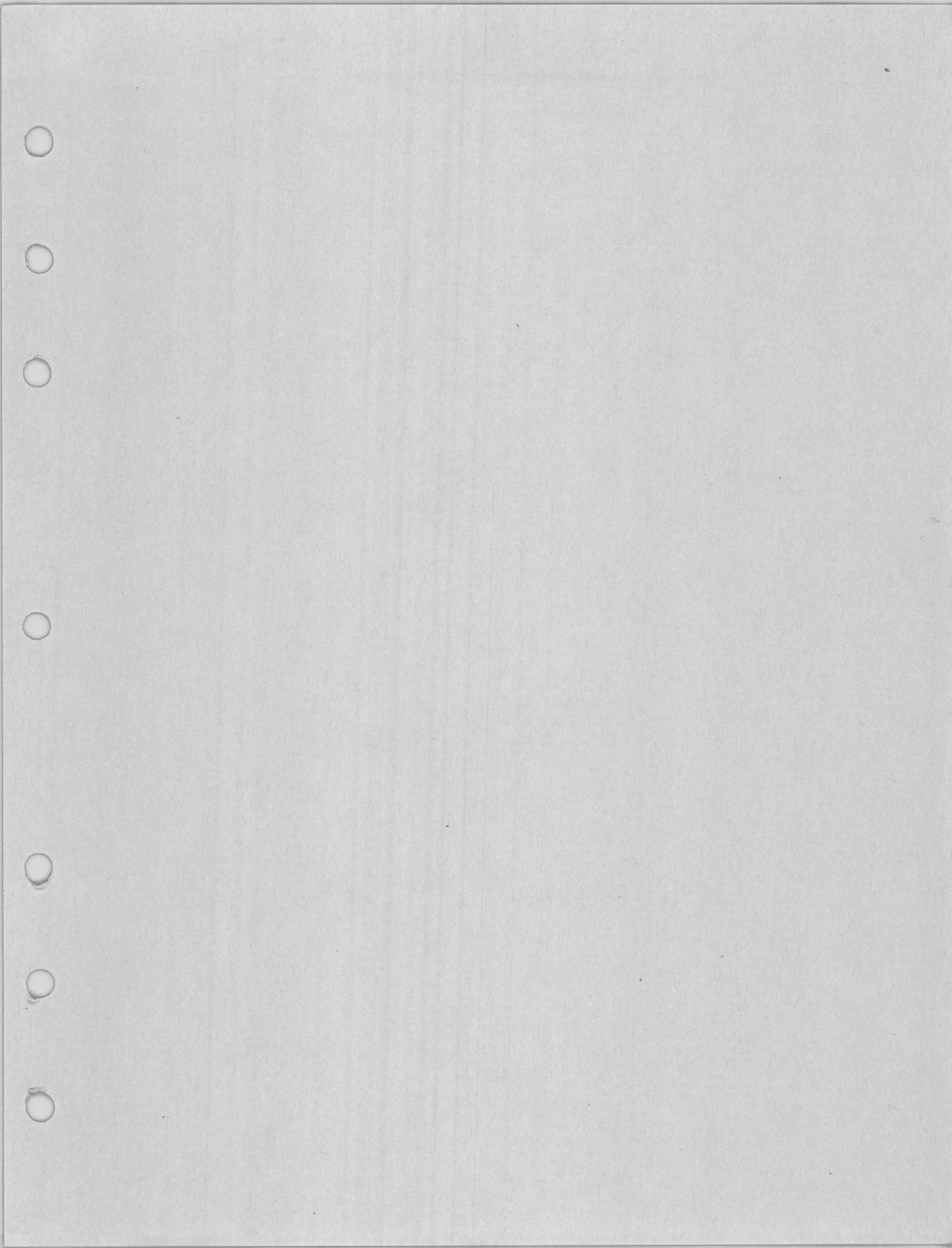
(h) default in performance of or failure to comply with any material agreement, obligation, undertaking or representation of a Party contained in this Exploration Agreement; provided that, in the event a Party is serving as Operator, the default by the Operator of its duties or obligations [^] as Operator shall not constitute a default by such Party for the purposes of this Section 15.01(h).

16.01 Termination. This Exploration Agreement may be terminated and the joint venture relationship of the Parties dissolved, in the event (i) the Parties agree in writing to terminate this Exploration Agreement, (ii) an event of default occurs, as defined in Section 15.01 hereof, which the defaulting Party fails to cure in the time permitted or commence to cure in the time permitted and diligently proceed, and the Non-Defaulting Party elects, at its sole option, to terminate this Exploration Agreement by giving written notice of such termination to the Defaulting Party, or (iii) Western gives notice of its election to terminate this Exploration Agreement during the Earning Period, (iv) Western fails [^] to [^] fulfill its Earning obligation within two (2) years after the effective date of this Agreement. If this Exploration Agreement terminates during the Earning Period as provided herein, Western shall have no further interest whatsoever in the Property [^] nor in the remainder of the Joint Assets. Except as otherwise provided herein, no payments made by or amounts

contributed by Western to the Venture or TDC prior to the time of such termination shall be refunded, credited or returned to Western by either the Venture or TDC. In the event TDC fails to cure or the commence to cure its default of any non-cash obligation or representation hereunder, including, but not limited to, the representations set forth in Section 11.07 hereof, Western may elect to terminate this Exploration Agreement, and, in addition to any other remedy which may be available to Western hereunder, Western shall have the right to recover all sums previously paid to the Venture pursuant to Section 3.02 hereof; provided, however, that any such recovery shall be limited to TDC's interest in the Joint Venture and in the Property. ^ In the event this Exploration Agreement is terminated during the Earning Period, Western shall execute a recordable deed, warranting that it has not theretofore conveyed nor encumbered to any other party, conveying to TDC all of Western's right, title and interest in and to the Joint Assets.

The termination of this Exploration Agreement hereunder shall be effective as of the date the notice of termination is given, or deemed to be given, to the Defaulting Party pursuant to Section 17.06 hereof. If this Exploration Agreement is so terminated, the joint venture relationship between the Parties shall be dissolved and the Liquidating Party (as defined in Section 16.03) shall wind up the Operations of the enture as provided in Section 16.03 hereof.

last 2 sentences of 16.02



RALPH W. BILBY
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August 16, 1984

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BILBY, THOMPSON, SHOENHAIR & WARNOCK, P.C.
1968-1975

BILBY, SHOENHAIR, WARNOCK & DOLPH, P.C.
1975-1983

OUR FILE NO. 91-145-001

Mr. William Hight
President
TOMBSTONE DEVELOPMENT COMPANY
Post Office Box 1445
Grand Island, Nebraska 68801

Re: Draft of proposed Walnut Creek
joint venture

Dear Bill:

At your request we have reviewed the draft of this proposed agreement delivered to us on August 10, 1984. From the statements you made to us over the phone it appears to us that this agreement would not meet your requirements or your desires in a number of basic ways. I will discuss the basic problems in the order they have occurred to me, but please understand that I am not attempting in this review to nit-pick or to correct style or other details which should be looked at if you decide that you can reach a meeting of the minds.

1. It is my understanding that Tombstone Development Co. (TDC) desires to limit its exposure to a maximum penalty of a loss of 90% of its present interest in the property in question. In the first place, this entire transaction is set up as a joint venture which is really nothing more than a partnership formed for a single project. The significance of this is that each of the joint venturers is liable to all third parties for any obligation incurred by the joint venture to the full extent of such obligations. This is true no matter how the partners or joint venturers agree upon splitting the responsibility among themselves. In other words, if Western should go broke, then all of the creditors of the joint venture would have the right to satisfy their claims against TDC to the extent that TDC had assets to satisfy them. Furthermore, this proposed agreement provides that the liability of TDC for a cash contribution commitment will continue even after and in spite of a dilution of its interest resulting from failure to pay such obligation even after you are reduced to 10%. (See 3.03, 4.04 and 4.05.)

This is the case - but it will be just as likely be the case under a lease will 5% N.B.R. AS Per Tom Sellers - for liabilities of Toxic chemical clean up etc.

I am not sure this is intended but Bill is correct

I agree with this

Mr. William Hight
Re: Draft of proposed Walnut Creek
joint venture
August 16, 1984
Page 2

2. It is my understanding that TDC does not wish to automatically include those claims owned by it but now under lease to another party nor tailings located on other properties which are presently being leased out. If this is your desire, then it should be clearly and expressly stated. It would appear that several parts of the draft indicate to the contrary. (See 3.01.) Other portions of the draft also indicate the policy to include all properties owned by TDC in the Area of Interest.

No No No
3. It is my understanding that Western is to be required to invest a minimum of \$400,000.00 in exploration and development work, including the acquisition of additional property, within a 2 year period. The question of its obligation to make such a contribution is not very clearly spelled out in the draft. Nor is it clear that a failure to make the contribution within the initial 2 year period is a default on its part. (See Sec. 3.04, 15.01 and 16.01.) In fact, the proposed draft would allow Western to take credit on this Earning Obligation for its required cash contributions under any operating joint venture in the event some of the property is designated as a development block. This is allowing it double credit for the same cash being paid. (See Sec. 3.02.) The same situation exists with regard to expenses incurred for clearing title. The draft allows Western to take credit on its Earning Obligation for any such expenses even though the draft also provides that such costs are "costs to the Venture". (See Sec. 11.01.)

4. Budget control should be placed with the Management Committee not with the Operator.

5. Western has 6 months within which to determine the condition of title and to perfect it and anything it expends in that connection is considered a contribution toward its Earning Obligation. In view of this, it would seem to me that TDC should not be required to make the warranties spelled out in section 11.07. In fact, some of the warranties cannot be given if you desire to do so. *120 days 4 months*

6. It may be an oversight and unintended but Subsection h of Section 15.01 literally relieves Western,

I feel it would be better to place cost restrictions on the Operator say \$25,000.

I agree about being specific but to the contrary does T.D.C.'s patented claims would clearly define what more explanation is necessary however

only to earn their interest which is about 8 times amount T.D.C. has in it.

Granted but does it make any difference

This would be to TDC's advantage

why the Operator control Management Committee

anyway essential it is any way section

*7.01
7.02
\$
6.02*

OK about signing obligation will not begin until 120 from signing and ok of Management Committee

This is not the case?? Bill is screwed up

This is a small situation I see nothing wrong with money is coming out of front end payment

kind of check sheet I think

Mr. William Hight
Re: Draft of proposed Walnut Creek
joint venture
August 16, 1984
Page 3

but must we not assume they at arms length I do agree there is a bit of problem here

which will be serving as Operator, of any charge of default.

Futhermore, Section 16.01 permits Western to terminate the agreement at anytime at will. *incurring period*

7. It would seem that certain rights of Western should become operative only after it has satisfied its earning obligation. This would include, among other things, its right to act as Operator in connection with any property placed in operation. Other examples are found in Section 3.04, 3.05, 4.01 and 4.03. *OK*

8. The Management Committee should not be granted the power in effect to amend or modify the agreement as has been proposed in section 4.02. *OK valid thought*

9. There should be some provision to cover the situation when one of the parties has made a voluntary assignment of a portion of its interest. While Section 4.05 recognizes the right to make a voluntary assignment, it does not make adequate provision for the obligation of the assignee, taken together with the assignor, to make required cash contributions, nor does it provide for a method of diluting the interests of any party who has not done so. *Good thought*

10. While Section 4.05 takes good care of the party who acquires the entire 90% interest, it does not make adequate provisions for documenting and recording the interest of the party retaining a 10% Working Interest. *Good thought*

11. Section 5.01 in effect locks Western into the position of Operator without regard to the quality of its performance. I question whether this is wise. *Good thought*

12. Under Article IX, the operator is given the power to designate Development Blocks. It seems to me that this is such a significant judgmental action that it should be delegated to the Management Committee rather than the Operator. The Operator should be required to furnish all underlying information and its recommendation, but the decision should be left with the Committee. *I don't know about this*

the operator should know ideally what is going on
There are a number of details in this draft which

I agree here

either party can stay out Operator has control sect. 6.02

is it some what standard to terminate at will

*standards
desire to get 400k out of them*

Mr. William Hight
Re: Draft of proposed Walnut Creek
joint venture
August 16, 1984
Page 4

should be scrutinized and perhaps modified, which I have not addressed. Also, I have not attempted to analyze the documents attached to the basic joint venture agreement because, unless you have a meeting of the minds on the basic proposition, there is no point in spending your money in going through the related documents.

For your information I am enclosing a copy of the letter I received from Mr. Waldrip, and as you requested a copy of this letter will be mailed to the office of Mr. Briscoe.

Very truly yours,


for BILBY & SHOENHAIR, P.C.

WED:cs
Enclosure

cc: James A. Briscoe & Associates, Inc. ✓

Page 1 - Recitals - retain T&I leased grounds out of Venture

Page 2 1.02 add provision for ever changing boundaries - (problems with acquisition overlapping area of interest boundary)

1.04 - who will submit cash call "Operator"

Page 3

1.12 should include special patents obtained by Research and development

1.13 additional expanded definition

1.15 Things like Environmental assessment, plans of operation, feasibility studies.

1.16 additional expanded definition to include parents subsidiaries of parent etc.

Page 4-

1.19 We may want to add excluding T&I leased property.

Page 6

→ definition for Prop. permit & application?

3.01 we may want to add "the then current or designated permit applications"

Page 7

3.04 we need provision for condition that if Western didn't contribute on Cash Call they would be in default after the Earning Period

(2)

Page 9

4.01 - are these undivided interests - I think they should be - I think this is stated in 4.02

4.03 Jim realize the value of the contributed property could be valued less than \$357K

Page 10

4.04 is an important statement - but necessary

4.05 From a tax stand point this is not ideal for T.D.C. since depletion & depreciation will have to be backed out of past taxes - a property will be considered as having been sold tax wise with actually not money ever changing hands - as I understated it.

Page 12

5.03 - (d) important - debt can be created and T.D.C. could be held responsible - but they also would have approval through Management Committee - to their interest & override powers.

Page 14- (e) ~~the~~ next to last line should be NO instead of an

(e) following

- 1.) need section for doing labor on state prospecting permits & filings - also period when not required
- 2.) need section for applying for in a timely fashion all prospecting renewals

Page 15 - 5.05 - as per our discussions with Julian Smith this is rather liberal - but I'm not sure how to change it.

Page 16

5.08 - i) I feel that taxes, ~~and~~ adverse judgments, land payments, rental should be exclude from management fee

ii) who is management - who is non-management

iii) what are reasonable out-of-pocket cost - some defining is necessary - what is reasonable - ^(my thoughts) anything payable to employee as a ^{business} expense under current tax laws) as a ~~business expense~~

or deductible

Page 19

Article VIII - I don't see anything here stating T.D.C. leased land would become part of agreement

Page 20. New section 8.04 Excluding Pat. & unpat. claims under lease both listed & will map.

Page 21 whole page - when term other party is used I would like to see a defined ~~term~~ term such as "Non Developing Party(ies)" ^{or} "Developing Party or(ies)" used

also: Operator is interchanged with Party should use one of the above terms

also: it would be appropriate to say "Operating Agreement Joint-Venture" in one or two situations

Page 22

9.04 Same problems as per page 21

9.04 (iii) Preference (near bottom of page) - as later ~~is~~ defined in section 16.03

Page 27

11.07 (a) We cannot warrant validity of p.p. applications

11.07 we cannot warrant prospecting permits to be valid on Execution of one or more Operating Agreement due to unknown time factors

Page 28

11.07 (f.) T.D.C. did not locate claims

11.07 (j) insert "no" between has — presently or not??

Page 29 12.01 - (ii) B - cash accounting maybe best but one or the other should decide.

12.01 (ii) should not some of this be left up to approval and input of Management Committee

Page 33

13.02 What is "Fair Market Value" define - to some index - board of Trade etc.

Page 34 13.02 last sentence should ?? and Addition Amount be include after 1st Special Contribution or not.

J.A.B.A

14.01 - T.D.C. possibly could give J.A.B.A. carried / participating interest here

Page 38

16.01 Start with Of this Exploration doesn't say the same thing as last sentence. At least the way I read it.

(6)

Page 38

16.02 - Clause need to terminate agreement if Western doesn't provide money on cash call

Page 39 16.03 last word otherwise - what does this mean. "I think this section is important in reference to liabilities & obligations - for no place through contract is there a way of relieving the Special Contribution debt if used

16.03 (c) Some problems with structure on sentence starting with (Joint Assets which.... This sentence & the next could be made into one

Page 40

16.03 (d) About the 1st 1/2 of this is restated from 16.03 (c)

16.04 should be made to read "legible copies"

Page 41

17.02 add so-long as this or other operating ~~other~~ Agreements remain in effect.

James A. Briscoe & Associates, Inc.

Exploration Consultants:

Base and Precious Metals/Geologic and Land Studies/Regional and Detail Projects

James A. Briscoe
Registered Professional Geologist

Thomas E. Waldrip, Jr.
Geologist/Landman

HAND DELIVERED

August 10, 1984

William E. Dolph, Esq.
Bilby, Shoenhair, Warnock & Dolph, P.C.
Valley National Bank Building
Tucson, Arizona

RE: Request for review of the Walnut Creek Joint Venture proposal between Tombstone Development Company, Inc. and Western States Minerals Corporation

Dear Mr. Dolph:

By means of introduction and to somewhat familiarize you with conditions at Tombstone in regard to the above joint venture, the following points should be addressed:

1. Tombstone Development Company (TDC) wishes to enter into a joint venture agreement with Western States Minerals Corporation (WSMC), the mineral subsidiary of S. J. Groves, Inc.
2. TDC wishes to maximize their profit potential both from their participation interest and subsequent tax benefits.
3. TDC wishes to minimize their financial risk to WSMC to that of their property contribution should WSME subsequent to earning period withdraw from the joint venture in regard to the "special contribution" (section 3.03).
4. TDC wishes to keep at arms length from this agreement certain patented mineral/surface lands and other unpatented lode mining claims under their ownership in the Tombstone Mining District and currently under lease. They do not want to be obligated to contribute these properties to the venture, should subsequent to

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the signing of this agreement, the current lease be terminated. However, this doesn't mean that they wish to totally remove the in question properties from consideration with the joint venture, only that they wish to be capable of negotiating a separate agreement in regards to these properties.

5. TDC wishes to make certain that all costs and expenses to venture by the operator are clearly outlined and reasonable. Concern exists that since the operator is WSMC that they will not be concerned about maximizing profits to the venture and in turn, try to maximize benefits to themselves as operator in regard to expenses generated in regard to work on the project. Therefore, we wish special attention be paid to both wording and meaning to articles pertaining to these conditions and exhibits pertaining to accounting procedures.
6. TDC has little understanding concerning the tax consequences of this agreement. Please advise us on these points.

Both Jim Briscoe and I have spent considerable time reviewing the agreement and are in general agreement that most negotiating points are in reasonable shape at this time. However, points 3 and 4, above, to my line of thinking, are still not clearly addressed. Some concern still exists as to structuring of certain articles, and completeness. I believe my harboring of a suspicious attitude toward any legal agreement has lead to many of my following concerns. By the nature of this agreement, I surmise that it is structured in a fair manner so both parties will benefit equally.

Could you please review my concerns below in context with the agreement, and see if they are legitimate or just trivial legalisms. I will generally approach my concerns as questions, but in some cases, more detailed explanations are forwarded as a means of clarifying my concerns.

Questions and concerns in joint venture agreement:

1. Page 1, Recitals A.

Should TDC's patented property and other unpatented claims be specifically removed from this agreement here? Should an Exhibit be included to identify these properties?

2. Page 2, Section 1.02

What happens in the event that an acquired property overlaps the area of interest boundary? Should there be a provision for "every changing boundary"?

3. Page 2, Section 1.04

Should the word "operator" be included in the statement "Cash Call" shall mean the billing submitted by the Operator to a party... or not?

4. Page 2, Section 105

Is this section correctly stated? I am not sure but I read sales of assets as being excluded from "cash flow". I do not believe that this should be the intent here. How will questions related to allowances credited toward equipment or property be figured here in regard to depreciation and depletion? It would seem that these items would be figured at full purchase book value under this structuring. Would it not be preferable to structure the agreement to these items being figured to their depreciated value?

5. Page 3, Section 1.12

Should items as special patents obtained by R & D in regards to the Tombstone Project be included here?

6. Omitted.

7. Page 3, Section 1.13

Should this definition be expanded to include other parties, individuals, or entities associated with the party involved here or not? Would this then be too restrictive?

8. Page 3, Section 1.15

Should additional statements in regards to environmental assessment, plans of operations, and feasibility studies be included or added here?

9. Page 3, Section 1.16

See question 7 above.

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10. Page 4, Section 1.19

Should a statement be included about property TDC wishes to keep out of the agreement?

11. Page 6, Section 3.01 - Line 7

After the word "and", add the words "...the then current or designated... I believe these words would be appropriate to add here as permit applications carry few rights and no interest. The only right extended to the applicant is to acquire a prospecting permit on a first right of refusal basis on the area covered in the application. In the past when the application comes up for payment, we have been allowing them to lapse and then reapplying again in a process called "top filing". During the 120 day title examination period section 11.01, we will have to reapply at lease once, therefore creating a new prospecting permit application making it somewhat difficult to keep up a clear transferable item as suggested in this section.

12. Page 9, Section 4.01

I believe that the interest is considered as an "undivided interest". Is it important to so designate each interest accordingly or not?

13. Page 10, Section 4.05

What complications for TDC, from a tax standpoint, are created by the transfer of working interest to strictly a net profits interest? Is it not assumed here that if TDC's working interest is reduced to only a net profits interest that they will not be able to further participate in development blocks established subsequent to this adjustment. Ideally, this is not well suited to TDC's position to participate fully in the area of interest. Should this be changed?

14. Page 14, Section 5.04(e) - Next to the last line

Change an to no.

15. Page 14, Section 5.04(e) - following or included in this section

We need additional statement(s) for:

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- a. Performance of yearly work requirements on state prospecting permits.
 - b. Also a period for when work will not be required to be performed if ^{the} venture is terminated (90 days prior to yearly termination).
 - c. Applying in timely fashion on all renewals, and payment of rentals
16. Page 14, following Section 5.04(e) - a new section
- In this area statements should be included about cost and expenses related to top filing of prospecting permit applications during terms of the agreement and that operator shall pay for such. Additionally, the operator or his assign will not be held responsible for loss of application through simultaneous filings on applications.
17. Page 15, Section 5.05
- These statements are very general and liberal in nature. Can they be made less general?
18. Page 16, Section 5.08
- I have questions as follows:
- a. Should taxes, adverse judgements, land payments and rentals be included in calculating management fees? This seems somewhat excessive.
 - b. Should there not be a clearer example of the separation between management vs. nonmanagement personnel?
 - c. What legalisms can be used to more clearly define "reasonable out-of-pocket cost and expenses"?
19. Page 20, Section 8.03 - Following this section.
- Should a section be included here to exclude TDC's leased patented and unpatented lands with map(s) and exhibits?

20. Pages 21 & 22, Sections 9.02, 9.03, and 9.04

It seems these sections are a little choppy and unorganized with unclear meaning and definitions. Words such as "other party" should be more clearly stated in terms of a "developing party" vs. "non-developing party"; "operator" seems to be interchanged at will with "party"; "Preference" in section 9.04 (g) (iii) is not defined until section 16.03 and "joint venture" is not defined as whether it is the "exploration joint venture or "development block joint venture".

21. Page 26, Section 11.04

TDC should have the ability to mortgage its participating interest no matter the conditions. However, in connection with Section 3.03, TDC's mortgage shall be a second to WSMC's loan.

22. Page 27, Section 11.07

We cannot warrant prospecting permits to be valid on the execution of one or more operating agreements due to unknown time factors and the term of validity of 5 years on prospecting permits. Currently most prospecting permits are in their third year of permitting.

23. Page 27, Section 11.07(a)

TDC cannot warrant title or validity of prospecting permit applications.

24. Page 28, Section 11.07(f)

TDC did not locate the claims. Agents for TDC located the claims.

25. Page 28, Section 11.07(j)

"No" should be inserted after ...has NO presently...

26. Page 29, Section 12.01(b) (ii)

Should not some of the provisions be left up to the management committee and not solely to the operator?

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27. Page 33, Section 13.02

What is "fair market value"? Should this be defined to some index, board of trade, etc..

28. Page 34, Section 13.02

In last sentence of this section, should "...and Additional Amount"... be included after contributions or not?

29. Page 38, Section 16.01 - Third line of section

Starting with sentence ...If this Exploration... etc. This sentence doesn't seem to say the same thing as the final sentence.

30. Page 39, Section 16.03

Last word of this section "otherwise" - what does this mean?

31. Pages 39 & 40, Sections 16.03(c) & (d)

It would seem to me that there are some structural problems here in subsection (c) on the latter part starting with sentence "Joint assets which...". Subsection (c) seems to be in part duplicated in subsection (d).

32. Page 40, Section 16.04 - Fourth line of section

Should be made to read "legible" copies...

33. Page 41, Section 17.02

Should this statement be added to the last sentence at the end of this section "so long as this Joint Venture or other operating agreements remain in effect"?

CONCERNS & QUESTIONS RELATED TO EXHIBIT B

34. Page B-1, Section 1.02

When are transactions to be posted to the books? - daily, weekly, bi-monthly, etc.

35. Page B-2, Section 2.02

Can upper restrictions be placed on labor charges and expenses (taxes & perks etc.) to some factor based on actual wages or salaries?

36. Page b-2, Section 2.04

Should this be added at end of first sentence ... "will be furnished on a competitive or standard charge to area of operation?"

37. Page B-3, Section 2.07

Should this be added to end of section ... "and not covered by insurance maintained by the operator"?

38. Page B-3, Section 2.08

Should a statement to the effect of "no legal expense related to labor contracts or negotiations will be charged to the joint venture unless specifically related to this operation" be added here?

39. Page B-4, Section 2.12

Should this statement be added? "If such studies are carried out by the operator, they shall be done on a competitive basis with reasonable rates being charged the venture by the operator in porportion do rates normally associated with other third parties performing such work".

40. Page B-5, New Sections (Special Conditions)

I feel certain areas have not been addressed in this section, which probably should have been. They will be outlined below:

- a. Interest - at no place through the document are interest compoundings addressed nor are there any means of computing the interest other than the rate. I would propose that interest be compounded on a yearly basis on the standard 30 day month, 12 month, 360 day year.

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- b. Per diem charges - I don't believe these charges have been included nor some outline as to what "away from home" charges will be acceptably charged the venture.
- c. Special patents and techniques whether used on this, or developed by the operator for venture or ~~for~~ use elsewhere, shall not have user fees assessed against the venture by the operator.
- d. Fees and licenses for patent process or special technologies developed by other companies or individuals will be expensed to the venture on an actual fee or cost basis.
- e. Nothing is addressed about competitive mining, milling or smelting of ore - even though the operator may wish to perform all these items they should be done on a competitive basis and not just for the ease of the operator, its benefit of pre-existing capacity or specifications of fabricating processes.
- f. Nothing has been addressed toward the purchase of option contracts, etc. to insure price stability of commodities produced over time.
- g. Nothing is addressed about security at the operation. Since this is a precious metal property, it should be.

QUESTIONS AND PROBLEMS ASSOCIATED WITH THE OPERATING AGREEMENT
EXHIBIT D:

Since this document is very similar to the Exploration Agreement problems and questions, here will be referred back to questions previously outlined to this point in the Exploration Agreement.

41. Page iii

No attachment IV "Insurance"

42. Page 2, Section 1.05

See question 4 above.

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43. Page 3, Section 1.10

See question 7 above.

44. Page 3, Section 1.13

See question 9 above.

44a. Page 3, Section 1.14

"Prospecting Permits" should also be included.

45. Page 4, Section 1.16

Next to last line should "or lease" be changed to "or leased"?

46. Page 7, Section 4.01

See question 12 above.

47. Page 8, Section 4.03

Is it necessary to establish a dollar amount at this time? Or should this be done in the future?

48. Page 8, Section 4.05

See question 13 above.

49. Page 12, Section 5.04(e)

See joint venture agreement section 5.04(e) related to wording of when work is not necessary. Also work must be performed on State Prospecting Permits as per question 15 above, and when work will not be necessary.

50. Page 14, Section 5.05

See question 17 above.

51. Page 14, Section 5.07

Please see wording in Exploration Joint Venture, Section 5.07. I believe this should be the wording in the first sentence.

52. Page 14, Section 5.08

Please see question 18 previous.

53. Page 17, Section 8.01

We would like to eliminate the last sentence as it has no bearing on the Area of Mutual Interest. On establishment of an area of mutual interest, the operator should include enough area to cover this anyway.

54. Page 19, Section 9.01

Should this be Colorado or Arizona? We should also change this on Page 41 of the Exploration Joint Venture, Section 17.04, if it is for Arizona, as I suspect.

55. Page 22, Section 11.01

First sentence should also include all patented mineral/surface lands. This statement should be somewhat revised and be made the same in both Section 1.15 and here.

56. Page 22, Section 11.04

See question 21 above.

57. Page 23, Section 11.05

See comments in Question 55 above or stream line in accordance with Section 11.05 of Exploration Joint Venture.

58. Page 23, Section 11.06

I tend to like the wording better in Section 11.06 of Exploration Joint Venture but used in the context of this agreement.

59. Page 24, Section 13.02

See Question 27 above.

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60. Page 25, Section 13.03

Would it not be wise to have written notice sent to the Operator with some deadline established say 90 days in advance?

61. Page 26, Section 13.03

What is a merchantable state? I would think this would best be explained or defined. For some reason, I am having a lot of trouble with this Section, and wonder if it should be expanded, even though most important points seem to be covered? Words like "fair market value" are creeping in again. What is this based on?

62. Page 30, Section 16.02(a)

See Question 30 above.

63. Page 30, Section 16.02(c)

See Question 31 above.

64. Page 31, Section 16.03

See Question 32 above.

65. Page 32, Section 17.02

See Question 33 above.

I believe that these are most of our major concerns in regard to these documents. It would be appreciated if you would make any necessary changes, additions or clarifications necessary to improve, from a legal standpoint, the documents under review. These updates will then be transmitted to Western States for approval and editing into the documents.

Should you have any questions regarding either points and questions put forward in their letter or the documents, please contact me at your convenience at 326-7237. Should I not

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August 10, 1984
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answer, please leave a message. I will attempt to return your call within 24 hours, if not sooner.

Sincerely,

JAMES A. BRISCOE & ASSOCIATES, INC.
Agent for Tombstone Development Co., Inc.



Thomas E. Waldrip, Jr.
Landman/Geologist

TEW/ms

PPSSCC
1511 K St. NW
Washington, DC
20005

Does we want to add these?

Definitions

~~20~~ 11.95 1.22 Prospecting Permit Application

Application to acquire the right to explore and prove mineral commodities on State held mineral trust ground on a preferential basis.

1.23 Prospecting Permit -

a Preferential grant by the State to explore for mineral commodities on State held mineral trust grounds. Both a yearly rental and escalating work commitment are required.

1.24

page 14 after e - (1)

So long as this Exploration Agreement remain in effect, the Operator shall perform work customarily performed to satisfy the yearly work requirements by state laws and regulations in order to maintain all Arizona State prospecting permits and ^{to pay all} rental renewals therefor, subject to this Exploration Agreement and file with the state necessary reports and affidavits of such work. The Operator shall ^{in the name of the Venture} further ^{be} responsible to acquire necessary ^{in amounts} bonding as required on each permit by the State of Arizona. These obligations shall be provided and subsequently ~~for any~~ pertain to any ~~of~~ prospecting permits ^{acquired} ~~subject~~ ⁱⁿ to the Area of Interest by the Venture.

~~See underlined portion ⁱⁿ change~~
~~unpatented mining claim to prospecting~~
~~permit~~
~~assessment - annual~~
~~such annual work~~

cont

e-1

The Operator shall not be liable for the loss ~~the loss of state~~ prospecting permits for failure to perform annual work if it performs work which it reasonably and in good faith, in accordance with accepted practices of the mining industry, believes is sufficient to satisfy such ^{annual} work requirements. The Operator shall have no responsibility to perform ~~assessment~~ annual work requirements nor to file necessary reports ^{or affidavits} of such work nor to pay annual rental fees ^{on} ~~any one~~ prospecting permits during the annual work year in which this Exploration Agreement terminates or expires prior to 90 days of the renewal date of anyone, or more or all of the prospect permits (prospecting permits have different dates of renewal) thereof; provide, however, in the event this Agreement terminate as a result of TOC failing to cure its default or any obligation or representation hereunder, the Operator and Western shall have no obligation whatsoever to perform any annual work with respect to the prospecting permits.

more or all of the

iii

Application for renewal of prospecting
permits

No charges ^{or fees} will be assessed by the operator for use of proprietary patents or procedures related to exploration, mining, milling or extraction of ore, metals or materials under exploration, development or production from the Property.

labor and wages no more than 1.7x base salary or wage

keeping of records - salaried - time keeping record

wage - time clock or other timing mechanism keep on sight.

per diem - ??

Specifics on milling ore -

" " " payment is kind
" " " "

Operator shall notify management committee and parties to this agreement on the anticipated date of commercial production of material metals etc.

Commercial production shall be defined as that point where ~~or in~~ the net value of ore mined is greater than the gross mining and milling and separation of ore in a development block

~~or where ore is being mined~~
where separate materials are being processed to or for sale to smelters fabricators or refiners

To get highest price - commodity contracts

problems with land acquisition within a development block

by definition all payments will be made against interest due or past due ^{1ST}

Randsburg

1. Net Profits scheme
 - A. Higher^N Profits on our ground
 - B. lower^N Profits on other ground
2. We would bring in all our ground.
3. Exploration & Dev. of Mine would pay for assessment work men of say \$40,000 actual work on our property
4. We would allow for lower ^{minimal} or ^{now} Net profits until payback of invested capital and interest with escalating on 1x payback 2x payback 3x payback 4x payback
5. Small or no initial payment to say max of 20% on ours and 10% on others
6. Small advance minimum payments
7. Exclude currently held grounds

4.05 Transferee of Working interest —

This just cannot be done

1. Loss of documents
2. Loss of ability to further participate in Area of Interest
3. Loss of ability for inspection of records
4. Loss of ability for inspection of material property etc.

p 2 - 1.05, part b.

1. Questions - what about a partial sale of say a development block? How would this be figured against total sum of money spent on all the property? How would T.D.C. recoup money invested in land.
2. Should T.D.C. Investment of land also be include or is this an expense to the Venture (see below)
3. I feel b should be changed because the way it reads now Cash Flow would exclude proceeds of sale - this is not the intent I feel it would be more appropriate to have These portions of the ...

less the ~~sum~~ whose sum includes (1) and ^{proportional or total} value of land holding contributed by T.D.C. less depreciated or and/or depletion allowances credit toward ^{equipment or} ~~property or equis~~ property.

~~Resistals~~

(1)

~~102~~-

T.D.C. is the owner of certain unpatented lode mining claims, permittee of certain Arizona State prospecting permits and ^{current} primary applicant of record for application for prospecting permits on certain other state grounds

~~Under no circumstances of this agreement shall~~
Further, T.D.C. states that ~~is~~ it is owner of certain other unpatented lode lode mining claims and patented mineral/surface land, ^{currently under lease,} within the "Area of Interest" which are ^{described} detailed in Exhibit F, ^{for} which T.D.C. expressly wishes ~~to~~ keep ^{ownership} separate and at arms length from this agreement, and hereby removes ^{from lands} from consideration ~~or~~ under terms contained herein. However, this doesn't preclude, leasing or subleasing of the ~~lands/properties~~ or the potential of creating a Development block as outlined ~~under~~ pursuant ~~special~~ to sect ???

1.02 and any other lands overlapping, ~~or~~ immediate
contiguous ~~to the~~ ~~to the~~ ~~so~~ ^{otherwise} or touching the
exterior boundary depicted on Exhibit C hereto.

From time to time ^{and no less than once a year} the Management Committee
shall ~~can~~ ^{shall} enlarge the exterior boundary ^{if necessary} to
encompass acquired grounds meeting conditions
outlined above to bring all lands within the
exterior boundary of the Area of Interest.

This shall be known as the every ^{enlarging} ~~changing~~ exterior
boundary provision. Under no circumstances
shall the exterior boundaries be
moved interior to the current exterior
boundary as depicted on the date of
this signing on Exhibit C.

There should be a provision for Western to pay
fee related to Prospecting Permits & labor
Top filing on $\approx \$625/45 \text{ days}$

Special patents related to mining, processing
or separation - no charges for

Interest on money compounding

Definition -

State Prospecting Permits

State Prospecting Permit Appl

Interest shall be figured on a 30 day month
12 month 360 day year ^{on} a simple yearly compounding
rate $12\% = 1\%$ per month

on principal due. When principal due
has been out stand^{ing} for one year the
subsequent compounding schedule will
be 1% on the principal plus accrued
interest from the preceding year.

~~Operator shall ~~have the right to~~ with draw ^{from} subsequent
contribution an amount equal to interest and
principal due to that time, a fixing the remaining
or amount deficient ^{new debt}. In other words debt would
be on FIFO accounting methods~~

Page 4 1.19 Property.

By definition used herein Property shall not include any other patented ~~and~~ ^{mineral/} ~~unpatented~~ mineral lands within the area of interest ^{owned, controlled ^{by} or leased by or to} ~~T.D.C.~~ ^{on the effective date of this agreement} (more specifically addressed in Exhibit F,) nor shall T.D.C.'s conditions as outline in the Recitals section A be denied ~~or~~ ~~otherwise interpreted~~ in part or whole by this agreement to these lands

1.13ⁿ Non Operator

and any individual, entity or association, ^{subsidiary, parent, or subsidiary of a parent} acting by for or on behalf of said ~~Party~~ Party

→ This would include us

1.16 or any subsidiary, parent, or subsidiary of a parent, individual, entity or association acting by for or on behalf of said Party.

Definition

Indebtedness -

The Nonoperator at no time shall be ~~under~~ under ~~the~~ debt to the

Operator for an ^{greater} amount than the ~~contributed~~ ^{contributed} value of Property to

the joint venture, should termination of this agreement be effect in the

future. Notwithstanding provisions of section ^{cancellation} the Operator

shall have full right to recoupe all debt owed by the Non Operator under section

so long as this agreement remain in effect.

Definition

Prospecting Permit Application - ~~state requested~~

Applications to acquire ^{mineral} rights to explore and prove up mineral commodities on state held trust grounds on a preferential basis. Applications are the preliminary ~~stage~~ ~~stage~~ of requesting paper work associated with acquiring a Prospecting Permit. No rights are held or granted by ^{the} application and

they only prioritize ^{the} order of ~~requestors~~ applicants. ~~Each application has a filing fee of 2500~~ ~~and upon receipt~~ ~~and~~ ~~the~~ ~~applicant~~ ~~has~~ ~~15~~ ~~days~~ ~~to~~ ~~pay~~ ~~the~~ ~~required~~ ~~rental~~ ~~and~~ ~~surety~~ ~~bond~~ ~~on~~ ~~close~~ ~~the~~ ~~then~~ ~~priority~~ ~~to~~ ~~convert~~ ~~the~~ ~~application~~ ~~to~~ ~~a~~ ~~prospecting~~ ~~permit~~

~~Top Filing -~~ ~~the~~ ~~process~~ ~~of~~ ~~continuously~~ ~~refiling~~

~~Prospecting Permit Application~~

~~subsequent applicants, but only those~~ ~~filing the~~

applicants compete by drawing to determine order of offering ~~to~~ them. Each applicant or applicants, in turn is offered the tract of ^{preceding} should ~~the~~ ~~first~~ applicant not comply with terms and conditions set forward by the prospecting permits.

Until such time that all application have been permitted to acquire the permit ~~the~~ ~~area~~ or the permit is acquire by one of the

closed to application and only under condition of simultaneous filing do two or more

applicants the tract remain closed. Upon offering to final applicant and his rejection, the tract then become open ~~to application~~ again for reapplication.

In general this above method can be done over and over again and is known as Top filing, Some risk is inherent in the process ~~but rarely~~ and at times a particular tract maybe lost, ~~but in the initial stages of exploration, this cuts down on land holding costs. For greatly~~ ^{land holding cost are greatly reduced}

Filing fee are \$25.00 per application and turn around time is normally 45 day

FEDERAL EXPRESS

PLEASE COMPLETE ALL INFORMATION IN THE 5 BLOCKS OUTLINED IN ORANGE
SEE BACK OF FORM SET FOR COMPLETE PREPARATION INSTRUCTIONS.

AIRBILL NUMBER

363123530



00802

YOUR FEDERAL EXPRESS ACCOUNT NUMBER

0802-0525-2

DATE

7/19/84

FROM (Your Name)

Dean W. Crowell

TO (Recipient's Name)

James A. Briscoe

If Hold For Pick-Up or Saturday Delivery, Recipient's Phone Number

COMPANY

DAVIS GRAHAM & STUBBS

DEPARTMENT/FLOOR NO.

COMPANY

James A. Briscoe Associates, Inc.

DEPARTMENT/FLOOR NO.

STREET ADDRESS

950 17TH ST STE 2600

STREET ADDRESS (P.O. BOX NUMBERS ARE NOT DELIVERABLE)

5701 East Glenn Street, Ste. 120

CITY

DENVER

STATE

CO

CITY

Tucson

STATE

Arizona

AIRBILL NO.

363123530

ZIP ACCURATE ZIP CODE REQUIRED FOR CORRECT INVOICING

80202

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ZIP ACCURATE ZIP CODE REQUIRED FOR OVERNIGHT DELIVERY

85712

YOUR NOTES/REFERENCE NUMBERS (FIRST 12 CHARACTERS WILL ALSO APPEAR ON INVOICE)

23207-078

PAYMENT Bill Shipper

Bill Recipient's F.E.C. Acct.

Bill 3rd Party F.E.C. Acct.

Bill Credit Card

Cash In Advance

Account Number/Credit Card Number

- SERVICES CHECK ONLY ONE BOX
- PRIORITY 1 (OVERNIGHT PACKAGES) (Up to 70 LBS.)
 - COURIER PAK (Up to 2 LBS.)
 - OVERNIGHT ENVELOPE (Up to 2 LBS.)
 - OVERNIGHT BOX (Up to 5 LBS.)
 - OVERNIGHT TUBE (Up to 5 LBS.)
 - STANDARD AIR
 - DELIVERY 2ND BUSINESS DAY FOLLOWING PICK UP (Up to 70 LBS.)
- "OVERNIGHT" IS NEXT BUSINESS DAY (MONDAY THROUGH FRIDAY); TWO DAYS FROM ALASKA/HAWAII. SATURDAY DELIVERY AVAILABLE IN CONTINENTAL U.S. SEE "SPECIAL HANDLING."

- DELIVERY AND SPECIAL HANDLING CHECK SERVICES REQUIRED
- HOLD FOR PICK UP AT FOLLOWING FEDERAL EXPRESS LOCATION SHOWN IN SERVICE GUIDE - RECIPIENT'S PHONE NUMBER REQUIRED
 - DELIVER
 - SATURDAY SERVICE REQUIRED See Reverse (Extra charge applies for delivery.)
 - RESTRICTED ARTICLES SERVICE (P-1 and Standard Air Packages only, extra charge)
 - SSS (Signature Security Service required, extra charge applies)
 - DRY ICE LBS.
 - OTHER SPECIAL SERVICE

PACKAGES	WEIGHT	DECLARED VALUE	O/S	EMP. NO.	DATE
1	7				
TOTAL	TOTAL	TOTAL			
RECEIVED AT					
<input type="checkbox"/> SHIPPER'S DOOR					
<input type="checkbox"/> REGULAR STOP					
<input type="checkbox"/> ON-CALL STOP					
<input checked="" type="checkbox"/> F.E.C. LOC.					
Federal Express Corporation Employee No. 9397					
DATE/TIME For Federal Express Use 7-19 1150					

EMP. NO.	DATE	AGT/PRO	AGT/PRO	STREET ADDRESS	CITY	STATE	ZIP
		<input type="checkbox"/> CASH RECEIVED	AGT/PRO				
		<input type="checkbox"/> RETURN SHIPMENT					
		<input type="checkbox"/> THIRD PARTY	AGT/PRO				
		<input type="checkbox"/> CHG. TO DEL.					
		<input type="checkbox"/> CHG. TO HOLD					
RECEIVED BY: (Signature) X							
DATE/TIME RECEIVED							
F.E.C. EMPLOYEE NUMBER							

FEDERAL EXPRESS USE

FREIGHT CHARGES

DECLARED VALUE CHARGE

ADVANCE ORIGIN

ADVANCE DESTINATION

OTHER

TOTAL CHARGES

PART #2041730751
FEC-S-0751 D/O/B
REVISION DATE 7/82 NCR
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THE WALNUT CREEK JOINT VENTURE

EXPLORATION AGREEMENT
BETWEEN
TOMBSTONE DEVELOPMENT COMPANY, INC.
AND
WESTERN STATES MINERALS CORPORATION

*Liability in relationship to Interest
of Money*

P-39	16.03 (a)
P-24	10.02
P-10	4.04
P-6	3.03
	4.03
	3.04

But Dolph's
Problem of I agree
I had not read it
is no provision stops so
amount due or interest
as worded

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Interim Plan sect. 7.01

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*\$ 22,000
3,300
CONFERS*

EXPLORATION AGREEMENT
BETWEEN
TOMBSTONE DEVELOPMENT COMPANY, INC.
AND
WESTERN STATES MINERALS CORPORATION

THIS AGREEMENT is made and entered into as of the _____ day of _____ 1984, by and between Tombstone Development Company, Inc., a _____ corporation, whose address for purposes hereof is _____ ("TDC"), and Western States Minerals Corporation, a Utah corporation, whose address for purposes hereof is 4975 Van Gordon Street, Wheat Ridge, Colorado 80033 ("Western"). TDC and Western are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. TDC is the owner of certain unpatented lode mining claims, and state prospecting permits, all of which are located in the Tombstone Mining District, Cochise County, Arizona and are more particularly described in Exhibit A, which is attached hereto and by this reference made a part hereof;

B. The Parties desire to enter into this Exploration Agreement and to form a joint venture for the purpose of exploring and developing all or portions of such unpatented lode mining claims and state prospecting permits and any other lands acquired hereunder.

AGREEMENT

NOW, THEREFORE, for and in consideration of the recitals and the mutual promises and covenants herein contained, the Parties agree as follows:

ARTICLE I

DEFINITIONS

In addition to the terms defined elsewhere in this Exploration Agreement, as used herein the following terms shall have the meanings assigned to them in this Article:

1.01 "Accounting Procedure" shall mean the procedures set forth in Exhibit B hereto, under which the general accounting for the Venture shall be governed. If there arises any conflict between the terms of the Accounting

*permittee of ~~land~~ of certain Arizona
primarily
and applicant for ~~certains~~
of record for certains other*

*Patented
Claims ??*

Procedure and those of this Exploration Agreement, this Exploration Agreement shall control.

1.02 "Area of Interest" shall mean all lands within the exterior boundary ~~depicted~~ on Exhibit C hereto.

area adjacent to boundary

Every changing boundaries

How about Properties near boundary

1.03 "Budget" shall mean a budget for Operations which the Management Committee will cause to be prepared and adopted prior to, or as soon as possible after, the commencement of each calendar year during the term of this Exploration Agreement, including the Budget contained in the Initial Plan and Budget as described in Section 1.10 hereof and as adopted by the Parties pursuant to Section 7.01 hereof.

after forming Board

who will submit this the operator or Management Committee

1.04 "Cash Call" shall mean the billing submitted to a Party prior to the last day of each month for the estimated cash requirements of the Venture for the ensuing month, based on and limited to the Work Plans and Budgets approved by the Management Committee except as otherwise expressly provided herein.

1.05 "Cash Flow" shall mean all cash revenues of the Venture, excluding (a) proceeds of financing by the Venture and (b) proceeds from the sale of assets in partial or complete liquidation of the Venture, less the sum of (i) all amounts expended by the Venture pursuant to this Exploration Agreement, including fees paid to the Operator; (ii) an amount equal to one month's estimated expenditures for the current and anticipated obligations of the Venture; and (iii) such other amounts as the Management Committee from time to time determines to be necessary or appropriate for the proper operation of the Venture's business, discharge of indebtedness and its winding up and liquidation.

or generated by

*??
You must show address of division of cash to parties if call is made in regard to fees & contributions*

1.06 "Development Block" shall mean a reasonably contiguous parcel or parcels of land designated as such by the Operator (as hereinafter defined) pursuant to Section 9.01 of this Exploration Agreement.

1.07 "Earning Obligation" shall mean the total amount of the cash contributions and expenditures to be contributed to the Venture by Western pursuant to Section 3.02 of this Exploration Agreement in order for Western to retain its full Participating Interest (as hereinafter defined).

1.08 "Earning Period" shall mean the period of time from the effective date of this Exploration Agreement (as hereinafter defined) until the first to occur of (i) Western's satisfaction of its Earning Obligation or (ii) a date two years following the effective date of this Exploration Agreement.

1.09 "Exploration Agreement" shall mean this Exploration Agreement, the recitals, and all exhibits attached hereto.

1.10 "Initial Plan and Budget" shall mean the Work Plan and Budget prepared by the Operator and approved by the Management Committee with respect to the Operations and expenditures of the Venture during the remainder of the present calendar year.

1.11 "Joint Account" shall mean the books and accounts of the Venture which are established and maintained by the Operator (as hereinafter defined) in accordance with the Accounting Procedure.

1.12 "Joint Assets" shall mean and include all interests in and to the Property and Valuable Minerals, and all tangible and intangible assets, including but not limited to equipment, facilities and utilities, obtained by acquisition, lease, license, or any other manner in connection with and in furtherance of the Operations under this Exploration Agreement. *special patents*

1.13 "Non-Operator" shall mean any Party to this Exploration Agreement not serving in the capacity of Operator. *weather equipment owned or augmented during the term of this Exploration Agreement.*

1.14 "Operating Agreement" shall mean the agreement, together with all attachments thereto, attached hereto as Exhibit D and by this reference made a part hereof, and under which the Parties may conduct further exploration and, if feasible, development and mining operations with respect to a Development Block.

1.15 "Operations" shall mean all activities conducted by the Venture which have for their purpose, or which are in furtherance of, the discovery, location, delineation, or economic evaluation of any deposit of Valuable Minerals or to determine the feasibility of commercial mining operations with regard to Valuable Minerals. Operations shall include, without limitation, maintenance of the Property in order to protect the title thereto, aerial, surface and underground reconnaissance, geological mapping, building, maintenance, and repair of access roads, drill site preparation, drilling, acquiring, diverting and/or transporting water, sampling, analysis, logging, surveying, laboratory work, and reclamation or restoration of any drill sites or access roads.

1.16 "Operator" shall mean the Party designated as such pursuant to Section 5.01 or Section 5.02 of this Exploration Agreement.

1.17 "Participating Interest" shall mean the interest of each Party in the Venture as defined in Article IV of this Exploration Agreement.

I think this is too general - better if computed on a average of Quarterly basis or at end of each Quarter figured on a Annual Percentage Rate term the amount of time from the loan - yearly compounding

1.18 "Prime" shall mean the rate of interest designated from time to time by the First National Bank of Minneapolis, Minneapolis, Minnesota as its prime rate during the period for which interest is required to be calculated pursuant to the terms of this Exploration Agreement.

1.19 "Property" shall mean the unpatented lode mining claims, state prospecting permits, and applications for state prospecting permits more particularly described in Exhibit A to this Exploration Agreement and any right or interest in or affecting Valuable Minerals within those claims and the lands covered by such permits and applications for permits, together with any rights thereto to which either Party may become entitled during the term of this Exploration Agreement, and together with any and all water and water rights used on or for the benefit of such claims and lands. As used herein, Property shall include any and all lands or interests in lands acquired by the Venture within the Area of Interest pursuant to this Exploration Agreement. Any lands which are included within a Development Block pursuant to Section 9.01 hereof, thereby becoming subject to an Operating Agreement, shall be immediately excluded from the Property.

the operator or Non operator after the effective date of this agreement.

This includes oil gas sands & leaseable minerals

1.20 "Valuable Minerals" shall mean all ores, metals, minerals and materials found in, on, or under the Property and shall include, but not be limited to, all ores, metals, minerals and materials subject to exploration, location, and purchase under the General Mining Law of 1872, 30 USC § 21, et seq., as amended, which are found in, on, or under the Property. *Sand, rock gravel or mineral aggregate*

Work Plan after 1/1/00

1.21 "Work Plan" shall mean a program and plan for Operations which the Management Committee will cause to be prepared and adopted prior to or as soon as possible after the commencement of each calendar year during the term of this Exploration Agreement, including the initial Work Plan adopted by the Parties pursuant to Section 7.01 hereof.

ARTICLE II

FORMATION OF VENTURE

2.01 Formation of Venture; Scope and Purpose. The Parties hereby enter into this Exploration Agreement and form a joint venture (the "Venture") for the limited purposes herein described, in accordance with and subject to all of the terms and conditions of this Exploration Agreement. The Parties agree that the scope and purpose of the Venture is the exploration and evaluation of the Property, the acquisition of lands within the Area of Interest, and all things related or incidental thereto, and for the further purposes and on the terms set forth in this Exploration Agreement.

2.02 Name of Venture. The business and affairs of the Venture shall be conducted solely under the name "Walnut Creek Joint Venture." Immediately following the formation of the Venture, the Parties shall execute and file for record in the appropriate state or local offices any trade name or fictitious-name statements or affidavits as may be necessary or appropriate for that purpose. All property of the Venture shall be held in the name of the Venture and such name shall be used at all times in connection with the business and affairs of the Venture.

2.03 Principal Place of Business. The Operator shall, from time to time, designate the Venture's principal place of business.

2.04 Term. The term of the Venture shall commence on the date of this Exploration Agreement and shall continue until the Venture has disposed of its entire interest in the Joint Assets, unless sooner terminated in accordance with the provisions of this Exploration Agreement. Except as otherwise permitted by this Exploration Agreement, neither Party shall have the right and each Party hereby agrees not to withdraw from the Venture or to dissolve, terminate or liquidate, to take any action which would result in the dissolution, termination or liquidation, or to petition a court for the dissolution, termination or liquidation of the Venture, and neither Party at any time shall have the right to petition or to take any action to subject the Property or any part thereof or any other Joint Assets of the Venture to the authority of any court of bankruptcy, insolvency, receivership or similar proceeding.

2.05 Capacity of Parties. Each of the Parties represents and warrants as follows:

(a) that it is a corporation duly incorporated, validly existing and in good standing in its state of incorporation;

(b) that it is, and shall remain for the term of this Exploration Agreement, qualified to do business in the State of Arizona;

(c) that it has the capacity and the full power and authority to enter into and authority to perform all of its obligations under this Exploration Agreement and all transactions contemplated herein and that all corporate and other actions required to authorize it to enter into and perform this Exploration Agreement have been properly taken; and

(d) that it will not breach any other agreement or arrangement by entering into or performing this

Exploration Agreement and that this Exploration Agreement has been duly executed and delivered by it and is valid and binding upon it in accordance with its terms.

The then current or designated

ARTICLE III
CONTRIBUTIONS

1 3.01 TDC's Contribution. TDC hereby makes its
2 initial contribution to the Venture of all right, title, and
3 interest in and to the Property which it now owns, possesses
4 or controls, either directly or indirectly. Concurrent with
5 the execution of this Exploration Agreement, TDC shall convey
6 and transfer to the Venture the unpatented lode mining claims
7 and the prospecting permits and permit applications comprising
the Property by instruments of conveyance satisfactory in form
to Western. The agreed fair market value of TDC's interest in
the Property, as of the date of this Exploration Agreement,
shall be deemed to be \$375,000.

8 3.02 Western's Earning Obligation. Upon the
9 execution of this Exploration Agreement, Western shall pay to
10 TDC five thousand dollars (\$5,000). Thereafter, subject to
11 the satisfaction of the conditions set forth in Section 11.01
12 and at the time set forth for such payment in Section 11.01,
13 Western shall pay to TDC twenty thousand dollars (\$20,000).
14 Western may terminate this Agreement, in its sole discretion,
15 at any time during the Earning Period. Unless this
16 Exploration Agreement has been previously terminated, Western
17 shall fulfill its Earning Obligation by contributing four
18 hundred thousand dollars (\$400,000) to the Venture during the
19 Earning Period, provided that the payments referred to above
20 in this Section 3.02 in the aggregate amount of twenty-five
21 thousand dollars (\$25,000) and payments in connection with
22 title curative work pursuant to the provisions of Section
23 11.01 shall be credited toward the satisfaction of Western's
24 Earning Obligation. Payment of the Earning Obligation shall
25 be made to the Operator on behalf of the Venture pursuant to
26 Cash Calls by the Operator and shall be used by the Operator
27 to satisfy a portion of the costs incurred by the Venture in
28 performing Operations upon the Property and evaluating other
29 lands within the Area of Interest. In the event the Operator
30 designates a Development Block and the Parties enter into an
31 Operating Agreement with respect thereto pursuant to
32 Article IX of this Exploration Agreement, all cash contribu-
33 tions by WSMC to the joint venture formed pursuant to the
34 Operating Agreement shall be credited toward satisfaction of
35 Western's Earning Obligation hereunder.

Do we want to add cost of filing application for prospect permits

3.03 Cash Contributions. During the Earning Period,
TDC shall not be obligated to make cash contributions to the
Venture. Subsequent to the Earning Period, the Parties shall

This provision is OK I guess

? premium to the loan and 100,000

be obligated to make cash contributions and share in the expenditures of the Venture in accordance with their respective Participating Interests and in accordance with the Budgets and Work Plans approved by the Management Committee. Each Party shall remit to the Operator its respective share of each Cash Call from the Operator within ten (10) days after receipt of notice of such Cash Call. Should either Party fail to make payment to the Operator of its share of a Cash Call within such 10-day period, the amount due shall thereafter bear interest at the rate of Prime plus four (4) percentage points per annum until paid and all interest accruing on such past due payments shall be paid directly to the other Party for the sole benefit of such other Party. Western hereby agrees, upon the written request of TDC, to make up to two million dollars (\$2,000,000) in contributions (Western's "Special Contribution") to the Venture, which contributions would otherwise be required to be made by TDC to the Venture pursuant to Cash Calls from the Operation. Any such Special Contribution, together with an additional amount with respect thereto computed as if it were interest at the Prime rate plus four (4) percentage points per annum (the "Additional Amount"), shall be recoupable by Western as provided in Section 13.02 hereof.

Simple
Subsequent Operating Ventures

Interest shall be compounded only on a simple yearly basis
Operator

3.04 Failure to Make Cash Contributions. In the event either Party fails to make any cash contribution required to be made by such Party pursuant to a Cash Call from the Operator within the time provided therefor, the Operator shall give prompt notice of such fact to each Party and the Management Committee. Any Party not having remitted its cash contribution shall have a period of ten (10) days from the receipt of notice of non-payment from the Operator in which to make its required cash contribution plus interest thereon. During the Earning Period, the failure of Western to make a cash contribution pursuant to a Cash Call from the Operator within the time provided herein shall be deemed a default by Western. Any provision in this Exploration Agreement to the contrary notwithstanding, Western shall have no right, subsequent to the expiration of the ten-day period following notice from the Operator, to cure or remedy a default of its obligation to make a cash contribution during the Earning Period, unless TDC expressly agrees to the cure or remedy of such default in writing. Upon the default of Western to make a cash contribution during the Earning Period, this Exploration Agreement shall be terminated pursuant to Section 16.01 hereof, unless otherwise agreed by TDC. Subsequent to the Earning Period, if any Party fails to make payment of its cash contribution, plus interest, within the period provided herein, the Participating Interests of the Parties shall be adjusted in the manner provided in Section 4.03 hereof. *see 16.02 comments*

Other than Western no remain Operator
This could work as a back up for T.D.C. however

I don't like this provision - Western has ultimate control of management committee and because it is the operator - as such they could commit to keep running the operation while not contributing cash at least initially until? could they run up debt against T.D.C.

375,000

3.05 Capital Accounts.

7
 6

(a) Operator shall maintain capital accounts for the Parties. Each Party's capital account shall be credited with (a) the dollar amount of any cash and the fair market value of any property (net of liabilities assumed by the Venture and liabilities to which such contributed property is subject) which it contributes to the Venture and (b) its share of Venture income and gain (or items thereof) and income exempt from tax. Each Party's capital account shall be charged with (1) its share of cash or the adjusted basis of any property, net of liabilities assumed by such Party and liabilities to which such distributed property is subject, distributed to such Party from the Venture, (2) its share of Venture losses and deductions (or items thereof) for tax purposes, provided, however, that percentage depletion in excess of the basis in a depletable property shall not be charged to capital accounts, and (3) its share of any expenditures made pursuant to this Agreement which are described in section 705(a)(2)(B) of the Internal Revenue Code of 1954, as amended (the "Code"); and provided, further, that upon a liquidation of the Venture pursuant to Section 15.03, each Party's capital account shall be charged with the fair market value of property (net of liabilities assumed by the Party and liabilities to which such property is subject) which is distributed to it.

(b) Notwithstanding the foregoing, in the case of property contributed to the Venture, the amount of gain or loss, depreciation and depletion with respect to such property to be taken into account in maintaining capital accounts hereunder shall be determined based upon the initial book value of the contributed property, i.e., its fair market value at the time of contribution, and the period of time and the method used for federal income tax purposes to determine such gain or loss, depreciation or depletion deductions shall also be used for such determination; provided, however, that if percentage depletion is used by the Venture for tax purposes, such method shall also be used for capital account maintenance purposes, except that the amount of depletion to be taken into account shall be the amount of percentage depletion for tax purposes multiplied by a fraction, the numerator of which is the fair market value of the depletable property at the time of contribution and the denominator of which is the adjusted tax basis of such property at that time and provided, further, that depletion in respect of contributed property shall not be charged to the capital account of any Party to the extent such depletion exceeds the book value of such property.

(c) Gain for capital account purposes, determined as set forth above, shall be allocated in the same manner as the portion of taxable gain which exceeds any Built-In Gain is allocated under Sections 12.02(a) and 16.03.

Losses for capital account purposes, determined as set forth above, shall be allocated in the same manner as the portion of taxable loss which exceeds any Built-In Loss is allocated under Section 12.02(c).

(d) For purposes of this Section, a Party's share of income exempt from tax shall be determined as if such income were taxable, and a Party's share of expenditures described in Code section 705(a)(2)(B) shall be determined as if such expenditures were not described therein. The agreed fair market value of the Property as of the date this Agreement is entered into shall be \$375,000 for purposes of this Agreement.

ARTICLE IV

PARTICIPATING INTERESTS

4.01 Participating Interests. As of the date of this Exploration Agreement, the Participating Interests of the Parties in the Venture shall be:

TDC	50%
Western	50%

do we want this as an undivided

Except as otherwise provided herein, the Parties shall retain such respective Participating Interests unless such interests are adjusted, transferred, or forfeited pursuant to the terms of this Exploration Agreement.

4.02 Ownership of Joint Assets. The interest of each Party in the Venture shall be personal property for all purposes. The Venture, as an entity, shall own title to and all interests in the Joint Assets, and neither Party shall have any individual ownership interest in all or any portion of the Joint Assets. Record title to the Joint Assets, including the Property, shall be held by the Venture subject to the terms and conditions hereof, unless otherwise directed by the Management Committee.

4.03 Adjustment of Participating Interests. Following the Earning Period, if either Party (the "Diluted Party") fails to make a cash contribution payment pursuant to a Cash Call from the Operator within the time provided therefor pursuant to Section 3.04 above, the respective Participating Interests of both Parties shall be automatically adjusted to a fraction, the numerator of which shall be the amount of the contributions each Party has made to the Venture (taking into account, in the case of the Property, its agreed value under Section 3.05) and the denominator of which shall be the total contributions of both Parties to the Venture. The other Party (the "Non-Diluted Party") may, but

is this right tax wise or do we want undivided ownership

Abundant 3 GMM Special Contribution not included

see

NOT 375K

we assumed alot here

Should the Non-diluted Party make the contribution of the diluted Party by the time the next cash call comes and only subsequent no payment the dilution will become greater

shall not be required to, advance to the Venture the cash contribution required of the Diluted Party and such advance shall be treated as a contribution by the Non-Diluted Party for purposes of determining the adjustment of Participating Interests described above. The Diluted Party shall have no right whatsoever to recoup any portion of its Participating Interest lost or reduced hereunder by subsequent repayment of an amount which it failed to contribute in a timely manner to the Venture. Any interest paid by either Party to the other Party as a result of the failure of such Party to make payment of its cash contributions within the period provided in Section 3.04 hereof shall not be included in the calculation of either Party's Participating Interest pursuant to any provision of this Exploration Agreement.

4.04 Continuing Liabilities Following Adjustments to Participating Interests. Any adjustment to or reduction of a Party's Participating Interest under the terms of this Exploration Agreement shall not relieve such Party of its share of any liability, whether it accrues before or after such adjustment or reduction, arising out of Operations conducted prior to the adjustment or reduction. For purposes of this Exploration Agreement, each Party shall share in the liability of the Venture in proportion to its respective Participating Interest at the time such liability was incurred by or on behalf of the Venture. The increased Participating Interest accruing to a Party as a result of the reduction of the other Party's Participating Interest shall be free of any royalties, liens or other encumbrances arising by, through or under the Party whose Participating Interest has been reduced. An adjustment or reduction of a Party's Participating Interest need not be evidenced during the term of this Exploration Agreement by the execution and recording of appropriate instruments, but the Participating Interests of the Party shall be shown, and adjusted as necessary from time to time, on the books of the Venture.

4.05 Transfer of Working Interest. If and when the Participating Interest of either Party (hereinafter the "Transferor") is equal to or less than ten percent (10%) as a result of dilution pursuant to Section 4.03 above, the Transferor shall be deemed to have transferred its entire Participating Interest to the other Party (hereinafter the "Transferee") and the Transferor shall be entitled thereafter to ten percent (10%) of the net profits, as determined in the manner set forth in Exhibit E hereto, derived by the Transferee from the operation of the Property. This Exploration Agreement shall terminate immediately upon the transfer of the Transferor's Participating Interest to the Transferee; provided, however, that any debts or obligations incurred by Transferor prior to the termination of this Exploration Agreement shall not be diminished or affected in any manner by such termination of this Exploration Agreement. The entire

important statement in regards to operation of 25k revenue or suit

Removes D.A.B.A interest proportional to T.D.C.'s

Ok but a suit could take place when SV = 50% T.D.C. could be diluted to 10% but still have to pay 50% of liability

see 2-18

not good from tax stand point I believe all depletion allowances and possibly depreciation would have to be back out of profit Taxes and then become a tax liability

Important Point for G.A.B.A.

Participating Interest of Transferor shall automatically be deemed to belong and to have been transferred to the Transferee without the necessity of any further acts by the Parties; provided that Transferee shall promptly execute any and all documents deemed advisable by Transferee for purposes of terminating and dissolving the Venture and conveying the Property and the Joint Assets from the Venture to Transferee. The provisions of this Section 4.05 shall not apply in the event the Participating Interest of a Party is reduced, in whole or in any part, by an assignment or transfer thereof. In the event the Participating Interest of a Party is reduced by an assignment or conveyance the provisions of Section 4.04 shall continue to apply to the Participating Interest of such Party and the Participating Interests of the successor or successors of such Party without regard to a reduction of all or any of such Participating Interests to less than ten percent (10%).

This sounds as if G.A.B.A. are participating and would be responsible for any obligations of the participants with T.O.C.

ARTICLE V

Protection from liens.

OPERATOR; RIGHTS AND OBLIGATIONS; MANAGEMENT FEE

5.01 Operator. Western is hereby appointed the Operator for all purposes of this Exploration Agreement, and shall remain in such capacity for the term hereof, unless and until Western resigns as provided in Section 5.02 below. Except as provided in Section 5.02, the Operator shall have no right to transfer its rights, duties and obligations as Operator without the consent of the Non-Operator, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Western may employ one or more contractors or consultants to perform all or some of the duties and obligations of the Operator hereunder.

5.02 Resignation of Operator. The Operator may resign from its duties and obligations under this Exploration Agreement at any time, effective on the last day of any calendar month, upon giving written notice to the Non-Operator not less than sixty (60) days prior thereto. In the event the Operator resigns, the Management Committee shall select a successor Operator who shall assume the obligations and duties, and have the rights provided to the Operator by this Exploration Agreement. The Operator, upon ceasing to act in such capacity, shall deliver to its successor the custody and possession of all the Joint Assets, including, but not limited to, records, books, fixtures, and other property, both real and personal, subject to this Exploration Agreement. Notwithstanding the rights, duties and obligations of the Operator set forth in this Article V or as provided elsewhere in this Exploration Agreement, if the Operator selected by the Management Committee is not a Party to this Exploration Agreement, all rights, duties and obligations of such Operator shall be determined by the Management Committee.

5.03 Operator's Rights. The Operator's rights shall include, without limitation, the following:

(a) The Operator shall have exclusive control of all Operations, subject to the Work Plans and Budgets approved by the Management Committee and the general supervision of the Management Committee.

(b) At any time while this Exploration Agreement is in effect, the Operator may, but shall have no obligation to, initiate and prosecute such actions as may be necessary or desirable in the opinion of the Operator to cure, remove, or correct title defects or uncertainties relating to the Joint Assets. Such actions may include, but shall not be limited to, initiating or prosecuting in the name of the Venture proceedings to obtain possession of or to quiet title to the Property or any portion thereof. The Parties shall cooperate with the Operator and shall execute all documents and take such actions as the Operator may reasonably request in connection with such actions. Subject to the provisions of Section 11.01, any costs incurred and expenditures made by the Operator in connection with title curative work shall be costs and expenditures of the Venture and shall be charged to the Joint Account.

(c) The Operator shall have the full and exclusive right to relocate, amend, apply for mineral patents, defend contests or adverse suits and negotiate the settlement thereof with respect to any and all of the unpatented mining claims included within the Property and to apply for state mineral leases with respect to the lands presently covered by the state prospecting permits and applications therefor included within the Property, and the Parties shall cooperate with the Operator and shall execute any and all documents necessary or desirable in the opinion of the Operator to further such amendments, relocations, patent applications, contests or adverse suits, settlement of such contests or adverse suits or application for state mineral leases. The Operator shall not be liable in any manner whatsoever to either Party or to the Venture for the loss of any unpatented mining claims or prospecting permits or applications therefor as a result of such amendment, relocation, contests, adverse suits or applications, unless such loss results from the Operator's gross negligence or willful misconduct.

(d) Subject to the prior approval of the Management Committee, the Operator shall have the right and the authority to pledge, encumber, hypothecate, lease (including transactions treated as leases only for tax purposes), and sell and lease-back (including transactions treated as sales and lease-backs only for tax purposes) all or any portion of the Property or other Joint Assets, on the terms and subject to the conditions the Management Committee

*This could be brought about
with T.D.C. consent - via
management committee*

*Could T.D.C. be held
responsible for debt
so created - yes??*

considers appropriate, for purpose of financing all or any portion of the Operations or any other business of the Venture under this Exploration Agreement. The Operator shall be responsible for the servicing of any debt secured by the Property or other Joint Assets hereunder only to the extent the funds therefor are made available by the Parties to the Venture. The Operator shall not be liable to the Venture or the Parties for the loss or forfeiture of the Property or other Joint Assets as a result of the failure to service such debt, unless such loss is a result of Operator's gross negligence or willful misconduct.

(e) The Operator, without the approval of the Management Committee, may make, institute, prosecute and defend any claim, action or suit arising out of or connected with the Operations which involves an amount less than \$25,000. The Operator shall consult with and obtain the approval of the Management Committee prior to the settlement of any action or suit involving the Joint Assets or the Operations.

(f) The Operator, without the approval of the Management Committee, may satisfy, discharge and settle any debts, liabilities, liens, and encumbrances against or secured by the Joint Assets as of the date hereof, and Operator may make Cash Calls upon the Parties at any time and from time to time for that purpose regardless of whether the payment thereof is provided for in a Budget approved by the Management Committee.

*I guess
this is OK*

(g) The Operator's rights shall include all other rights necessary or incidental to fulfilling the purposes of this Exploration Agreement and the performance of the Operator's duties and obligations hereunder, including, but not limited to, the authority to apply for all necessary federal, state, county, and local permits, licenses, and other approvals.

5.04 Operator's Duties. Subject to the policies, directions and procedures established by the Management Committee, the provisions of any Work Plan or Budget which has been approved by the Management Committee, and the actual funding of the Budgets by the contributions of the Parties, the Operator, at the expense and on behalf of the Venture, shall implement or cause to be implemented all decisions of the Management Committee and shall conduct or cause to be conducted the ordinary and usual business and affairs of the Venture in accordance with, and as limited by, this Exploration Agreement, including the following:

(a) The Operator shall carry out the Operations described in the Work Plans and Budgets.

(b) The Operator shall secure and furnish or cause to be secured and furnished all supervision, labor, services, materials, supplies, equipment, water, utility, and transportation services, permits and rights necessary or appropriate to the Operations. The selection of employees, the number thereof, their hours of labor, compensation, termination and benefits shall be determined by Operator, in its sole discretion. To the extent practicable, all employees shall be employees of the Venture.

(c) The Operator shall manage, direct, control, and conduct all Operations in a miner-like fashion.

(d) The Operator shall take such action as it believes necessary to preserve, perfect, or maintain the Venture's title or interests in and to the Joint Assets and shall pay all fees, rentals, royalties, and renewal payments or other charges related to the Joint Assets as it deems necessary.

(e) So long as this Exploration Agreement remains in effect, the Operator shall perform work customarily performed to satisfy the assessment work required by federal and state laws and regulations in order to maintain all unpatented mining claims subject to this Exploration Agreement, and record affidavits of such performance as required. ~~The Operator shall not be liable for the loss of unpatented mining claims for failure to perform assessment work if it performs work which it reasonably and in good faith, in accordance with accepted practices of the mining industry, believes is sufficient to satisfy such work requirements. The Operator shall have no responsibility to perform assessment work or file or record affidavits of such work during the assessment year in which this Exploration Agreement terminates or expires prior to June 1 thereof; provided, however, in the event this Agreement terminates as a result of TDC failing to cure its default of any obligation or representation hereunder, the Operator and Western shall have an obligation whatsoever to perform any assessment work with respect to the Property.~~

No

2 points to be included here

(f) The Operator shall cause to be paid all taxes levied or assessed upon or against the Joint Assets, excluding income taxes, and shall assure that such taxes are properly paid as the same become due and payable; provided that the Operator shall have the right to contest in good faith any taxes levied or assessed upon the Joint Assets and to postpone payment until the resolution thereof. To the extent any Party is so advised or informed, they shall advise the Operator of all general real property tax assessments and levies pertaining to the Property and shall deliver to the Operator any and all notices with respect thereto.

(g) The Operator shall prepare and file within the prescribed periods of time all reports relating to the Operations as may be required by all governmental agencies having jurisdiction over the Operations.

(h) While the Operator is a Party hereto, the Operator shall be designated and serve as the "tax matters partner" under the meaning and for the purposes of Section 6231(a)(7) of the Code.

(i) The Operator shall keep and maintain the Joint Account in accordance with the Accounting Procedure.

(j) The Operator shall not make any expenditures on behalf of the Venture in excess of the amounts provided therefor in the Budgets except:

(i) If certain actions or expenditures not provided for in a Budget are required by law or governmental regulations, the Operator may conduct such actions and make such expenditures as part of the Operations, and shall give prompt written notice thereof to the Management Committee.

(ii) If necessary to carry out the Operations contemplated by a Work Plan, the Operator, at its sole discretion, may incur expenses six (6) times over the course of each calendar year, each time not to exceed \$25,000, and shall report each such expenditure to the Management Committee and the Non-Operator within a reasonable time thereafter.

(iii) In case of emergency, the Operator may take such action and make such immediate expenditures as are necessary for the protection of human life or the Joint Assets, or to avoid violation of state or federal laws, rules, orders, or regulations, and shall give prompt written notice thereof to the Management Committee and the Non-Operators.

(k) The Operator shall obtain and maintain insurance coverage of the types and in the amounts set forth in Exhibit F hereto, the premiums for which shall be a cost and expense of the Venture.

5.05 Liability of Operator. The Operator shall not be liable to any Party or to the Venture for errors in judgment or performance in carrying out any of its duties as Operator under this Exploration Agreement, except in instances of loss resulting from the gross negligence or willful misconduct of the Operator.

very liberal ?? this is needed but ??

5.06 Defense of Claims. If any Party to this Exploration Agreement is sued, receives notices that the Venture has been sued or receives notice of any claim or demand against the Venture based on an alleged cause of action arising out of the Operations or related to the Joint Assets, it shall promptly notify the Operator and the Management Committee of the suit, claim or demand. The Operator shall be responsible for the defense of all lawsuits and all costs incurred in the defense of such lawsuits, including the amount of any judgment or settlement and all attorneys' fees, shall be considered expenditures on behalf of the Venture, and shall be charged to the Joint Account.

5.07 Non-Operator's Access to Information and the Property. The Operator shall, during normal business hours and on reasonable notice, make available to the Non-Operator or its agent, at such place or places as they are normally maintained, all maps, drill logs, core tests, analytical reports, and other information and data accumulated as a result of the Operations, and all records, accounts and documents in its possession which pertain to this Exploration Agreement. In addition, the Non-Operator, its agents, employees, and representatives, at its and their sole risk and upon reasonable notice to the Operator, shall have access to the site of the Operations during normal working hours for purposes of viewing and examining the Operations being performed by the Operator. The Non-Operator's rights of access to information and the site of the Operations as provided herein shall not interfere with or delay the Operations. The Non-Operator hereby agrees to indemnify and hold harmless the Operator and the Venture from and against any and all claims, demands or liability whatsoever arising out of access to information and the Property by the Non-Operator, its agents, employees and representatives.

5.08 Management Fee. For the performance of its duties and obligations hereunder, the Operator (provided it is a Party hereunder) shall receive each month from the Venture a management fee equal to five percent (5%) of all expenditures incurred by or on behalf of the Venture the previous month. Such management fee shall be in full consideration for the general administrative and overhead expenses of Operator's main office, for which Operator shall not be entitled to further reimbursement. Such management fee shall not be in lieu of the costs of Operator's non-management level technical personnel engaged in work directly related to the Operations and such costs shall be deemed costs of the Operations for which the Operator shall be reimbursed. The Operator shall also be reimbursed for all reasonable out-of-pocket costs and expenses incurred by Operator. The management fee paid to the Operator and the costs and expenditures for which the Operator is reimbursed hereunder shall be charged to the Joint Account.

7. I feel we should not exclude taxes, (an judgments, land payments) rental of property ???

In reality T.P.C. pays 2 1/2% Western pay 2 1/2%

Clear cut example of who will be billed & who will not

what is reasonable

ARTICLE VI

MANAGEMENT COMMITTEE

6.01 Management Committee. The Parties hereby establish a Management Committee to manage the Venture. The Management Committee shall consist of an equal number of representatives, not to exceed two (2), appointed by each Party. Each Party may appoint one or more alternates to act in the absence of a regular representative to the Management Committee and any alternate so acting shall be deemed a representative to the Management Committee. Appointments of regular and alternate representatives to the Management Committee shall be made or changed by a Party by notice to the other Party. A representative to the Management Committee appointed by a Party serving as Operator shall act as chairman of the Management Committee.

6.02 Decisions of the Management Committee. Subject to the provision in Section 15.01 hereof limiting a defaulting party's right to vote in Management Committee decisions, the representatives of each Party to the Management Committee which are present at a meeting of the Management Committee collectively shall be entitled to a weighted vote equal to the Participating Interest of such Party at the time of each decision by the Management Committee. All decisions of the Management Committee, except as otherwise provided herein, shall be by majority vote of the aggregate Participating Interests of the Parties. During any period that the representatives of a Defaulting Party are not entitled to vote on decisions by the Management Committee pursuant to the provisions of Section 15.01, the vote of the representatives of the Non-Defaulting Party shall be controlling. In the event of a tie vote, the vote of the representatives of the Party serving as Operator shall be controlling, provided the Operator is a Party hereto. The vote of each Party shall be made in good faith and shall not be unreasonably delayed. If this Agreement is terminated as set forth in Article XVI below, the Management Committee shall be automatically dissolved.

6.03 Meetings. The meetings of the Management Committee shall be held at least twice each calendar year at the places designated therefor by the chairman of the Management Committee. To the extent practicable, an equal number of meetings will be held in places requested by representatives of Western and TDC, respectively. With the unanimous consent of the Management Committee, meetings of the Management Committee may be held by long distance conference telephone calls. Notice of a Management Committee meeting shall be given by the chairman to the representatives of each Party not less than fifteen (15) working days prior to such meeting, provided that no notice of a meeting shall be necessary if

each representative is present at the meeting or participates in such telephone conference call. Any Party may request the chairman to call a meeting of the Management Committee, and upon the receipt of such a request, the chairman shall schedule and notify the Parties of a meeting to occur within twenty (20) days of the receipt of such request. The notice of a meeting shall set forth the matters proposed to be considered at the meeting.

6.04 Expenses. Each Party shall bear all the expenses of its representatives to the Management Committee and of all other persons such Party desires to have in attendance at the meetings of the Management Committee. The expenses of all persons, including consultants, invited by the Operator or the chairman of the Management Committee to attend a meeting of the Management Committee for purposes of advising the Venture, shall constitute an expense of the Venture.

ARTICLE VII

BUDGETS AND WORK PLANS

7.01 Budgets. Within sixty (60) days following the execution of this Exploration Agreement, the Operator shall prepare and submit the Initial Plan and Budget to the Management Committee. By no later than November 1, 1984 and on or before November 1 of each year thereafter during the term hereof, the Operator shall prepare and submit a Budget and Work Plan to the Management Committee with respect to the Operations of the Venture during the forthcoming calendar year. The Operator may submit proposed revisions of the Budget and Work Plan to the Management Committee in order to make adjustments to an approved Budget and Work Plan. The Work Plan prepared by the Operator hereunder shall describe the type of activity and the vicinity of the activities composing the Operations during the ensuing calendar year. The Budgets shall include projections of the costs, expenditures and revenues of the Venture during the ensuing calendar year and itemize, by general category, the total projected expenditures according to the location of the proposed Operations. The Operator shall be guided generally in the preparation of Budgets and Work Plans by the directives of the Management Committee.

7.02 Approval and Adoption of Budgets. The Management Committee shall meet no later than ten (10) days following submittal of the Initial Plan and Budget by the Operator and no later than December 7, of each year during the term of this Exploration Agreement in order to adopt a Budget and Work Plan for the ensuing calendar year. If the Management Committee is unable to approve a Budget and Work Plan at the meeting convened for that purpose, the Operator

may call subsequent meetings of the Management Committee to consider and revise the Budget and Work Plan which may be resubmitted by the Operator to the Management Committee. For so long as the Parties are unable to approve the proposed Budget prepared by the Operator, the Operations of the Venture shall be conducted pursuant to the Budget last approved by the Management Committee, as adjusted on an annual basis by the percentage of increase or decrease by which the Consumer Price Index (U.S. City Average - All Urban Consumers) published immediately prior to the commencement of the calendar year for which the Parties were unable to agree upon a Budget differs from the Consumer Price Index published immediately prior to the approval of said last Budget.

ARTICLE VIII

AREA OF INTEREST

8.01 Operations Within Area of Interest. During the term of this Exploration Agreement, the Operator may conduct Operations within the Area of Interest pursuant to an approved Budget and Work Plan in order to determine whether to acquire additional lands and in order to identify and evaluate the suitability of lands for inclusion within Development Blocks. Any right or interest in real property acquired by the Operator within the Area of Interest pursuant to an approved Budget shall be acquired on behalf of the Venture and shall be satisfactorily included within the Property.

8.02 Acquisition of Interests Within the Area of Interest. So long as this Exploration Agreement remains in force and effect and for a period of two (2) years thereafter, neither Party shall acquire, in any manner whatsoever, any interests in real property within the Area of Interest or any right or interest in or affecting any real property within the Area of Interest without first offering the Venture or other Party an opportunity to participate in the acquisition of such interest. In the event either Party (hereinafter called the "Acquiring Party") proposes to acquire any such interest in real property ("Acquired Interest"), any portion of which lies within the Area of Interest, the Acquiring Party shall promptly give written notice of such proposed acquisition to the the other Party (the "Offeree Party"), specifying the terms of the proposed acquisition. Such notice shall be accompanied by a copy of the instrument, if any, under which such Acquired Interest may be acquired and copies of any and all data in the possession of the Acquiring Party concerning such Acquired Interest. For a period of thirty (30) days following the receipt of such notice, the Offeree Party, in its sole discretion, may elect to participate in the acquisition of such Acquired Interest. If this Exploration Agreement is in effect at such time as the Offeree Party elects to

participate in the acquisition of the Acquired Interest, the Acquired Interest shall be acquired on behalf of the Venture and each Party shall be committed to pay its proportionate share of the acquisition cost of the Acquired Interest according to its Participating Interest in the Venture at the time of such acquisition." If this Exploration Agreement is no longer in effect, the Parties shall acquire the Acquired Interest as tenants in common with each Party owning an undivided interest and sharing in the cost of acquiring such interest according to its respective Participating Interest as of the termination or expiration of this Exploration Agreement. In the event the Offeree Party elects not to acquire an Acquired Interest, the Acquiring Party may proceed with respect thereto at its sole risk and expense and the Venture and the other Party will be deemed to have waived any and all interests therein. @

8.03 No Merger. In the event the Offeree Party declines to participate in the Acquired Interest and the Acquiring Party proceeds to obtain the Acquired Interest, the Parties hereby agree there shall be no merger of any leasehold estate held by the Venture or any Party with the fee ownership of the Property by reason of the same person, firm, or corporation owning or holding both the leasehold estate or some fractional interest therein and the fee estate or some other interest in the Property. The Parties agree that no merger shall occur in such event unless and until all Parties execute a written instrument effecting such merger and duly record such instrument in the appropriate public records.

← ARTICLE IX ← add

DEVELOPMENT BLOCKS

9.01 Designation of Development Blocks. The Operator may at any time conduct a feasibility study with respect to any portion of the Property which has been explored by the Venture, which feasibility study shall include a proposed budget for the first year of operations on such portion of the Property. Following the completion of any such feasibility study, the Operator may designate a Development Block in the event that (i) the Venture has incurred at least \$100,000 in exploration costs upon the lands within the Development Block, (ii) the lands within the proposed Development Block comprise a contiguous, reasonably compact area, and (iii) based upon the results of the feasibility study, the Operator reasonably believes that the Development Block has sufficient mineralization to present a reasonable possibility of conducting commercial mining operations. The Operator shall notify the other Party of its designation of a Development Block and, at such time, provide the other Party with copies of all data and reports in the possession of the

Part
production
area
within
the last
2 years

Will transfer fee simple mineral/surface to acquire fee simple mineral/surface on Wind Mountain Mine.

~~we will be deeded~~
escrow

we will abandon mining claims -

exchange land

mineral to be deeded to TMB or corporation ^{including material substances such as rock & gravel.}
surface to Mike Stewart
TMB/corporation will lease ^{mineral} property back to Mike Stewart.
for \$10.00/yr.

structures

Mike Stewart w/ operate a joint venture w/ TMB to produce -

- We have ^{these} problems
1. Need to patent some property
 2. Have unpatent mining claims
 3. He has fee simple ~~surface~~ mineral
 4. May have additional areas which we could locate on mineral w/ geothermal resource

Son Emidio
Joint Venture

Mike Stewart will be operator - will be reimbursed for any expense past land exchange stage

1. Need list of claims to be exchanged for.
2. Other leases etc.
3. Problems with archeology sites ?? or reserves.
4. All geological data.

Exchange and lease back Agreement. # JV agreement.

Mike Stewart to have use of ~~land~~ surface improvement ~~to~~ to such extent that it doesn't unreasonably interfere w/ efficient mining and recovery processes.

TMB Lease it mineral lands

Stewart to lease it mineral lands if any

other property to be acquired by the Venture, if any

Special contribution
Stewart to put up all money

money put up will be prime + 4%

75% - 25%

Stewart to recoup from NP until Special contribution recouped.

~~80% - 20%~~ 70% - 30%

prop to payback of Special contribution Operator shall have control of tie votes.

after payback - TMB.

Set-up Exploration - Agreement on all lands.

Break off Operating agreement on Patented areas.
Wind Mountain JV. - (Development Block.)

Escrow -

Exchange agreement.

Pat Surf to Stewart

pat men to TMB

TMB lease to Wind Mountain JV

Stewart Surface improve to lease San Emidio JV

Stewart Fee Sample mineral to lease San Emidio JV

San Emidio JV pat men & surface lease to Wind Mtn. JV

Exploration
San Emidio JV
50% Stewart
50% TMB

Operation
Wind Mtn JV
San Emidio JV (25%)
Stewart 37.5%
TMB 37.5%

Operation Geothermal.

1 SF JV 25%

FUND
this

money

this avoids all money going back into Exploration

EXPLORATION UNIT
SAN EMIDIO JV

50% TMB
50% Stewart.

NPI

Stewart 75% NPI UNTIL
TMB 25% NPI UNTIL FOR TAXES

INCOME FUNDING by agreement 50% goes
to exploration & payback any debt. 50% to

Only 25% of any income into
maybe used for expenses
the remainder must be passed
down to owners. or payback debt.

PT. GROUND Operational unit only
WIND MTN JV

TMB
Stewart

25% 50%
25% 50%

UPI

STEWART 75%

For - TMB 25%
TAXES until payback

Then

Exploration & Feasibility \$250k
Special Contribution
Development Contribution
Special Contributions ???
Development of 1st Develop Block

Special Contribution \$2,000,000 will be to bring a Development
block into ~~Wind Mtn into~~ production. or ~~\$250,000~~ ~~\$400,000~~ outside of
patented ground inside patented ground \$250,000
on exploration out side of patented ground.
Then each party contributes equally to JV on
cash calls or is debited.

Management Committee to designate Wind Mtn. JV develop-
ment Block initially

NO LESS THAN
10% NPI

If either party is diluted to a carried interest No. ↓
may convert up to a full 50% interest
by re-incubating Operation for costs associated
~~20% x cost~~ with exploration & development
exploration and development cost x
increasing percentage ownership in
ownership in percentage Times 2

30 day after reaching commercial production.

8/29/91

1. Stewart to provide or negotiate

- A. Deed from Amax for Surface Improvements to TMB
- B. Deed from B.L.M for Exchange of Mineral/Surface for Mineral Surface to TMB
(these probably will be placed in escrow)

2. Exchange and option Agreement ← MAJOR DOC 1WK

A. Above escrowed documents.

1 day deed → B. TMB to provide deed to Stewart for Surface and Surface improvements.

1 day minor doc → C. TMB to provide in agreement for 50k yds of non-mineral bearing rock for 5 yrs. = 250k total

1 day? check Amax doc. minor doc.?? → D. STEWART TO PROVIDE CONTRACT FOR WATER AND HEAT

1 wk MAJOR DOC. → E. STEWART TO LEASE ALL LOCATABLE minerals in Area of Interest - to JV (EXPLORATION)

1 wk maybe MAJOR DOC. → F. TMB TO LEASE ALL MINERALS TO JV (EXPLORATION)

I WOULD LIKE TO SEE THESE SET-UP BEFORE DEAL GOES THROUGH AND ALSO BE ESCROWED
G. Option - Set-up within 90 day EXPLORATION and operational JV - mutual agreement time to be extended.

Operation JV - major doc 1wk?
Exploration JV - major doc 1wk?

Approx 5^{to 6} man weeks of time to get doc.'s in order.

Control Development Block Party
Non-Development Block Party
Control

Development
Develo

should this not
be The Parties

Operator regarding the mineralization and feasibility of conducting commercial mining operations within the Development Block.

differs

9.02 Participation in Development Blocks. Upon the receipt of notice of the designation of a Development Block from the Operator, the other Party shall have a period of thirty (30) days in which to elect whether to participate in further exploration, development and mining of the Development Block. The failure of the other Party to exercise its election within the 30-day period for doing so shall be deemed conclusively an election not to participate in the further exploration, development and mining of a Development Block. In the event the other Party elects to participate further with respect to a Development Block, the Parties shall immediately enter into and execute an Operating Agreement with respect to the lands included within the Development Block pursuant to Section 9.04 hereof.

Carried interest

that either (one or the other)

9.03 Election Not to Participate in Development Blocks. In the event the other Party elects not to participate further with respect to a Development Block, such other Party shall be deemed to have transferred its entire Participating Interest in the lands within the Development Block to the Operator, shall execute all documents of conveyance as the Operator shall deem necessary and appropriate to accomplish the conveyance to the Operator of the lands within the Development Block and shall have no further right, title or interest in or to the lands within the Development Block. Notwithstanding the foregoing, the other Party shall have the right anytime within 12 months following its election not to participate in a Development Block in which to re-earn an interest in the Development Block equal to its Participating Interest as of the time of its election not to participate in the Development Block. The other Party may re-earn its Participating Interest by reimbursing the Operator for 200% of all exploration costs and 300% of all development and mining costs, including a proportionate share of the costs of any facilities which also benefit other lands, incurred by the Operator with respect to the Development Block during the period since the other Party's election not to participate in the Development Block. Immediately upon the other Party fully reimbursing the Operator for its prior costs and expenditures in the manner provided herein, the Parties shall execute and enter into an Operating Agreement as provided in Section 9.04 hereof and the Operator shall convey the lands within the Development Block to the joint venture formed pursuant to the Operating Agreement. In the event that the other Party does not, within the 12-month period referred to above, make all payments required hereunder to the Operator necessary to re-earn an interest in the Development Block, such other Party's right to re-earn an interest in the Development Block shall cease upon the expiration of such 12-month period. For

that Party not wishing to Participate

other party

Should these
% be in relation to Participation
Assuming
on 50%
interest
400% of
Participating

herein after
Development
Block JV

Does this then give Party a right to past Net Profits or
Does this preclude participation in Profits to only that portion
generated after reentering

purposes of Section 3.05, the Development Block shall be deemed distributed to the Operator at the end of the 12-month period referred to above.

9.04 Operating Agreement.

(a) Upon the election of the other Party to participate in a Development Block or the full reimbursement of the Operator as provided in Section 9.03 hereof, the Parties shall immediately enter into and execute an Operating Agreement, with the lands within the Development Block being the subject thereof, and accordingly identified in an exhibit thereto. The Venture shall execute and deliver to the joint venture formed pursuant to the Operating Agreement an instrument of conveyance with respect to all lands and all interests of the Venture in the lands within the Development Block. The Parties shall have initial interests in the joint venture formed pursuant to an Operating Agreement equal to their respective Participating Interests hereunder as of the date of execution of the Operating Agreement. This Exploration Agreement shall terminate with respect to the lands within the Development Block immediately upon the Operating Agreement taking effect and the Operating Agreement shall govern the further acquisition, exploration, development and mining of the lands subject thereto.

operating
DVB
DU

(b) The first time an Operating Agreement is entered into pursuant to this Section 9.04, the tax partnership referred to in Section 10.01 shall be divided, pursuant to Treas. Regs. § 1.708-1(b)(2)(ii), into two tax partnerships as follows:

(i) Operations under the Operating Agreement (the "Operating Venture") shall constitute a separate tax partnership.

(ii) The remainder of the original tax partnership shall constitute the other tax partnership resulting from the division (the "Exploration Venture").

(iii) The provisions of Section 3.05, Article XII, Article XIII, and Section 16.03 shall apply separately to the Operating Venture and the Exploration Venture and shall override any contrary provisions in the Operating Agreement; provided, however, that in the case of each tax partnership, Sections 12.02, 13.02 and 16.03 shall be applied by reference to the total Special Contribution, Additional Amount, and Preference applicable to the Exploration Agreement and all Operating Agreements; and provided, further, that if two or more such agreements terminate simultaneously, the total

(As defined in 16.03)
where is this defined
see 16.03

Preference referred to in Section 16.03 shall be allocated between the terminating agreements in proportion to the excess, if any, of the total fair market value over the total adjusted basis, at the time of termination, of the assets to which each such agreement applies, and only such allocated portion of the Preference shall be taken into account in applying Section 16.03 to each such agreement.

(iv) The capital accounts of Western and TDC in the original tax partnership shall be allocated between the Operating Venture and the Exploration Venture in such fashion as Western reasonably determines to be in compliance with section 704(b) of the Code and the regulations thereunder to the maximum extent consistent with the economic arrangement between the Parties.

(v) Any Built-In Gain or Built-In Loss shall be allocated between the Exploration Venture and the Operating Venture, and any required related adjustments shall be made, in such fashion as Western reasonably determines to be in compliance with sections 704(c) and 704(b) of the Code and the regulations thereunder to the maximum extent consistent with the economic arrangement between the Parties.

(c) Each successive time an Operating Agreement is entered into pursuant to Section 9.04, the continuing Exploration Venture shall be divided into two tax partnerships in the same fashion as described in Section 9.04(b) above.

FINANCING of development

ARTICLE X

RELATIONSHIP OF THE PARTIES

10.01 Partnership. It is the intention of the Parties to create a joint venture taxable as a partnership for federal and state income tax purposes. It is further the intention of the Parties to form a joint venture limited to the express purposes of this Exploration Agreement and governed by the laws of the State of Arizona, including, in matters not covered by this Exploration Agreement, the Arizona Uniform Partnership Law. It is not the purpose or intention of this Exploration Agreement to create a general partnership, mining partnership, commercial partnership or other similar partnership relation among the Parties for purposes beyond those expressly authorized by this Exploration Agreement. Except as expressly provided herein, nothing contained in this Exploration Agreement shall be deemed to constitute any Party

the partner, agent or legal representative of any other Party. No Party shall have any authority to act for, or to assume any obligation or responsibility on behalf of, any other Party, or the Venture except as expressly provided herein.

10.02 Several Liability of Parties. The Parties shall be jointly liable to third parties, in proportion to their respective Participating Interests, for any and all losses, claims, damages and liabilities, acts, omissions or assumptions of any obligation or liability done or undertaken or apparently done or undertaken by its directors, officers, agents, or employees in the exercise of its rights or the discharge of its obligations as a Party hereunder unless such losses, claims, damages or liabilities result from the willful misconduct or gross negligence of officers or directors but not of other employees or agents of the Party in which case such Party shall be severally liable therefor. All damages for loss or injury to persons or property arising out of the activities of the Venture, except as otherwise provided in the Operating Agreement, shall be borne by the Parties in proportion to their respective Participating Interests at the time the loss or injury occurred and, in the event a Party is required to satisfy any claim or judgment for such damages, it shall have the right of contribution against the other Party to the extent of such other Party's Participating Interest in the Venture. Neither Party shall be liable to the other Party for any act or omission resulting in loss or liability to such other Party, except to the extent such loss or liability is caused by the negligence of the officers or directors (but not other employees or agents) of the first-mentioned Party. Each Party covenants and agrees to indemnify, defend and hold harmless the other Party and its directors, officers, and employees from and against any and all losses, claims, damages, and liabilities resulting from any unauthorized acts with respect to the Operations.

10.03 Other Business Opportunities. This Exploration Agreement is, and the rights and obligations of the Parties are, strictly limited to the scope and purpose of the Venture. Except as otherwise expressly provided herein, the Parties shall have the free, unrestricted and independent right to engage in and receive the full benefits of any other business or activity ventures of any sort whatever, without consulting the other or inviting or allowing the other to participate therein, and without any accountability to the Venture or the other Party, even if such business or activity competes with the business of the Venture. No Party shall be under any fiduciary or other duty to the other Party which will prevent it from engaging in or enjoying the benefits of any competing venture or ventures which are within the general scope of the activities contemplated by this Exploration Agreement. The legal doctrines of "corporate opportunity" or

"business opportunity" which are sometimes applied to persons involved in a joint venture or subject to other fiduciary obligations shall not apply to the activities, ventures, or operations of any Party except as specifically provided herein, insofar as concerns the Property, the Area of Interest, and the Operations of the Venture.

10.04 Insurance. Nothing contained in this Exploration Agreement shall preclude the Parties from obtaining, at their sole expense and benefit, additional insurance covering risks not protected by the coverage to be maintained by the Operator pursuant to Section 5.04(k) hereof. Any Party obtaining such additional or other insurance shall promptly notify the other Party and the Operator in order to avoid a conflict between coverage or overlapping coverage and shall ensure that any such coverage includes waiver of subrogation against the other Party.

10.05 Implied Covenants. There are no implied covenants under this Exploration Agreement or among the Parties other than those of good faith and fair dealing.

10.06 Consultants' and Brokerage Fees. Except as otherwise provided herein, each Party represents and warrants to the other Parties that it has not incurred any obligations or liabilities, contingent or otherwise, for the fees, commissions or other like payments of brokers, finders or agents in connection with this Exploration Agreement or pertaining to the Joint Assets for which any Party will have any liability.

*This is important
to J.A.B.A. as it
says we have no interest*

ARTICLE XI
THE PROPERTY

11.01 Title Examination. Western shall have the right, for a period of 120 days commencing on the date of the execution of this Exploration Agreement, to review and examine title to the Property. Western shall have the right, at its sole option, to terminate this Exploration Agreement in the event that Western determines, in its sole discretion, that title to the Property is not satisfactory for the purposes of the Venture. Western shall have the option, but not the duty, to undertake any and all title curative work that it reasonably determines to be necessary in connection with the Property. Any and all costs incurred by Western in connection with such title curative work shall be costs to the Venture and shall be credited toward the satisfaction of Western's Earning Obligation described in Section 3.02. Within ten (10) business days following the expiration of the 120-day period described above, Western shall either notify TDC in writing of its election to terminate this Exploration Agreement as

provided in this Section 11.01 or shall notify TDC in writing of its election to proceed with the Operations and shall pay to TDC twenty thousand dollars (\$20,000) as provided in Section 3.02. In the event Western elects to terminate the Exploration Agreement as provided herein, such termination shall be accomplished in accordance with the provisions of Section 16.01.

11.02 Joint Loss of Title. Following the 120-day period described in Section 11.01, any failure or loss of title to the Property or any portion of the Joint Assets shall be the loss of the Venture and shall be charged to the Parties pursuant to Section 12.02(c). The Operator shall not be liable to the Venture for any loss of title to the Property or the other Joint Assets, unless such loss results from the gross negligence or willful misconduct of the Operator.

11.03 Waiver of Right to Partition. The Parties hereby waive and release for the term of this Exploration Agreement all rights of partition or sale in lieu thereof or other divisions of the Joint Assets, including any such rights provided by statute.

11.04 Financing Venture Contributions. So long as a Party maintains a Participating Interest in the Venture, that Party shall be free to mortgage, pledge, or otherwise encumber its Participating Interest solely for the purpose of financing its cash contributions to the Venture; provided, however, that, except for the security granted to Western by TDC in TDC's Participating Interest in connection with loans by Western to TDC pursuant to the provisions of Section 3.03, TDC shall not mortgage, pledge or otherwise encumber its Participating Interest until all loans made by Western to TDC pursuant to the provisions of Section 3.03 have been repaid to Western. The costs of obtaining any financing secured thereby and servicing such financing will be borne by the Party so obtaining the financing and not the Venture. If any Party so mortgages, pledges, or otherwise encumbers its Participating Interest in the Venture, that Party shall make any and all payments and take all such action necessary to prevent default under any loan agreement and the foreclosure of any third-party liens. No Party shall have the right to mortgage, pledge or otherwise encumber the Joint Assets or the Property.

11.05 Surrender or Abandonment of Property. The Management Committee may authorize the Operator to surrender or to abandon any property interest comprising a portion of the Property. If the Management Committee authorizes any such surrender or abandonment over the objection of any Party, the Venture shall convey to such objecting Party, by quitclaim deed or assignment as appropriate, and without any cost to the Venture or the other Parties, all of the Venture's interest in the portions of the Property to be abandoned or surrendered,

and the abandoned or surrendered property shall cease to be a part of the Property. Any portion of the Property conveyed to the objecting Party shall be taken by the objecting Party subject to any royalties, liens or encumbrances applicable thereto.

11.06 Reacquisition. All property interests previously included within the Property which are surrendered or abandoned and which are not acquired by an objecting Party as provided in Section 11.05 above, shall be automatically included within the Area of Interest. In the event any Party acquires any interest in any property interest previously included within the Property and surrendered or abandoned hereunder, such Party shall be deemed the "Acquiring Party" and the other Parties shall be deemed the "Offeree Party" for the purposes of Article VIII of this Agreement and the Parties shall have the respective rights, duties and obligations provided in Article VIII hereof.

11.07 Representations of Title. TDC represents, warrants and covenants that, which representations, warranties and covenants shall survive the expiration of the 120-day period described in Section 11.01 above and the execution of one or more Operating Agreements as provided in Section 9.04 above:

(a) All agreements pursuant to which TDC owns or holds interests in the Property, including the state prospecting permits and applications for state prospecting permits, are in good standing and full force and effect, a TDC has duly and timely made all payments and performed all obligations required in order to maintain such agreements.

(b) There are no outstanding judgments, claims, demands, actions, proceedings or litigation pending or, to the knowledge of TDC, its agents, officers or representatives, threatened against the Property or against TDC, its officers, principals or agents, regarding its operation on, or interests in, the Property;

(c) There are no liens, encumbrances, assessments, charges or penalties against or upon the Property;

(d) All unpatented mining claims included within the Property have been properly located and location notices with respect to all such claims have been posted upon the claims and executed copies thereof have been recorded and filed, in a timely manner, in the office of the Cochise County Recorder and the Arizona State Office of the Bureau of Land Management;

Other part could cause trouble with prospecting permit

assessment with require remove on state pp.

(e) The requisite annual assessment work has been duly and adequately performed with respect to all unpatented mining claims included within the Property for every year following the year in which such claims were staked through the assessment year ending September 1, 1983 and affidavits of labor or notices of intention to hold have been recorded and filed, in a timely manner, for each such year in the office of the Cochise County Recorder and, as required, with the Arizona State Office of the Bureau of Land Management;

(f) TDC is the sole owner, claimant and locator of all unpatented mining claims included within the Property;

(g) TDC, through its agent, is the sole permittee or applicant of the state prospecting permits and applications for state prospecting permits included within the Property;

(h) There are no known valid mining claims or locations that are adverse to or in conflict with any significant portion of the Property;

(i) By their terms, the state prospecting permits included within the Property can be assigned to the Venture and the Venture shall be entitled to all rights, title and interest of TDC thereunder;

(j) TDC has presently existing, legally enforceable obligations, whether by contract or otherwise, with respect to the development or maintenance of the Property.

(k) TDC is in full compliance with all applicable federal, state and local laws, rules and regulations pertaining to its operations upon the Property.

ARTICLE XII

FEDERAL INCOME TAXATION

12.01 Federal Income Tax Elections.

(a) With respect to all activities conducted pursuant to this Exploration Agreement, each Party agrees:

(i) not to elect to be excluded from the application of Subchapter K of Chapter 1 of the Code;

why as long as the tax partnership status is not destroyed it would seem this ^{subsection} would be an important tax planning section in the "out" election

I think out under this provision would be important

~~out through its agent~~

caused the through its agent

no

This should go thru on account

12-11 through 12-17

(ii) to join in the execution of such additional documents and elections as may be required by the Internal Revenue Service in order to effectuate the foregoing; and

(iii) not to take any action that will jeopardize their relationship as partners for United States federal income tax purposes. In addition, if the income tax laws of any state in which the Parties conduct operations pursuant to this Exploration Agreement contain provisions similar to those contained in Subchapter K of Chapter 1 of Subtitle A of the Code, each Party agrees not to elect to exclude all or any part of the Operations from the application of said provisions.

(b) The federal and state income tax returns and elections of the Venture shall be filed and made as follows:

(i) The Operator shall prepare and file all necessary federal and state partnership income tax returns for the Venture in a timely manner. The Operator agrees, if feasible, to furnish each Party with information in order to complete Schedule K-1, Form 1065, within ninety (90) days after the close of each calendar year; and

(ii) The Parties hereby authorize and direct the Operator to make the following elections on the tax returns of the Venture:

(A) to elect the calendar year as the fiscal year for the Venture;

(B) to elect, in its discretion, the cash or accrual method of accounting for the Venture; and

(C) such other elections as the Operator, in its sole discretion, deems advisable.

(c) The following tax elections shall be made, or not made, at the discretion of each Party separately, rather than the Venture:

(i) The election to expense certain mining exploration costs pursuant to Code section 617(a)(2); and

(ii) The election pursuant to Code section 617(b)(2)(A) to include in income, in the

it would appear to be best to be on a cash basis

I think this should be with approval oversight of the management committee

Subchapter K

year in which a mine reaches the producing stage, certain exploration expenditures with respect to such mine.

For purposes of this Exploration Agreement, it shall be assumed that each Party has made the election to expense referred to in (i), above, but not the income inclusion election referred to in (ii), above, unless the Operator is notified to the contrary as provided herein. Any Party for whom the election to expense described in (i) above is not made or is revoked shall so notify the Operator within 30 days of the following, as applicable: (a) the date of this Agreement, (b) the acquisition by such Party of its interest in this Agreement, or (c) the revocation of such election. Any Party which makes or intends to make the income inclusion election referred to in (ii), above, shall so inform the Operator within 30 days of the end of the taxable year to which such election relates.

12.02 Allocations of Income, Deductions and Tax Credits. For federal and applicable state income tax purposes:

(a) Except as provided in Section 16.03 and 12.02(j) hereof, Venture taxable income and gain shall be allocated 90% to Western and 10% to TDC until that point at which further Cash Flow is distributable under Section 13.02 80% to Western and 20% to TDC; thereafter, 80% to Western and 20% to TDC until that point at which further Cash Flow is distributable under Section 13.02 70% Western and 30% to TDC; thereafter, 70% to Western and 30% to TDC until that point at which further Cash Flow is distributable under Section 13.02 60% to Western and 40% to TDC; thereafter, 60% to Western and 40% to TDC until that point at which further Cash Flow is distributable under Section 13.02 in accordance with Participating Interests; and thereafter, in accordance with the respective Participating Interests of the Parties at the time the income is taken into account for tax purposes. Notwithstanding the previous sentence, any gain realized upon a disposition of property contributed to the Venture by a Party shall be allocated, to the extent of the "Built-In Gain" (as defined below), entirely to the party contributing such property. "Built-In Gain" shall refer to the excess, if any, of the fair market value over the adjusted basis of property contributed to the Venture at the time of contribution, less the excess, if any, of total venture depreciation and depletion for capital account maintenance purposes over total depreciation and depletion claimed by the Venture for tax purposes in respect of the property. For purposes of this Section 12.02 and Section 3.05, where both Parties contribute interests in the same property, each such interest shall be treated as a separate property.

(b) All Venture deductions and losses not specifically covered in Subsections (c) through (g) below shall be allocated between the Parties in accordance with the respective cash contributions to the Parties to the costs and expenditures giving rise to such deductions.

(c) Any losses upon the disposition of Venture property shall be allocated between the Parties in accordance with the Parties' respective contributions to the adjusted basis of such property, except that any loss resulting from failure or loss of title to the Property or any portion of the Joint Assets following the 120-day period referred to in Section 11.01 shall be allocated in proportion to the Parties' respective Participating Interests. Notwithstanding the foregoing, (i) to the extent of any "Built-In Loss" (as defined below) in respect of such property, any loss upon the disposition of contributed property shall be allocated entirely to the contributing Party, and (ii) any additional loss upon such disposition shall be allocated in accordance with the Parties' respective contributions to any increases in the adjusted basis of such property between the time of contribution and the time of disposition. "Built-In Loss" shall refer to the excess, if any, of the adjusted basis over the fair market value of property contributed to the Venture at the time of contribution.

(d) Any recapture for tax purposes of mining exploration and development expenditures arising by reason of a disposition of any portion of the Joint Assets shall be allocated, to the extent consistent with the allocation of the gain giving rise to such recapture, to the Party originally allocated the deductions for such expenditure or, in the case of contributed property, to the Party which claimed such deductions prior to contribution.

(e) Depreciation of real and tangible personal property and any amortization of intangible property owned by the Venture shall be allocated between the Parties in proportion to the respective contributions of the Parties to the adjusted basis of such property. Any recapture for tax purposes of depreciation or amortization by reason of a disposition of Joint Assets shall be allocated, to the extent consistent with the allocation of the gain giving rise to such recapture, to the Party or Parties originally allocated the deduction of such depreciation or amortization or, in the case of contributed property, to the Party which claimed such deductions prior to contribution.

(f) All percentage depletion deductions shall be allocated for federal income tax purposes in the same proportions as the gross income giving rise to such deductions and any cost depletion shall be allocated for federal income

tax purposes in accordance with the Parties' respective contributions to the adjusted basis of the depletable property; provided, however, that in the case of a Party failing to make the income inclusion election provided by Code Section 617(b)(1)(A), the amount of depletion which would otherwise be allocable to such Party shall be disallowed pursuant to Code Section 617(b)(1)(B) until the disallowed amount equals the amount of such Party's "adjusted exploration expenditures" with respect to the mine in question. Any such disallowed amount shall be deemed to come entirely from the depletion otherwise allocable to such non-electing Party, so that the amount of depletion allocable to the other Party shall not thereby be reduced.

(g) Operating costs shall be allocated in the same proportions as the gross income to which such costs related.

(h) For purposes of Section 46 of the Code and similar state tax provisions, the adjusted basis in the Venture "Section 38 property" shall be allocated between the Parties in the ratio of their respective contributions to the adjusted basis of the property.

(i) For purposes of this Section 12.02, any portion of the adjusted basis of property resulting from (i) a Party's failure to make the election to expense mining exploration expenditures pursuant to Code Section 617(a), or (ii) a Party's election to include an amount in income pursuant to Code Section 617(b)(1)(A), shall be deemed contributed by such Party.

(j) In the case of a Party electing to include an amount in income pursuant to Code Section 617(b)(1)(A), the amount of income resulting from such election shall be allocated 100% to such Party.

(k) Any recapture arising under Code Section 617(b) by reason of a mine's reaching the producing stage shall be allocated, to the extent attributable to expenditure incurred in respect of contributed property prior to the contribution of such property to the Venture, 100% to the contributing Party, so that the provisions of Section 12.02(j) or Section 12.02(f) hereof, depending on whether such contributing Party makes the election provided by Code Section 617(b)(1)(A), shall apply to such contributing Party with respect to such recapture.

12.03 Administrative Clarification. The Parties understand that final regulations under Code Section 704(b), as well as administrative guidance on Code Section 704(c) (as amended by the Tax Reform Act of 1984) are expected to be published within several months. If such final regulations

and administrative guidance make it advisable to modify the terms of this Agreement or the Operating Agreements in order to maintain the allocations of tax items provided herein, the Parties agree to negotiate in good faith to make such modifications to the extent substantially consistent with the economic arrangement between the Parties.

ARTICLE XIII

VENTURE DISTRIBUTIONS

13.01 Distribution of Cash Flow. Within thirty (30) days following the end of each calendar quarter, the Management Committee shall arrange for a distribution of all Cash Flow to the Parties. Payment of such distributions shall be accompanied by a statement supporting the calculation of the Cash Flow distribution.

38%
TDC
actual of 10/20/80 = 59%
80 = 10%
70 = 15%

a.

13.02 Distribution of Cash Flow. With respect to the Venture and any joint operating agreements entered into pursuant to Section 9.04, Cash Flow and distributions in kind (taken into account for purposes of this Section at their fair market value) shall be distributed as follows: (i) until such time as twenty-five percent (25%) of the Special Contribution, together with the Additional Amount with respect thereto, has been recouped by Western, Western shall be allocated ninety percent (90%) of the Cash Flow of the Venture; (ii) after twenty-five percent (25%) of the Special Contribution, together with the Additional Amount with respect thereto, has been recouped by Western and until such time as fifty percent (50%) of the Special Contribution, together with the Additional Amount with respect thereto, has been recouped by Western, Western shall be allocated eighty percent (80%) of the Cash Flow of the Venture; (iii) after fifty percent (50%) of the Special Contribution, together with the Additional Amount with respect thereto, has been recouped by Western, and until such time as seventy-five percent (75%) of the Special Contribution, together with the Additional Amount with respect thereto, has been recouped by Western, Western shall be allocated seventy percent (70%) of the Cash Flow of the Venture; and (iv) after seventy-five percent (75%) of the Special Contribution, together with the Additional Amount with respect thereto has been recouped by Western, and until such time as the rest of the Special Contribution, together with the Additional Amount with respect thereto, has been recouped by Western, Western shall be allocated sixty percent (60%) of the Cash Flow of the Venture. After recoupment by Western, of the full amount of its Special Contribution, together with the Additional Amount with respect thereto, Cash Flow and

Flow - by #5 & tons? where piece -

~~and Additional Amount~~
and additional Amount

not right
??
a

distributions in kind shall be allocated to the Parties in accordance with their respective Participating Interests at the end of the calendar quarter. For purposes of this Section, the amount deemed "recouped" by Western in respect of its Special Contribution shall be the excess of the amount distributed to it hereunder over the amount which would have been distributed to it if no Special Contribution had been made.

less the Additional Amount

So T.D.E. could give up his interest through this section. This could even be a participating interest so long as they are participating.

ARTICLE XIV

SALE, TRANSFER, OR ASSIGNMENT

14.01 Sale, Transfer, or Assignment. Subject to the provisions of Section 11.04 and Section 14.03 hereof, either Party may sell, convey, assign, transfer, pledge or encumber its Participating Interest subject to the prior written consent of the other Parties, which consent shall not be unreasonably withheld. Such consent will be deemed to be reasonably withheld if any Party seeks to pledge, mortgage or otherwise encumber its Participating Interests for purposes other than obtaining financing of its capital contributions to the Venture. Any Party may, at any time, assign and transfer any or all its Participating Interests, without the consent of the other Parties, to a corporation, individual or business entity which is controlled by, controls or is under common control with such Party, or to a successor thereof by reason of merger, consolidation or reorganization. No transfer, sale or assignment shall operate to relieve the assignor from any liability or obligation under this Exploration Agreement which arose prior to the transfer, sale or assignment. The Parties acknowledge that if there are more than two parties to this Exploration Agreement or to an Operating Agreement entered into pursuant to Section 9.04, it may be necessary to make changes in the provisions of Article IX, Article XII, Article XIII and Article XVI, among others, in order to maintain the same tax allocations and economic arrangement provided herein. Accordingly, the Parties agree to make such changes if there should be three or more parties hereto by virtue of an assignment by a Party of a portion of its Participating Interest.

14.02 Agreement by Transferee. Any transfer of interest referred to in Section 14.01 of this Exploration Agreement shall be subject to the condition that the transferee first shall give its written commitment to be bound by all of the terms, conditions, and covenants of this Exploration Agreement. Such transferee shall thereafter be considered for all purposes to be a Party to this Exploration Agreement.

14.03 Compliance with Laws. Notwithstanding any provisions hereof to the contrary, any sale, transfer or assignment (including sales, transfers, or assignments by any entity related to or affiliated with any Party) of any interest in this Exploration Agreement or the Participating Interest of either Party shall be void and of no legal effect if, in the opinion of counsel for the Venture, (i) registration is required under the Securities Act of 1933, as amended, or (ii) such transfer would violate applicable State Securities or Blue Sky laws in any respect. The opinion of counsel shall be rendered by counsel approved by the Parties and all cost and expense thereof shall be borne by the Party seeking to transfer its Participating Interest. In no event shall any interest in the Venture be transferred to a minor or an incompetent or in violation of any state or federal law.

14.04 Third-Party Liens. In the event of the foreclosure of any third-party lien which has attached to the interest of any Party under this Exploration Agreement, the other Party may make such payments and take all such actions as are reasonably necessary to prevent the foreclosure or the forfeiture of the interest which is subject to such third-party lien. The Party preventing any such foreclosure or forfeiture shall be entitled to recover from the Party whose interest is being foreclosed upon its actual, reasonable costs, including, but not limited to, attorneys' fees, in preventing such foreclosure or forfeiture and shall have a lien on that Party's interest in the Venture and in the distributions to which that Party may be entitled to secure the repayment of such costs, plus interest from date of the outlay of funds at the rate of Prime plus four (4) percentage points per annum. The Party preventing the foreclosure or forfeiture shall be entitled, at any time, to foreclose its lien upon the interest of the other Party as provided by law.

14.05 Effect on Capital Accounts and Tax Items.

(a) In General. In the case of a transfer which does not terminate the Venture for income tax purposes under Section 708(b) of the Code, (i) the capital account of the transferor shall carry over to the transferee and (ii) the varying interests of transferor and transferee in the Venture shall be taken into account on the basis of an interim closing of the tax partnership's books, unless the transferor and the tax matters partner designated in Section 510.3 agree upon some other method under Section 706 of the Code, in which case that method shall be used.

(b) Transfers Resulting in Termination for Tax Purposes. In the case of a transfer which results in a termination of the Venture for tax purposes under Code Section 708(b), the provisions of Section 16.03 shall be deemed to apply and the capital accounts of the Parties as

*Keep property
free &
clear of
liens.*

adjusted by that Section shall govern the constructive liquidation of the partnership under that Section and paragraph (b)(1)(iv) of Treas. Regs. § 1.708-1; and the Venture shall be deemed to be reconstituted and all of the Properties recontributed, under paragraph (b)(i)(iv) of Treas. Regs. § 1.708-1. For purposes of this Agreement, including without limitation Sections 3.05 and 12.02, the Venture shall treat separately, as a separately contributed property, the undivided interest in each property deemed recontributed to the Venture under the previous sentence.

ARTICLE XV

DEFAULT

15.01 Event of Default. In the event any Party (the "Defaulting Party") commits or suffers one of the specific events of default listed below, the other Party (the "Non-Defaulting Party"), may serve upon the Defaulting Party notice of default, alleging the specific event or events of default. The Defaulting Party shall have twenty (20) days from receipt of notice of default in which to cure or diligently commence to cure the events of default listed in subparagraphs (a), (b) and (h) below and sixty (60) days from receipt of notice of default in which to cure, by obtaining a dismissal, discharge or stay, as appropriate, the events of default listed in subparagraphs (c), (d), (e), (f) or (g) below. If the Defaulting Party fails to cure or, with respect to the events listed in subparagraphs (a), (b) or (h), diligently commence to cure a default for which notice has been given within the period provided for such purpose herein, the Non-Defaulting Party may elect to terminate this Exploration Agreement without diminishing any other remedy the Non-Defaulting Party may have against the Defaulting Party at law or in equity, and the Non-Defaulting Party shall, if necessary, choose a new Operator. In addition to the foregoing, the Defaulting Party shall lose its right to vote on decisions by the Management Committee until the default has been cured. Events of default shall include, but shall not be limited to, the following:

(a) the violation by a Party of any of the restrictions upon that Party's right to transfer its Participating Interest;

(b) the failure of a Party's transferee to assume in writing and agree to be bound by the transferor's obligations as provided in Section 14.02;

(c) institution by a Party of proceedings of any nature under any laws of the United States or any state relating to the relief of debtors wherein such Party is seeking relief as a debtor;

(d) a general assignment by a Party for the benefit of its creditors;

(e) the appointment of a trustee or receiver to take possession of substantially all of a Party's assets;

(f) the entry by any court of a charging order with respect to a Party's interest in the Venture;

(g) a petition to have a Party adjudged bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy, is filed by or against such Party; and

(h) default in performance of or failure to comply with any material agreement, obligation, undertaking or representation of a Party contained in this Exploration Agreement; provided that, in the event a Party is serving as Operator, the default by the Operator of its duties or obligations hereunder shall not constitute a default by such Party for the purposes of this Section 15.01(h).

15.02 Remedies. Subject to the provisions hereof, upon the occurrence of an event of default, the remedies available to the Non-Defaulting Party with respect to the Defaulting Party, in addition to the termination of this Agreement, shall include:

(a) instituting any action or proceeding for specific performance, injunction or other equitable relief;

(b) instituting any action at law as may be permitted in order to recover damages; and

(c) instituting such proceedings as may be necessary or appropriate to secure an accounting and to terminate and liquidate the Venture.

ARTICLE XVI

TERMINATION

16.01 Termination During Earning Period. This Exploration Agreement shall terminate and the joint venture relationship of the Parties shall dissolve, at the election of either Party, in the event (i) the Parties agree in writing to terminate this Exploration Agreement, (ii) an event of default occurs, as defined in Section 15.01 hereof, which the defaulting Party fails to cure, and the Non-Defaulting Party elects, at its sole option, to terminate this Exploration Agreement by giving written notice of such termination to the Defaulting Party, (iii) Western elects to terminate this

Exploration Agreement, or (iv) Western fails or elects not to make one or more cash contributions pursuant to the Cash Calls of the Operator during the Earning Period. If this Exploration Agreement terminates during the Earning Period as provided herein, Western shall have no further interest whatsoever in the Property; provided, however, the Parties shall have equal rights and interests in the remainder of the Joint Assets. Except as otherwise provided herein, no payments made by or amounts contributed by Western to the Venture or TDC prior to the time of such termination shall be refunded, credited or returned to Western by either the Venture or TDC. In the event TDC fails to cure its default of any obligation or representation hereunder, including, but not limited to the representations set forth in Section 11.07 hereof, Western may elect to terminate this Exploration Agreement, and, in addition to any other remedy which may be available to Western hereunder, Western shall have the right to recover all sums previously paid to the Venture pursuant to Section 3.02 hereof. At the request of TDC in the event this Exploration Agreement is terminated during the Earning Period, Western shall execute a recordable deed, without warranty of title, conveying to TDC all of Western's right, title and interest in and to the Joint Assets. *Should be property and*

doesn't say this

16.02 Termination Subsequent to Earning Period.

This Exploration Agreement may be terminated subsequent to the Earning Period in the event (i) the Parties agree in writing to terminate this Exploration Agreement, or (ii) an event of default occurs, as defined in Section 15.01 hereof, which the Defaulting Party fails to cure within the period provided in Section 15.01 hereof, and the Non-Defaulting Party elects, at its sole option, to terminate this Exploration Agreement by giving written notice to the Defaulting Party of such termination. The termination of this Exploration Agreement hereunder shall be effective as of the date the notice of termination is given, or deemed to be given, to the Defaulting Party pursuant to Section 17.06 hereof. If this Exploration Agreement is so terminated, the joint venture relationship between the Parties shall be dissolved and the Liquidating Party (as defined in Section 16.03) shall wind up the Operations of the Venture as provided in Section 16.03 hereof.

16.03 Liquidation and Distribution.

(a) Upon the dissolution of the joint venture relationship between the Parties, the party identified herein as the "Liquidating Party" shall have the right and authority, including the rights and authority provided to the Management Committee hereunder, to take all action necessary to wind up the Operations of the Venture. In the event the Parties agree to terminate this Exploration Agreement, the Management Committee shall appoint the Liquidating Party. If this Exploration Agreement is terminated as a result of an uncured

Have not been previously liquidated prior to the dissolution of the Joint Venture

default by either party, the Party designated as the Non-Defaulting Party in Section 15.01 shall be the Liquidating Party. All revenues, costs, and expenses incurred by the Liquidating Party in winding up the Operations shall be charged to and reflected in the Joint Account. The Liquidating Party shall conclude such windup as soon as reasonably practicable and as required by law following the termination of this Exploration Agreement. Termination of this Exploration Agreement shall not relieve either Party of any liability or obligation which has accrued or attached prior to the date of termination hereof. The Liquidating Party may liquidate all or some of the Joint Assets in the course of winding up the Venture. The Liquidating Party shall satisfy all liabilities resulting from Operations out of the proceeds of liquidation or otherwise.

X

what does this mean

(b) The Liquidating Party shall establish by independent appraisal the fair market value of the Joint Assets, taking into account all liabilities and debts of the Venture.

(c) Notwithstanding Section 12.02 of this Agreement, gain recognized upon the sale of all or some of the Joint Assets incident to liquidation (but only to the extent that such gain exceeds any Built-In Gain as defined in Section 12.02 in the case of contributed property) shall be allocated in the following order: first to Western, to the extent of the Preference (as defined below), and second, (i) in the event that the Parties each have 50% Participating Interests, any additional gain shall be allocated between the Parties in such proportions as necessary to cause Western's capital account balance to exceed TDC's capital account balance by the amount of the Preference (as defined below) and (ii) in the event that the Parties do not each have 50% Participating Interests, the additional gain shall be allocated between the Parties in such proportions as are necessary to cause Western's capital account balance to exceed, by the amount of the Preference, that amount which bears the same ratio to TDC's capital account balance as Western's Participating Interest bears to TDC's Participating Interest. Joint Assets which are not liquidated by the Operator shall be valued at their market value and the unrealized gain or loss, as the case may be, shall be allocated between the parties in the manner provided herein as if the assets had been sold at fair market value. The Liquidating Party shall establish by independent appraisal the fair market value of any Joint Assets which are not liquidated by the Operator. For purposes of this Section 16.03, "Preference" shall mean the excess, if any, of that portion of the Special Contribution which has not yet been recouped by Western under Section 13.02 (treating all distributable Cash Flow as if distributed) or under this Section 16.03(c), together with the Additional Amount in respect of such unrecouped portion.

independently appraised (law)

by the figure

what is market value

by the Liquidating Party

Duplicated in part *interchangeable use* *guarantors* *liquidating party*

(d) Any Joint Assets which are not liquidated by the Operator shall be distributed to the Parties in accordance with the balances in their respective capital accounts (taking properties distributed in kind into account at fair market value). Any Party with a capital account deficit shall contribute to the Venture an amount of cash equal to that deficit. The Operator shall have sole discretion to determine which portion of each Party's distribution shall be in cash and which portion shall be in kind.

1
2
3
4
16.04 Right to Data After Termination. If this Exploration Agreement is terminated as provided in this Article XVI upon the mutual agreement of the Parties, each Party shall be entitled to copies of all information acquired hereunder as of the date of the termination and not previously furnished to it. If this Exploration Agreement is terminated as provided in this Article XVI because of the occurrence of an event of default as set forth in Section 15.01 hereof, the Defaulting Party shall have no right to information acquired hereunder not previously furnished to it. The Defaulting Party shall furnish to the Non-Defaulting Parties copies of all such information the Defaulting Party may have acquired and the Defaulting Party shall make no further use of any information acquired hereunder or disclose any such information to any third party.

legible ~~and~~

ARTICLE XVII

GENERAL PROVISIONS

17.01 Indemnification. Each Party hereby agrees to indemnify and to hold the Venture and the other Parties, their directors, officers and agents, harmless from and against any and all claims, demands, losses, damages, liabilities, costs, fees, expenses (including attorneys' fees), actions, lawsuits and other proceedings in law or in equity of every kind and nature whatsoever resulting, directly or indirectly in whole or in part from, or occurring in connection with, any public or private offering or sale of any securities of or interests in such first-mentioned Party.

17.02 Confidentiality. The Parties hereto agree to treat as confidential the terms and provisions of this Exploration Agreement, the terms and provisions of all contracts and agreements pertaining to the Venture's interest in the Property, and all data, drill logs, assays, samples, reports, records, and other information relating to the Property, the Operations and the affairs of the Operator, and such information shall not be disclosed to any other person except when such disclosure is required by any law, rule, regulation, or order, including, without limitation, any such

disclosure required in connection with a public or private offering or sale of any securities of or interests in any Party, or consented to in writing by the other Parties.

or Operating Agreements
so long as this agreement remains in effect.

17.03 Memorandum for Recording. The Parties agree to execute a written Memorandum of this Exploration Agreement, for the sole purpose of recording, in form and substance mutually acceptable to the Parties.

17.04 Laws and Regulations. This Exploration Agreement shall be deemed made and entered into in the State of Colorado, and it shall be governed by the laws of Colorado and be subject to all applicable state and federal laws and rules and regulations of public bodies exercising jurisdiction over this Exploration Agreement of the exploration, development, or operation of the Property.

17.05 Force Majeure. Except for the obligations to make money payments when due hereunder, the obligations of any Party under this Exploration Agreement shall be suspended and no Party shall be deemed in default or liable for damages or other remedies while such Party is prevented from performance thereof by acts of God, the elements, riots, acts or failure to act on the part of federal, state, or local government agencies, inability to obtain necessary permits or approvals from federal, state, or local government agencies, inability to secure materials or to obtain access to the location of Operations, strikes, lockouts, damage to, destruction, or unavoidable shutdown of necessary facilities, or any other matters (whether or not similar to those mentioned above) beyond their reasonable control; provided, however, that settlement of strikes or lockouts shall be entirely within the discretion of the Party experiencing the difficulty; and provided further that the Party so prevented from complying with its obligations hereunder shall promptly notify the other Parties thereof and shall exercise diligence in an effort to remove or overcome the cause of such inability to perform.

17.06 Notices. Any notice, election, proposal, objection or other document required or permitted to be given hereunder shall be in writing and either (a) delivered personally to the Party or an officer of the Party to whom directed; (b) sent by registered or certified United States mail, postage prepaid, return receipt requested; or (c) sent by telegraph or telex with all necessary charges fully prepaid, confirmation of delivery requested. All such notices shall be addressed to the Parties as follows:

If to TDC:

Tombstone Development Company, Inc.

Attn: _____

If to Western:

Western States Minerals Corporation
4975 Van Gordon Street
Wheatridge, Colorado 80033

Attn: President

Any Party may from time to time change its address or addresses for future notices hereunder by notice to the other Parties in accordance with this Section 17.06. Notices and all other documents shall be complete and deemed to have been given, and payments shall be sufficiently tendered, immediately if delivered personally, three (3) days after the date postmarked thereon if sent by mail, or the day following transmission if sent by telegraph or telex.

17.07 Severability. In the event any provision of this Exploration Agreement is, or the operations contemplated hereby are found to be, inconsistent with or contrary to any such laws, rules, or regulations, the latter shall be deemed to control, and this Exploration Agreement shall be regarded as modified accordingly and, as so modified, shall continue in full force and effect.

17.08 Rule Against Perpetuities. Any right or option to acquire any interest in real or personal property under this Exploration Agreement must be exercised, if at all, so as to vest such interest in the acquirer within 21 years after any present life in being.

17.09 Currency. All dollar sums specified herein shall be in lawful money of the United States and shall not in any way be diminished or impaired by any fluctuation in the exchange rate of any foreign currency.

17.10 Sole Agreement. This Exploration Agreement shall constitute the sole understanding of the Parties with respect to the Property and the subject matter hereof, all previous agreements with respect thereto, being expressly superseded and replaced hereby, and no modifications or alteration of this Exploration Agreement shall be effective unless in writing executed subsequent to the date hereof by the Parties. No prior or contemporaneous written or oral promises, representations, or agreements shall be binding upon the Parties.

17.11 Title Headings. The title headings of the respective articles and sections of this Exploration Agreement are inserted for convenience only and shall not be deemed to be a part of this Exploration Agreement or considered in construing this Exploration Agreement.

17.12 Further Instruments. The Parties hereto agree that they will execute any and all other instruments which may be necessary or required to carry out and effectuate any and all of the provisions hereof.

17.13 Binding Effect. This Exploration Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Exploration Agreement effective as of the date first above written.

TOMBSTONE DEVELOPMENT COMPANY, INC.

By _____
President

WESTERN STATES MINERALS CORPORATION

By _____
President

EXHIBIT B
TO
JOINT VENTURE AGREEMENT
BETWEEN
TOMBSTONE DEVELOPMENT CORPORATION
AND
WESTERN STATES MINERALS CORPORATION

ACCOUNTING PROCEDURE

ARTICLE I - GENERAL PROVISIONS

1.01 Definitions. All terms used herein shall have the same meaning ascribed to them as in the Agreement to which this Accounting Procedure is attached as Exhibit B.

1.02 General Accounting Records. Operator shall maintain accounting records in accordance with the Agreement, this Accounting Procedure and generally accepted accounting principles, consistently applied, to permit separate and distinct periodic reporting for tax and financial reporting purposes. The records shall reflect all revenues, expenses, costs, assets, liabilities and capital accounts relating to the Venture. *When are transactions to be posted to the books?*

1.03 Audits. Operator shall arrange for annual audits of the accounts and records relating to the Venture by a firm of certified public accountants, and all expenses of such audits shall be charged to the Joint Account. A copy of each annual audit shall be provided to each Party within thirty (30) days after the submittal thereof to Operator. All matters or items disclosed by the audit shall be conclusively binding upon any Party failing to take written exception to any discrepancy disclosed by an audit within sixty (60) days following the completion of the audit. The Operator shall not be liable to the Venture for any discrepancy to which a Party takes exception unless such discrepancy resulted from the gross negligence or willful misconduct of the Operator.

1.04 Statements. Operator shall furnish to the Parties, before the last day of each fiscal quarter, a statement reflecting in reasonable detail all charges and credits to the Joint Account during the preceding fiscal quarter and year to date.

1.05 Bank Accounts. On behalf of the Venture, the Operator shall establish and maintain one or more separate bank accounts for the payment of all expenses and the deposit of all receipts.

ARTICLE II - EXPLORATION, DEVELOPMENT, CONSTRUCTION, MINING
AND OPERATING CHARGES

Costs and expenditures chargeable to the Joint Account shall include all costs and expenditures incurred by the Operator in connection with the exercise of Operator's rights and obligations under the Agreement. Without in any way limiting the generality of the foregoing, chargeable costs and expenditures shall include the following items:

2.01 Rentals and Royalties. All delay or other rentals, royalties, overriding royalties, advance royalties, penalties, bonuses or other payments based on production or otherwise, necessary to maintain title to the Property or any interests therein.

2.02 Labor.

(a) Salaries and wages of Operator's employees engaged in Operations, including salaries or wages paid to geologists, engineers, draftsmen and other employees who are temporarily assigned to and employed on work relating to the Operations for such work.

(b) Operator's costs of holiday, vacation, sickness, and disability benefits, costs or contributions made pursuant to assessments imposed by governmental authorities which are applicable to Operator's labor cost of salaries and wages, and other customary allowances applicable to the salaries and wages chargeable under paragraphs 2.02(a) hereof. These costs may be charged on a "when and as accrued" basis or by "percentage assessment" on the amount of salaries and wages chargeable under 2.02(a) hereof. If percentage assessment is used, the rate shall be based on Operator's cost experience, and shall not include overtime or bonuses paid and chargeable under Section 2.03 on any wages or salaries on which the percentage rate is calculated.

2.03 Employee Benefits. Operator's cost of plans for employees' group life insurance, medical, hospitalization, employee relocation costs, pension, profit-sharing, retirement, stock purchase, thrift, bonus and other customary benefit plans; provided that production or incentive bonus plans are based on actual rates of production, cost savings, or other measurable physical factors of production that are customary in the industry or are required to attract competent employees.

2.04 Material. Cost of material, equipment, vehicles and supplies purchased, leased or rented by Operator, or furnished by Operator for Operations. So far as it is

furnished on a competitive basis, are standard charge to the area of operations

reasonably practical and consistent with efficient and economical operation, accumulation of surplus stocks shall be avoided.

2.05 Transportation. Cost of transportation of employees, equipment, materials and supplies necessary for exploration, development, construction, maintenance, mining and/or operation of the Property, including relocation costs for employees transferred to the site of Operations.

competitive basis
2.06 Services. *To be born on a competitive basis*

(a) The cost of contract services and utilities procured from outside sources. If contract services are performed by an affiliate of Operator, the cost charged to the Joint Account shall not be greater than that for which comparable services and utilities are available in the open market from sources not affiliated with Operator.

(b) The direct costs of using and servicing equipment and facilities exclusively owned by Operator or its affiliates as provided in Section 3.02 hereof.

2.07 Damages and Losses to Equipment. All costs or expenses necessary to replace or repair damages or losses incurred by fire, flood, storm, theft, accident, or any other cause beyond the control of Operator. *and not covered by insurance maintained by the operator*

2.08 Legal Expenses. Legal expenses incurred in connection with Operations, including all costs and expenses of securing legal advice and services, drafting of contracts, negotiating on behalf of Operator with third parties and government agencies, prosecuting applications for permits, licenses, leases or other authorizations from government agencies, handling, investigating, and settling litigation or claims arising by reason of the Operations or necessary to protect or recover the Property or the other Joint Assets, including but not limited to, attorneys' fees, court costs, cost of investigation or procuring evidence, and amounts paid in settlement or satisfaction of any such litigation or claims. - *No. legal expenses related to labor contracts or negotiations unless specifically related to this operation* ✓

2.09 Taxes. All taxes of every kind and nature (except income taxes) assessed or levied upon or in connection with the Property, the production of Valuable Minerals therefrom, and the remaining Joint Assets.

2.10 Insurance Premiums. Premiums paid for insurance on activities or transactions related to the Agreement and for the protection of the Parties, and subject to the terms hereof, all expenses incurred or paid in settlement of

any and all losses, claims, and damages, and other expenses, including legal services, not recovered from insurance carriers.

2.11 Plant and Facilities. ^{to security} The costs of acquisition, construction and maintenance of all plants and facilities related to Operations, including without limitation, all underground track, timber, headframe, conveyors, load-out facilities, mill or other processing facilities. Such costs shall include, by way of example and not limitation, all interest and other costs of borrowed funds and all brokers' or sales fees or commissions.

2.12 Engineering, Environmental Studies; Economic Analysis. All costs incurred in connection with engineering studies, environmental analyses, and economic analyses, whether carried out by Operator or by third parties under contract with Operator. *if carried out by Operator shall be done on a competitive basis with reasonably rates associated with other third parties*

ARTICLE III - BASIS OF CHARGES TO JOINT ACCOUNT

3.01 Purchases. Material and equipment purchased and services procured shall be charged to the Joint Account at the price paid by Operator after deduction of all discounts actually received.

3.02 Exclusively Owned Equipment and Facilities. Charges for Operator's exclusively owned equipment, facilities and utilities will be based on rates currently prevailing for like equipment and service in the area of the Property. Rates may be revised from time to time as appropriate.

3.03 Transactions with Affiliates. Services or equipment provided by any affiliate of the Operator shall be charged to the Joint Account on terms no less favorable than would be the case with unrelated persons in arm's length transactions.

ARTICLE IV - DISPOSAL OF EQUIPMENT AND MATERIAL

4.01 Disposition Generally. Operator shall be under no obligation to purchase the interest of any Non-Operator in surplus new or second-hand equipment and material. The Management Committee shall determine the manner and terms of the disposition of major items of such surplus equipment and material, provided Operator shall have the right to dispose of normal accumulations of junk and scrap material either by transfer or sale from the Joint Assets. Operator shall credit the Joint Account with all proceeds derived from the

disposition of equipment and material. Any damages or claims shall be charged back to the Joint Account if and when paid by Operator.

ARTICLE V - INVENTORIES

5.01 Periodic Inventories, Notice, and Representatives. At reasonable intervals, but not less than annually, inventories shall be taken by Operator of the material, which shall include all such material as is ordinarily considered controllable by Operators of mining properties or exploration activities.

ARTICLE VI Special Condition

- 6.01 Interest - wherever stated through this agreement Interest shall be calculated on a simple annual basis compounding. The standard 30 day month 12 month 360 day year will be used where possible. All calculation of interest on period of less than one year duration shall be computed at the fraction whose numerator shall be the number of days elapsed and whose denominator will be ~~the~~ 360 times the current prevailing rate.
- 6.02 Per Diem ^{business} Commonly employee excepted charges related to the running of business, ~~or~~ travel or related away from office business shall be charge on a cost basis. These charges shall be reasonable and in line with stand expense account deduction excepted by IRS regulation ~~±~~??
- 6.03 a Special Patents or commission or license fees No charges will be address to the operations for ^{operator} patents developed by the Parties hereto in regards to special techniques technologies related to exploration, mining or beneficiation of metals or materials

EXHIBIT D
TO
EXPLORATION AGREEMENT
BETWEEN
TOMBSTONE DEVELOPMENT COMPANY
AND
WESTERN STATES MINERALS CORPORATION
OPERATING AGREEMENT

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*are these
the same or
different as to
exploration agreement.*

OPERATING AGREEMENT
BETWEEN
TOMBSTONE DEVELOPMENT COMPANY,
AND
WESTERN STATES MINERALS CORPORATION

THIS OPERATING AGREEMENT is made and entered into as of the ____ day of _____ 19__ by and between Tombstone Development Company, Inc., a _____ corporation, whose address for purposes hereof is _____ ("TDC") and Western States Minerals Corporation, a Utah corporation, whose address for purposes hereof is 4975 Van Gordon Street, Wheat Ridge, Colorado 80033 ("Western"). TDC and Western are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Parties hereto entered into an Exploration Agreement dated as of _____, 1984 (the "Exploration Agreement") to which this Operating Agreement was attached as Exhibit D;

B. Pursuant to the Exploration Agreement, the Parties conducted exploration operations on certain mineral properties in the Tombstone Mining District, Cochise County, Arizona including the lands more particularly described in Attachment I to this Operating Agreement; and

C. The Parties hereto desire to terminate the Exploration Agreement with respect to the lands described in Attachment I hereto and to enter into this Operating Agreement in order to provide appropriate procedures for further exploration and, if feasible, development and mining of valuable minerals from such lands and for the apportionment of the costs, obligations and benefits of such operations.

AGREEMENT

NOW, THEREFORE in consideration of the recitals and the mutual promises and covenants herein contained, the Parties agree as follows:

ARTICLE I

DEFINITIONS

In addition to the terms defined elsewhere in this Operating Agreement, as used herein the following terms shall have the meanings assigned to them in this Article:

1.01 "Accounting Procedure" shall mean the procedures set forth in Attachment II hereto, under which the general accounting for the Venture shall be governed. If there arises any conflict between the terms of the Accounting Procedure and those of this Operating Agreement, this Operating Agreement shall control.

1.02 "Area of Mutual Interest" shall mean that area of land defined in Section 8.01 hereof.

1.03 "Budget" shall mean a budget for Operations which the Management Committee will cause to be prepared and adopted prior to, or as soon as possible after, the commencement of each calendar year during the term of this Operating Agreement, including the Budget contained in the Initial Plan and Budget as described in Section 7.01 hereof.

1.04 "Cash Call" shall mean the billing submitted to a Party prior to the last day of each month for the estimated cash requirements of the Venture for the ensuing month, which Cash Calls shall be based on and limited to the Work Plans and Budgets approved by the Management Committee except as otherwise expressly provided herein.

1.05 "Cash Flow" shall mean all cash revenues of the Venture, excluding (a) proceeds of financing by the Venture and (b) proceeds from the sale of assets in partial or complete liquidation of the Venture, less the sum of (i) all amounts expended by the Venture pursuant to this Operating Agreement, including fees paid to the Operator; (ii) an amount equal to one month's estimated expenditures for the current and anticipated obligations of the Venture; and (iii) such other amounts as the Management Committee from time to time determines to be necessary or appropriate for the proper operation of the Venture's business, discharge of indebtedness and its winding up and liquidation.

1.06 "Exploration Agreement" shall mean the agreement between TDC and Western dated _____, 1984 to which a form of this Operating Agreement was attached as Exhibit D.

1.07 "Joint Account" shall mean the books and accounts of the Venture which are established and maintained by the Operator in accordance with the Accounting Procedure.

1.08 "Joint Assets" shall mean and include all interests in and to the Premises and Valuable Minerals and all tangible and intangible assets, including but not limited to equipment, facilities and utilities, obtained by acquisition, lease, license or any other manner in connection with and in furtherance of the Operations under this Operating Agreement.

1.09 "Net Profit Interest" shall mean the right of a Party to receive a portion of the proceeds derived from the sale of Valuable Minerals produced from the Premises as calculated in the manner set forth in Attachment III hereto.

1.10 "Non-Operator" shall mean any Party to this Operating Agreement not serving in the capacity of Operator.

Should this be expanded
1.11 "Operating Agreement" shall mean this Operating Agreement, together with all attachments hereto.

1.12 "Operations" shall mean and include all exploration, development, mining, production, processing and marketing operations and related activities conducted by the Parties pursuant to this Operating Agreement.

1.13 "Operator" shall mean the Party so designated in Section 4.01 or Section 4.02 of this Operating Agreement.

Should this be expanded
1.14 "Premises" shall mean the patented and *junior sites* unpatented lode and placer mining claims and millsites and state mining leases and applications therefrom, as more particularly described in Attachment I hereto and any other real property or interests in real property which may be acquired by the Parties in the Area of Mutual Interest, and any right or interest in or affecting Valuable Minerals therein, together with any rights thereto to which the Parties may become entitled during the term of this Operating Agreement, and together with any and all water and water rights used on or for the benefit thereof.

1.15 "Prime" shall mean the rate of interest designated from time to time by the First National Bank of Minneapolis, Minneapolis, Minnesota as its prime rate during the period for which interest is required to be calculated pursuant to the terms of this Operating Agreement.

1.16 "Valuable Minerals" shall mean all ores, metals, minerals, materials, or products thereof found in, on, or under the Premises and shall include, but not be limited

permitted by this Operating Agreement, neither Party shall have the right and each Party hereby agrees not to withdraw from the Venture nor to dissolve, terminate or liquidate, to take any action which would result in the dissolution, termination or liquidation, or to petition a court for the dissolution, termination or liquidation of the Venture, and neither Party at any time shall have the right to petition or to take any action to subject the Premises or any part thereof, or any other Joint Assets to the authority of any court of bankruptcy, insolvency, receivership or similar proceeding.

2.05 Capacity of the Parties. Each Party hereby represents and warrants as follows:

(a) that it is a corporation duly incorporated, validly existing and in good standing in its state of incorporation;

(b) that it is qualified to do business in the State of Arizona;

(c) that it shall remain in good standing as a corporation qualified to do business in the State of Arizona;

(d) that it has the capacity and the full power and authority to enter into and authority to perform all of its obligations under this Operating Agreement and all transactions contemplated herein and that all corporate and other actions required to authorize it to enter into and perform this Operating Agreement have been properly taken; and

(e) that it will not breach any other agreement or arrangement by entering into or performing this Operating Agreement and that this Operating Agreement has been duly executed and delivered by it and is valid and binding upon it in accordance with its terms.

ARTICLE III

CONTRIBUTIONS

3.01 Cash Contributions. The Parties shall be obligated to make cash contributions and share in the expenditures of the Venture in accordance with their respective Working Interests and in accordance with the Budgets and Work Plans approved by the Management Committee. Each Party shall remit to the Operator its respective share of each Cash Call from the Operator within ten (10) days after receipt of notice of such Cash Call. Should either Party fail to make payment

to the Operator of its share of a Cash Call within such 10-day period, the amount due shall thereafter bear interest at the rate of Prime plus four (4) percentage points per annum until paid and all interest accruing on such past due payments shall be paid directly to the other Party for the sole benefit of such other Party. Without in any manner limiting or relieving TDC of its obligation to make cash contributions to the Venture in accordance with the provisions of this Section 3.01, TDC shall, with respect to the first and only the first Cash Call made by the Operator hereunder, have 120 days after the receipt of notice of such Cash Call in which to make payment to the Operator of its share of such Cash Call; provided, however, that, notwithstanding the provisions of Section 3.02, if such payment is not received by the Operator by the 120th day after receipt of notice of such Cash Call, the Working Interest of the Parties shall be adjusted immediately in the manner provided in Section 4.03 hereof. The Operator shall not make any Cash Calls upon TDC in addition to the first Cash Call which would require TDC to make a cash contribution during the 120 day period following the first Cash Call hereunder. Pursuant to the Exploration Agreement, Western agreed to make contributions to the joint venture on behalf of TDC up to a total of two million dollars (\$2,000,000), which contributions otherwise would be required by TDC pursuant to the cash calls of the operator thereunder. Western hereby agrees to make contributions (referred to herein as Western's "Special Contribution") to the Venture on behalf of TDC up to an amount equal to the difference between \$2,000,000 and the total amount of all contributions made by Western on behalf of TDC pursuant to the Exploration Agreement and any other joint venture operating agreement between the Parties. Any Special Contribution and any other special contributions made by Western on behalf of TDC pursuant to the Exploration Agreement on any other operating agreement between the Parties, together with an additional amount with respect thereto computed as if it were interest at the Prime rate plus four (4) percentage points per annum which additional amount shall be included in and for purposes hereof treated as part of the Special Contribution, shall be recoupable by Western as provided in Section 13.02 hereof.

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3.02 Failure to Make Cash Contributions. In the event either Party fails to make any cash contribution required to be made by such Party pursuant to a Cash Call from the Operator within the time provided therefor, the Operator shall give prompt notice of such fact to each Party and the Management Committee. Any Party not having remitted its cash contribution shall have a period of ten (10) days from the receipt of notice of non-payment from the Operator in which to make its required cash contribution plus interest thereon. If any Party fails to make payment of its cash contribution, plus

interest, within the period provided herein, the Working Interests of the Parties shall be adjusted in the manner provided in Section 4.03 hereof.

3.03 Capital Accounts. The Operator shall maintain capital accounts for the Parties. Each Party's initial capital account shall be determined in accordance with Section 9.04(b)(iv) of the Exploration Agreement. Thereafter, capital accounts shall be maintained in accordance with Section 3.05 of the Exploration Agreement; provided, however, that in applying Section 3.05 of the Exploration Agreement for purposes of maintaining capital accounts hereunder, references to Section 16.02 of this Operating Agreement shall be substituted for all references to Section 16.03 of the Exploration Agreement.

ARTICLE IV

WORKING INTERESTS

4.01 Working Interests. The initial Working Interests of the Parties in the Venture shall be equal to the respective Participating Interests of the Parties under the Exploration Agreement at the time the Premises were designated as a Development Block pursuant to the Exploration Agreement, and are hereby recognized as being:

TDC: _____

Western: _____

undivided ownership??

Except as otherwise provided herein, the Parties will retain such respective Working Interests unless and until such interests are adjusted, transferred or forfeited pursuant to the terms of this Operating Agreement.

4.02 Ownership of Joint Assets. The interest of each Party in the Venture shall be personal property for all purposes. The Venture, as an entity, shall own title to and all interests in the Joint Assets, and neither Party shall have any individual ownership interest in all or any portion of the Joint Assets. Record title to the Joint Assets, including the Premises, shall be held by the Venture subject to the terms and conditions hereof, unless otherwise directed by the Management Committee.

4.03 Adjustment of Participating Interests. If either Party (the "Diluted Party") fails to make a cash contribution payment pursuant to a Cash Call from the Operator within the time provided therefor pursuant to Section 3.01 and Section 3.02 above, the Working Interest of the Diluted Party shall be automatically reduced by one percent (1%) for each

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\$ _____ which the Diluted Party fails to contribute in a timely manner to the Venture and the Working Interest of the other Party (the "Augmented Party") shall be correspondingly increased automatically by one percent (1%). The Augmented Party shall have no obligation to contribute to the Venture any funds which the Diluted Party fails to contribute to the Venture thereby resulting in a reduction of the Working Interest of the Diluted Party. The Diluted Party shall have no right whatsoever to recoup any portion of its Working Interest lost or reduced hereunder by subsequent repayment of an amount which it failed to contribute in a timely manner to the Venture.

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4.04 Continuing Liabilities Following Adjustments to Working Interest. Any adjustment to or reduction of a Party's Interest under the terms of this Operating Agreement shall not relieve such Party of its share of any liability arising out of Operations conducted prior to the adjustment or reduction, whether such liability accrues before or after such adjustment or reduction. For purposes of this Operating Agreement, each Party shall share in the liability of the Venture in proportion to its respective Working Interest at the time such liability was incurred by or on behalf of the Venture. The increased Working Interest accruing to the Augmented Party as a result of the reduction of the Diluted Party's Working Interest shall be free of any royalties, liens or other encumbrances arising by, through or under the Diluted Party. An adjustment or reduction of a Party's Working Interest need not be evidenced during the term of this Operating Agreement by the execution and recording of appropriate instruments, but the Working Interests of the Parties shall be shown, and adjusted as necessary from time to time, on the books of the Venture.

4.05 Transfer of Working Interest. If and when the Working Interest of the Diluted Party is reduced to ten (10%) percent or less solely as a result of the provisions of Section 4.03 above, the Diluted Party shall be deemed to have transferred its entire Working Interest and, except as herein-after provided, its entire interest in the Premises to the Augmented Party. In exchange for the transfer of its interest to the Augmented Party, the Diluted Party shall be entitled thereafter to a ten percent (10%) Net Profits Interest derived by the Augmented Party from the operation of the Premises, as determined in the manner set forth in Attachment III hereto. This Operating Agreement shall terminate immediately upon the transfer of the Working Interest of the Diluted Party to the Augmented Party; provided, however, that any debts or obligations incurred by the Diluted Party prior to the termination of this Operating Agreement shall not be diminished or affected in any manner by such termination of this Operating Agreement. The entire Working Interest of the Diluted Party automatically shall be deemed to belong and to have been transferred to the

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Augmented Party without the necessity of any further acts by the Parties; provided that the Diluted Party shall promptly execute any and all documents deemed advisable by the Augmented Party for purposes of terminating and dissolving the Venture and conveying the Premises and the Joint Assets from the Venture to the Augmented Party. The provisions of this Section 4.05 shall take effect only in the event of a reduction of a Party's Working Interest solely as the result of dilution pursuant to Section 4.03. This Section 4.05 shall not apply and shall have no force or effect in the event a Party's Working Interest is transferred, in whole or in part, or transferred in part and reduced in part by dilution or otherwise thereby resulting, in the sum, in a reduction of a Party's Working Interest to ten percent (10%) or less.

ARTICLE V

OPERATOR

5.01 Operator. Western is hereby appointed the Operator for all purposes of this Operating Agreement, and shall remain in such capacity for the term hereof, unless and until Western resigns or is removed therefrom as provided in Section 5.02 below. Except as provided in Section 5.02, the Operator shall have no right to transfer the rights, duties and obligations as Operator without the consent of the Non-Operator, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Western may employ one or more contractors or consultants to perform all or some of the duties and obligations of the Operator hereunder.

5.02 Resignation of Operator.

(a) The Operator may resign from its duties and obligations under this Operating Agreement at any time, effective on the last day of any calendar month, upon giving written notice to the Non-Operator not less than sixty (60) days prior thereto. In the event the Operator resigns, the Management Committee shall select a successor Operator. If the Operator selected by the Management Committee is otherwise a Party hereto, such Operation shall assume the obligations and duties, and have the rights provided to the Operator by this Operating Agreement. If the Operator selected by the Management Committee is not a Party to this Operating Agreement, all rights, duties and obligations of such Operator shall be determined by the Management Committee. The Operator, upon ceasing to act in such capacity, shall deliver to its successor the custody and possession of all the Joint Assets.

(b) The Management Committee may decide, by a majority vote, to remove an Operator from the position of Operator at any time. At the election of the Non-Operator, the Operator may be removed if (i) the Operator makes a general assignment for the benefit of its creditors, or (ii) a petition to have the Operator adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy, is filed by or against the Operator, and the same is not dismissed within 60 days. In the event the Operator is removed from that position at the election of the Non-Operator, the Non-Operator shall appoint either itself or a third-party to serve as Operator hereunder. If a third-party is selected by the Non-Operator to serve as Operator, all rights, duties and obligations of such Operator shall be determined by the Management Committee.

5.03 Operator's Rights. The Operator's rights shall include, without limitation, the following:

(a) The Operator shall have exclusive control of all Operations, subject to the Work Plans and Budgets approved by the Management Committee and the general supervision of the Management Committee.

(b) At any time while this Operating Agreement is in effect, the Operator may, but shall have no obligation to, initiate and prosecute such actions as may be necessary or desirable in the opinion of the Operator to cure, remove or correct title defects or uncertainties relating to the Joint Assets. Such actions may include, but shall not be limited to, initiating or prosecuting in the name of the Venture proceedings to obtain possession of or to quiet title to the Premises or any portion thereof. The Parties shall cooperate with the Operator and shall execute all documents and take such actions as the Operator may reasonably request in connection with such actions.

(c) The Operator shall have the full and exclusive right to relocate, amend, apply for mineral patents, defend contests or adverse suits and negotiate the settlement thereof with respect to any and all of the unpatented mining claims included within the Premises and to apply for state mineral leases with respect to the lands covered by state prospecting permits or applications therefor, and the Parties shall cooperate with the Operator and shall execute any and all documents necessary or desirable in the opinion of the Operator to further such amendments, relocations, patent applications, contests or adverse suits, or settlement of such contests or adverse suits or applications for state mineral leases. The Operator shall not be liable in any manner whatsoever to either Party or to the Venture for the loss of any unpatented mining or millsite claims or prospecting

permits on applications therefrom as a result of such amendment, relocation, contests, adverse suits or applications, unless such loss results from the Operator's gross negligence or willful misconduct.

See previous comments

(d) Subject to the prior approval of the Management Committee, the Operator shall have the right and the authority to pledge, encumber, hypothecate, lease (including transactions treated as leases only for tax purposes), and sell and lease-back (including transactions treated as sales and lease-backs only for tax purposes) all or any portion of the Premises or other Joint Assets, on the terms and subject to the conditions the Management Committee considers appropriate, for purpose of financing all or any portion of the Operations or any other business of the Venture under this Operating Agreement. The Operator shall be responsible for the servicing of any debt secured by the Premises or other Joint Assets hereunder only to the extent the funds therefor are made available by the Parties to the Venture. The Operator shall not be liable to the Venture or the Parties for the loss or forfeiture of the Premises or other Joint Assets as a result of the failure to service such debt, unless such loss is a result of Operator's gross negligence or willful misconduct.

(e) The Operator, without the approval of the Management Committee, may make, institute, prosecute and defend any claim, action or suit arising out of or connected with the Operations which involves an amount less than \$25,000. The Operator shall consult with and obtain the approval of the Management Committee prior to the settlement of any action or suit involving the Joint Assets or the Operations.

(f) The Operator, without the approval of the Management Committee, may satisfy, discharge and settle any debts, liabilities, liens and encumbrances against or secured by the Joint Assets as of the date hereof, and the Operator may make Cash Calls upon the Parties at any time and from time to time for that purpose regardless of whether the payment thereof is provided for in a Budget approved by the Management Committee.

(g) The Operator's rights shall include all other rights necessary or incidental to fulfilling the purposes of this Operating Agreement and the performance of the Operator's duties and obligations hereunder, including, but not limited to, the authority to apply for all necessary federal, state, county and local permits, licenses and other approvals.

5.04 Operator's Duties. Subject to the policies, directions and procedures established by the Management Committee, the provisions of any Work Plan or Budget which has been approved by the Management Committee, and the actual funding of the Budgets by the contributions of the Parties, the Operator, at the expense and on behalf of the Venture, shall implement or cause to be implemented all decisions of the Management Committee and shall conduct or cause to be conducted the ordinary and usual business and affairs of the Venture in accordance with, and as limited by, this Operating Agreement, including the following:

(a) The Operator shall carry out the Operations described in the Work Plans and Budgets.

(b) The Operator shall secure and furnish or cause to be secured and furnished all supervision, labor, services, materials, supplies, permits and rights necessary or appropriate to the Operations. The selection of employees, the number thereof, their hours of labor, compensation, termination and benefits shall be determined by Operator, in its sole discretion. To the extent practicable, all employees shall be employees of the Venture.

(c) The Operator shall manage, direct, control and conduct all Operations in a miner-like fashion.

(d) The Operator shall take such action as it believes necessary to preserve, perfect, or maintain the Venture's title or interests in and to the Joint Assets and shall pay all fees, rentals, royalties and renewal payments or other charges related to the Joint Assets as it deems necessary.

(e) So long as this Operating Agreement remains in effect, the Operator shall perform work customarily performed to satisfy the assessment work or similar obligations required by federal and state laws and regulations in order to maintain all unpatented mining claims and state mining leases subject to this Operating Agreement, and record or file affidavits or other statements of the performance of such work or other obligations as may be required. The Operator shall not be liable for the loss of unpatented mining claims for failure to perform assessment work if it performs work which it reasonably and in good faith, in accordance with accepted practices of the mining industry, believes is sufficient to satisfy such work requirements. The Operator shall have no responsibility to perform assessment work or satisfy other similar obligations or file or record affidavits or statements of such work during the assessment year or other applicable period in which this Operating Agreement terminates or expires.

Date Property Permits

*need Work Commitment
if end only if 90 days
in advance*

(f) The Operator shall cause to be paid all taxes levied or assessed upon or against the Joint Assets, excluding income taxes, and shall assure that such taxes are properly paid as the same become due and payable; provided that the Operator shall have the right to contest in good faith any taxes levied or assessed upon the Joint Assets and to postpone payment until the resolution thereof. To the extent any Party is so advised or informed, they shall advise the Operator of all general real property tax assessments and levies pertaining to the Premises and shall deliver to the Operator any and all notices with respect thereto.

(g) The Operator shall prepare and file within the prescribed periods of time all reports relating to the Operations as may be required by all governmental agencies having jurisdiction over the Operations.

(h) While the Operator is a Party hereto, the Operator shall be designated and serve as the "tax matters partner" under the meaning and for the purposes of Section 8231(a)(7) of the Code.

(i) The Operator shall keep and maintain the Joint Account in accordance with the Accounting Procedure.

(j) The Operator shall not make any expenditures on behalf of the Venture in excess of the amounts provided therefor in the Budgets except:

(i) If certain actions or expenditures not provided for in a Budget are required by law or governmental regulations, the Operator may conduct such actions and make such expenditures as part of the Operations, and shall give prompt written notice thereof to the Management Committee.

(ii) If necessary to carry out the Operations contemplated by a Work Plan, the Operator, at its sole discretion, may incur expenses over the course of each calendar year in the total amount of \$100,000 and shall report each such expenditure to the Management Committee and the Non-Operator within a reasonable time thereafter.

(iii) In case of emergency, the Operator may take such action and make such immediate expenditures as are necessary for the protection of human life or the Joint Assets, or to avoid violation of state or federal laws, rules, orders, or regulations, and shall give prompt written notice thereof to the Management Committee and the Non-Operators.

(k) The Operator shall obtain and maintain insurance coverage of the types and in the amounts set forth in Attachment IV hereto, the premiums for which shall be a cost and expense of the Venture.

Liberal
5.05 Liability of Operator. The Operator shall not be liable to any Party or to the Venture for errors in judgment or performance in carrying out any of its duties as Operator under this Operating Agreement, except in instances of loss resulting from the gross negligence or willful misconduct of the Operator.

5.06 Defense of Claims. If any Party to this Operating Agreement is sued, receives notices that the Venture has been sued or receives notices of any claim or demand against the Venture based on an alleged cause of action arising out of the Operations or related to the Joint Assets, it shall promptly notify the Operator and the Management Committee of the suit, claim or demand. The Operator shall be responsible for the defense of all lawsuits and all costs incurred in the defense of such lawsuits, including the amount of any judgment or settlement and all attorneys' fees, shall be considered expenditures on behalf of the Venture, and shall be charged to the Joint Account.

5.07 Non-Operator's Access to Information and the Premises. The Operator shall, during normal business hours and on reasonable notice, make available to the Non-Operator at such place or places as they are normally maintained, all maps, drill logs, core tests, analytical reports, and other information and data accumulated as a result of the Operations, and all records, accounts and documents in its possession which pertain to this Operating Agreement. In addition, the Non-Operator, its agents, employees, and representatives, at its and their sole risk and upon reasonable notice to the Operator, shall have access to the site of the Operations during normal working hours for purposes of viewing and examining the Operations being performed by the Operator. The Non-Operator's rights of access to information and the site of the Operations as provided herein shall not interfere with or delay the Operations. The Non-Operator hereby agrees to indemnify and hold harmless the Operator and the Venture from and against any and all claims, demands or liability whatsoever arising out of access to information and the Property by the Non-Operator, its agents, employees and representatives. *in his assigned*

5.08 Management Fee. For the performance of its duties and obligations hereunder, the Operator (provided it is a Party hereunder) shall receive each month from the Venture a management fee equal to five percent (5%) of all expenditures

incurred by or on behalf of the Venture the previous month. Such management fee shall be in full consideration for the general administrative and overhead expenses of Operator's main office, for which Operator shall not be entitled to further reimbursement. Such management fee shall not be in lieu of the costs of Operator's non-management level technical personnel engaged in work directly related to the Operations and such costs shall be deemed costs of the Operations for which the Operator shall be reimbursed. The Operator shall also be reimbursed for all reasonable out-of-pocket costs and expenses incurred by Operator. The management fee paid to the Operator and the costs and expenditures for which the Operator is reimbursed hereunder shall be charged to the Joint Account.

ARTICLE VI

MANAGEMENT COMMITTEE

6.01 Management Committee. The Parties hereby establish a Management Committee to manage the Venture. The Management Committee shall consist of an equal number of representatives, not to exceed two (2), appointed by each Party. Each Party may appoint one or more alternates to act in the absence of a regular representative to the Management Committee and any alternate so acting shall be deemed a representative to the Management Committee. Appointments of regular and alternate representatives to the Management Committee shall be made or changed by a Party by notice to the other Party. A representative to the Management Committee appointed by a Party serving as Operator shall act as chairman of the Management Committee.

6.02 Decisions of the Management Committee. Subject to the provision in Section 15.01 hereof limiting a defaulting party's right to vote in Management Committee decisions, the representatives of each Party to the Management Committee which are present at a meeting of the Management Committee collectively shall be entitled to a weighted vote equal to the Working Interest of such Party at the time of each decision by the Management Committee. All decisions of the Management Committee, except as otherwise provided herein, shall be by majority vote of the aggregate Working Interests of the Parties. During any period that the representatives of a Defaulting Party are not entitled to vote on decisions by the Management Committee pursuant to the provisions of Section 15.01, the vote of the representatives of the Non-Defaulting Party shall be controlling. In the event of a tie vote, the vote of the representatives of the Party serving as Operator shall be controlling, provided the Operator is a Party hereto. The vote of each Party shall be made in good faith

and shall not be unreasonably delayed. If this Agreement is terminated as set forth in Article XVI below, the Management Committee shall be automatically dissolved.

6.03 Meetings. The meetings of the Management Committee shall be held at least twice each calendar year at the places designated therefor by the chairman of the Management Committee. To the extent practicable, an equal number of meetings will be held in places requested by representatives of Western and TDC, respectively. With the unanimous consent of the Management Committee, meetings of the Management Committee may be held by long distance conference telephone calls. Notice of a Management Committee meeting shall be given by the chairman to the representatives of each Party not less than fifteen (15) working days prior to such meeting, provided that no notice of a meeting shall be necessary if each representative is present at the meeting or participates in such telephone conference call. Any Party may request the chairman to call a meeting of the Management Committee, and upon the receipt of such a request, the chairman shall schedule and notify the Parties of a meeting to occur within twenty (20) days of the receipt of such request. The notice of a meeting shall set forth the matters proposed to be considered at the meeting.

6.04 Expenses. Each Party shall bear all the expenses of its representatives to the Management Committee and of all other persons such Party desires to have in attendance at the meetings of the Management Committee. The expenses of all persons, including consultants, invited by the Operator or the chairman of the Management Committee to attend a meeting of the Management Committee for purposes of advising the Venture, shall constitute an expense of the Venture.

ARTICLE VII

BUDGETS AND WORK PLANS

7.01 Budgets. Within sixty (60) days following the execution of this Operating Agreement, the Operator shall prepare and submit an Initial Plan and Budget to the Management Committee regarding the Operations and projected expenditures of the Venture during the remainder of the then-current calendar year. On or before November 1 of each year during the term of this Operating Agreement, the Operator shall prepare and submit a Budget and Work Plan to the Management Committee with respect to the Operations of the Venture during the forthcoming calendar year. The Operator may submit proposed revisions of the Budget and Work Plan to the Management Committee in order to make adjustments to an approved Budget

and Work Plan. The Work Plan prepared by the Operator hereunder shall describe the type of activity and the vicinity of the activities composing the Operations during the ensuing calendar year. The Budgets shall include projections of the costs, expenditures and revenues of the Venture during the ensuing calendar year and itemize, by general category, the total projected expenditures according to the location of the proposed Operations. The Operator shall be guided generally in the preparation of Budgets and Work Plans by the directives of the Management Committee.

7.02 Approval and Adoption of Budgets. The Management Committee shall meet no later than ten (10) days following submittal of the Initial Plan and Budget by the Operator and no later than December 7 of each year during the term of this Operating Agreement in order to adopt a Budget and Work Plan for the ensuing calendar year. If the Management Committee is unable to approve a Budget and Work Plan at the meeting convened for that purpose, the Operator may call subsequent meetings of the Management Committee to consider and revise the Budget and Work Plan which may be resubmitted by the Operator to the Management Committee. For so long as the Parties are unable to approve the proposed Budget prepared by the Operator, the Operations of the Venture shall be conducted pursuant to the Budget last approved by the Management Committee, as adjusted on an annual basis by the percentage of increase or decrease by which the Consumer Price Index (U.S. City Average - All Urban Consumers) published immediately prior to the commencement of the calendar year for which the Parties were unable to agree upon a Budget differs from the Consumer Price Index published immediately prior to the approval of said last Budget.

ARTICLE VIII

AREA OF MUTUAL INTEREST

8.01 Operations Within Area of Mutual Interest. During the term of this Operating Agreement, the Operator may conduct Operations within the Area of Mutual Interest pursuant to an approved Budget and Work Plan in order to identify and evaluate the suitability of lands for acquisition and inclusion within the Premises. Any right or interest in real property acquired by the Operator within the Area of Mutual Interest pursuant to an approved Budget shall be acquired on behalf of the Venture and shall be satisfactorily included within the Property. For purposes of this Operating Agreement the Area of Mutual Interest shall include all lands within a one-mile radius of the present exterior boundaries of the Premises, excluding all lands which are subject to the Exploration Agreement and excluding further any lands which

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are subject to a prior joint venture operating agreement between the Parties.

8.02 Acquisition of Interests Within the Area of Mutual Interest. So long as this Operating Agreement remains in force and effect and for a period of two (2) years thereafter, neither Party shall acquire, in any manner whatsoever, any interests in real property within the Area of Mutual Interest or any right or interest in or affecting any real property within the Area of Mutual Interest without first offering the Venture or other Party an opportunity to participate in the acquisition of such interest. In the event either Party (hereinafter called the "Acquiring Party") proposes to acquire any such interest in real property ("Acquired Interest"), any portion of which lies within the Area of Mutual Interest, the Acquiring Party shall promptly give written notice of such proposed acquisition to the the other Party (the "Offeree Party"), specifying the terms of the proposed acquisition. Such notice shall be accompanied by a copy of the instrument, if any, under which such Acquired Interest may be acquired and copies of any and all data in the possession of the Acquiring Party concerning such Acquired Interest. For a period of thirty (30) days following the receipt of such notice, the Offeree Party, in its sole discretion, may elect to participate in the acquisition of such Acquired Interest. If this Operating Agreement is in effect at such time as the Offeree Party elects to participate in the acquisition of the Acquired Interest, the Acquired Interest shall be acquired on behalf of the Venture and each Party shall be committed to pay its proportionate share of the acquisition cost of the Acquired Interest according to its Working Interest in the Venture at the time of such acquisition. If this Operating Agreement is no longer in effect, the Parties shall acquire the Acquired Interest as tenants in common with each Party owning an undivided interest and sharing in the cost of acquiring such interest according to its respective Working Interest as of the termination or expiration of this Operating Agreement. In the event the Offeree Party elects not to acquire an Acquired Interest, the Acquiring Party may proceed with respect thereto at its sole risk and expense and the Venture and the other Party will be deemed to have waived any and all interests therein.

8.03 No Merger. In the event the Offeree Party declines to participate in the Acquired Interest and the Acquiring Party proceeds to obtain the Acquired Interest, the Parties hereby agree there shall be no merger of any leasehold estate held by the Venture or any Party with the fee ownership of the Property by reason of the same person, firm, or corporation owning or holding both the leasehold estate or some fractional interest therein and the fee estate or some other interest in the Property. The Parties agree that no merger

shall occur in such event unless and until all Parties execute a written instrument effecting such merger and duly record such instrument in the appropriate public records.

ARTICLE IX

TAX PARTNERSHIP

9.01 Partnership. It is the intention of the Parties to create a joint venture taxable as a partnership for federal and state income tax purposes. It is further the intention of the Parties to form a joint venture limited to the express purposes of this Operating Agreement and governed by the laws of the State of Colorado, including, in matters not covered by this Operating Agreement, the Colorado Uniform Partnership Law. It is not the purpose or intention of this Operating Agreement to create a general partnership, mining partnership, commercial partnership or other similar partnership relation among the Parties for purposes beyond those expressly authorized by this Operating Agreement. Except as expressly provided herein, nothing contained in this Operating Agreement shall be deemed to constitute any Party the partner, agent or legal representative of any other Party. No Party shall have any authority to act for, or to assume any obligation or responsibility on behalf of, any other Party, or the Venture except as expressly provided herein.

9.02 Division from Exploration Venture. The Parties are co-ventures in a joint venture pursuant to the Exploration Agreement which is separate and distinct from the Venture formed hereunder. Immediately upon the execution of this Operating Agreement, the tax partnership formed under the Exploration Agreement shall be divided, pursuant to Treas. Regs. § 1.708-1(b)(2(ii)), into two tax partnerships as follows:

(a) Operations of the Venture under this Operating Agreement shall constitute a separate tax partnership from the joint venture formed under the Exploration Agreement. The remainder of the original tax partnership resulting from the division thereof shall constitute a separate tax partnership under the Exploration Agreement (the "Exploration Venture").

(b) The provisions of Section 3.05, Article XII, Article XIII, and Section 16.03 of the Exploration Agreement shall apply separately to both the Operating Venture and the Exploration Venture and shall override any provisions in the Operating Agreement to the contrary; provided, however, that in the case of each tax partnership, Sections 12.02, 13.02 and

16.03 of the Exploration Agreement shall be applied by reference to the total Special Contribution and Preference under the Exploration Agreement, this Operating Agreement and all other operating agreements between the Parties; and provided, further, that if two or more such agreements terminate simultaneously, the total Preference referred to in Section 16.03 shall be allocated between the terminating agreements in proportion to the excess, if any, of the total fair market value over the total adjusted basis, at the time of termination, of the assets to which each such agreement applies, and only such allocated portion of the Preference shall be taken into account in applying Section 16.03 to each such agreement.

(c) The capital accounts of Western and TDC under the Exploration Agreement shall be allocated between the Venture and the Exploration Venture in such fashion as Western reasonably determines to be in compliance with sections 704(b) and 704(c) of the Code and the regulations thereunder to the maximum extent consistent with the economic arrangement between the Parties.

(d) Any Built-In Gain or Built-In Loss shall be allocated between the Venture and the Exploration Venture, and any required related adjustments shall be made, in such fashion as Western reasonably determines to be in compliance with sections 704(c) and 704(b) of the Code and the regulations thereunder to the maximum extent consistent with the economic arrangement between the Parties.

ARTICLE X

RELATIONSHIP OF THE PARTIES

10.01 Several Liability of Parties. The Parties shall be jointly liable to third parties, in proportion to their respective Working Interests, for any and all losses, claims, damages and liabilities, acts, omissions or assumptions of any obligation or liability done or undertaken or apparently done or undertaken by its directors, officers, agents, or employees in the exercise of its rights or the discharge of its obligations as a Party hereunder unless such losses, claims, damages or liabilities result from the willful misconduct or gross negligence of officers or directors but not of other employees or agents of the Party in which case such Party shall be severally liable therefor. All damages for loss or injury to persons or property arising out of the activities of the Venture, shall be borne by the Parties in proportion to their respective Working Interests at the time the loss or injury occurred and, in the event a Party is

required to satisfy any claim or judgment for such damages, it shall have the right of contribution against the other Party to the extent of such other Party's Working Interest in the Venture. Neither Party shall be liable to the other Party for any act or omission resulting in loss or liability to such other Party, except to the extent such loss or liability is caused by the negligence of the officers or directors (but not other employees or agents) of the first-mentioned Party. Each Party covenants and agrees to indemnify, defend and hold harmless the other Party and its directors, officers, and employees from and against any and all losses, claims, damages, and liabilities resulting from any unauthorized acts with respect to the Operations.

10.02 Other Business Opportunities. This Operating Agreement is, and the rights and obligations of the Parties are, strictly limited to the scope and purpose of the Venture. Except as otherwise expressly provided herein, the Parties shall have the free, unrestricted and independent right to engage in and receive the full benefits of any other business or activity ventures of any sort whatever, without consulting the other or inviting or allowing the other to participate therein, and without any accountability to the Venture or the other Party, even if such business or activity competes with the business of the Venture. No Party shall be under any fiduciary or other duty to the other Party which will prevent it from engaging in or enjoying the benefits of any competing venture or ventures which are within the general scope of the activities contemplated by this Operating Agreement. The legal doctrines of "corporate opportunity" or "business opportunity" which are sometimes applied to persons involved in a joint venture or subject to other fiduciary obligations shall not apply to the activities, ventures, or operations of any Party except as specifically provided herein, insofar as concerns the Premises, the Area of Mutual Interest, and the Operations of the Venture.

10.03 Insurance. Nothing contained in this Operating Agreement shall preclude the Parties from obtaining, at their sole expense and benefit, additional insurance covering risks not protected by the coverage to be maintained by the Operator pursuant to Section 5.04(k) hereof. Any Party obtaining such additional or other insurance shall promptly notify the other Party and the Operator in order to avoid a conflict between coverage or overlapping coverage and shall ensure that any such coverage includes waiver of subrogation against the other Party.

10.04 Implied Covenants. There are no implied covenants under this Operating Agreement or among the Parties other than those of good faith and fair dealing.

10.05 Consultants' and Brokerage Fees. Except as otherwise provided herein, each Party represents and warrants to the other Parties that it has not incurred any obligations or liabilities, contingent or otherwise, for the fees, operating commissions or other like payments of brokers, finders or agents in connection with this Operating Agreement or pertaining to the Joint Assets for which any Party will have any liability.

ARTICLE XI

THE PREMISES

11.01 Conveyance of Premises; Title Examination. Pursuant to the Exploration Agreement, immediately following the execution of the Operating Agreement, the joint venture created pursuant to the Exploration Agreement shall execute and deliver to the Venture appropriate instruments for purposes of conveying to the Venture all unpatented mining claims and state mineral leases, prospecting permits and applications therefor comprising the Premises. The Venture shall accept delivery of the instruments of conveyance of the Premises and the Operator shall record such instruments in the appropriate offices of Cochise County, Arizona. The Operator shall have the option, but not the duty, to undertake any and all title curative work that it reasonably determines to be necessary in connection with the Premises. Any and all costs incurred by the Operator in connection with such title curative work shall be charged to the Joint Account.

11.02 Joint Loss of Title. Any failure or loss of title to the Premises or any portion of the Joint Assets shall be the loss of the Venture and shall be charged to the Parties pursuant to Section 12.02(c). The Operator shall not be liable to the Venture for any loss of title to the Premises or the other Joint Assets, unless such loss results from the gross negligence or willful misconduct of the Operator.

11.03 Waiver of Right to Partition. The Parties hereby waive and release for the term of this Operating Agreement all rights of partition or sale in lieu thereof or other divisions of the Joint Assets, including any such rights provided by statute.

11.04 Financing Venture Contributions. So long as a Party maintains a Working Interest in the Venture, that Party shall be free to mortgage, pledge, or otherwise encumber its Working Interest solely for the purpose of financing its cash contributions to the Venture; provided, however, that, except for the security granted to Western by TDC in TDC's Working

Interest in connection with loans by Western to TDC pursuant to the provisions of Section 3.03 of the Exploration Agreement, TDC shall not mortgage, pledge or otherwise encumber its Working Interest until all loans made by Western to TDC pursuant to the provisions of Section 3.03 have been repaid to Western. The costs of obtaining any financing secured thereby and servicing such financing will be borne by the Party so obtaining the financing and not the Venture. If any Party so mortgages, pledges, or otherwise encumbers its Working Interest in the Venture, that Party shall make any and all payments and take all such action necessary to prevent default under any loan agreement and the foreclosure of any third-party liens. No Party shall have the right to mortgage, pledge or otherwise encumber the Joint Assets or the Premises.

These would be better if it follows through with Premises as before

11.05 Surrender or Abandonment of Premises. The Management Committee may authorize the Operator to surrender or to abandon any ^{portion} ~~unpatented mining claims or any lands covered by a state mining lease, prospecting permit or application for a prospecting permit comprising a portion of the~~ Premises. If the Management Committee authorizes any such surrender or abandonment over the objection of any Party, the Venture shall convey to such objecting Party, by quitclaim deed or assignment as appropriate, and without any cost to the Venture or the other Parties, all of the Venture's interest in the portions of the Premises to be abandoned or surrendered, and the abandoned or surrendered property shall cease to be a part of the Premises. Any portion of the Premises conveyed to the objecting Party shall be taken by the objecting Party subject to any royalties, liens or encumbrances applicable thereto.

11.06 Reacquisition. All unpatented mining claims and any lands previously covered by a state mining lease or prospecting permit which are surrendered or abandoned and which are not acquired by an objecting Party as provided in Section 11.05 above, shall be automatically included within the Area of Mutual Interest. In the event any Party acquires any interest in any unpatented claim or any portion of the lands previously covered by a state mining lease or prospecting permit surrendered or abandoned hereunder, such Party shall be deemed the "Acquiring Party" and the other Parties shall be deemed the "Offeree Party" for the purposes of Article VIII of this Agreement and the Parties shall have the respective rights, duties and obligations provided in Article VIII hereof.

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ARTICLE XII

FEDERAL INCOME TAXATION

12.01 Elections and Allocations. The provisions of Article XII of the Exploration Agreement, as modified by Section 9.04(b) of the Exploration Agreement and Section 12.02 hereof, shall apply to this Operating Agreement.

12.02 Allocations When Taking-in-Kind. Notwithstanding any other provision hereof, so long as one Party is taking in kind pursuant to Section 13.03 while the other Party's share of production is being sold by the Venture, all of the taxable income from such sales of production by the Venture shall be allocated to the Party which is not taking in kind.

ARTICLE XIII

VENTURE DISTRIBUTIONS

13.01 Cash Flow. Within thirty (30) days following the end of each calendar quarter, the Management Committee shall arrange for a distribution of all Cash Flow to the Parties. Payment of such distributions shall be accompanied by a statement supporting the calculation of the Cash Flow distribution.

13.02 Distribution of Cash Flow. With respect to the Venture, Cash Flow and distributions in kind (taken into account for purposes of this Section at their fair market value) shall be distributed as follows: (i) until such time as twenty-five percent (25%) of the Special Contribution has been recouped by Western, Western shall be allocated ninety percent (90%) of the Cash Flow of the Venture; (ii) after twenty-five percent (25%) of the Special Contribution has been recouped by Western and until such time as fifty percent (50%) of the Special Contribution has been recouped by Western, Western shall be allocated eighty percent (80%) of the Cash Flow of the Venture; (iii) after fifty percent (50%) of the Special Contribution has been recouped by Western, and until such time as seventy-five percent (75%) of the Special Contribution has been recouped by Western, Western shall be allocated seventy percent (70%) of the Cash Flow of the Venture; and (iv) after seventy-five percent (75%) of the Special Contribution has been recouped by Western and until such time as the remainder of the Special Contribution has been recouped by Western, Western shall be allocated sixty percent (60%) of the Cash Flow of the Venture. After recoupment by Western of the full amount of its Special

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Contribution Cash Flow and distributions in kind shall be allocated to the Parties in accordance with their respective Working Interests at the end of the calendar quarter. For purposes of this Section, the amount deemed "recouped" by Western in respect of its Special Contribution shall be the excess of the amount distributed to it hereunder over the amount which would have been distributed to it under the Exploration Agreement or under any other operating agreement entered into pursuant to Section 9.04 of the Exploration Agreement, if no Special Contribution had been made.

13.03 Venture Distributions in Kind.

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(a) So long as a Party is entitled to a distribution hereunder, that Party shall have the right to take in kind, subject to any contracts in place for the sale of production. The Parties may elect to take in kind by written notice to the Operator, and such election shall be in effect thereafter until such election is revoked. If either Party elects to take in kind, as soon as reasonably practicable and consistent with any contracts in place for the sale of production, the Operator shall reduce the Valuable Minerals produced from the Premises to a merchantable state, and the Party having so elected shall take in kind and separately dispose of its share of such productions in proportion to the value the Party would have received as Cash Flow distributions pursuant to Section 13.02 had the products been sold at the fair market value on the date of distribution. The election to take in kind shall govern all of the distributions to which a Party is entitled while such election is in effect, and not merely a portion of such distributions. With respect to the products taken in kind, delivery shall be deemed conclusively to have been made, possession to have begun, and title to have passed to the Party taking in kind, at the time such products are first segregated for the accounts of the Party or Parties. Thereafter, the Party or Parties taking in kind shall assume all risk and liability for the loss of or damage to such products and shall bear any and all increased costs and expenses to the Venture in segregating the Valuable Minerals, or the products thereof, for the account of the Parties, and delivering the products in kind.

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ARTICLE XIV

SALE, TRANSFER, OR ASSIGNMENT

14.01 Sale, Transfer, or Assignment. Subject to the provisions of Section 11.04 and Section 14.03 hereof, either Party may sell, convey, assign, transfer, pledge or encumber its Working Interest subject to the prior written consent of

the other Parties, which consent shall not be unreasonably withheld. Such consent will be deemed to be reasonably withheld if any Party seeks to pledge, mortgage or otherwise encumber its Working Interests for purposes other than obtaining financing of its capital contributions to the Venture. Any Party may, at any time, assign and transfer any or all its Working Interests, without the consent of the other Parties, to a corporation, individual or business entity which is controlled by, controls or is under common control with such Party, or to a successor thereof by reason of merger, consolidation or reorganization. No transfer, sale or assignment shall operate to relieve the assignor from any liability or obligation under this Operating Agreement which arose prior to the transfer, sale or assignment. The Parties acknowledge that if there are more than two parties to this Operating Agreement, it may be necessary to make changes in the provisions of Article IX, Article XII, Article XIII and Article XVI, among others, in order to maintain the same tax allocations and economic arrangement provided herein. Accordingly, the Parties agree to make such changes if there should be three or more parties hereto by virtue of an assignment by a Party of a portion of its Working Interest.

14.02 Agreement by Transferee. Any transfer of interest referred to in Section 14.01 of this Operating Agreement shall be subject to the condition that the transferee first shall give its written commitment to be bound by all of the terms, conditions, and covenants of this Operating Agreement. Such transferee shall thereafter be considered for all purposes to be a Party to this Operating Agreement.

14.03 Compliance with Laws. Notwithstanding any provisions hereof to the contrary, any sale, transfer or assignment (including sales, transfers, or assignments by any entity related to or affiliated with any Party) of any interest in this Operating Agreement or the Working Interest of either Party shall be void and of no legal effect if, in the opinion of counsel for the Venture, (i) registration is required under the Securities Act of 1933, as amended, or (ii) such transfer would violate applicable State Securities or Blue Sky laws in any respect. The opinion of counsel shall be rendered by counsel approved by the Parties and all cost and expense thereof shall be borne by the Party seeking to transfer its Working Interest. In no event shall any interest in the Venture be transferred to a minor or an incompetent or in violation of any state or federal law.

14.04 Third-Party Liens. In the event of the foreclosure of any third-party lien which has attached to the interest of any Party under this Operating Agreement, the other Party may make such payments and take all such actions

as are reasonably necessary to prevent the foreclosure or the forfeiture of the interest which is subject to such third-party lien. The Party preventing any such foreclosure or forfeiture shall be entitled to recover from the Party whose interest is being foreclosed upon its actual, reasonable costs, including, but not limited to, attorneys' fees, in preventing such foreclosure or forfeiture and shall have a lien on that Party's interest in the Venture and in the distributions to which that Party may be entitled to secure the repayment of such costs, plus interest from date of the outlay of funds at the rate of Prime plus four (4) percentage points per annum. The Party preventing the foreclosure or forfeiture shall be entitled, at any time, to foreclose its lien upon the interest of the other Party as provided by law.

14.05 Effect on Capital Accounts and Tax Items.

(a) In General. In the case of a transfer which does not terminate the Venture for income tax purposes under Section 708(b) of the Code, (i) the capital account of the transferor shall carry over to the transferee and (ii) the varying interests of transferor and transferee in the Venture shall be taken into account on the basis of an interim closing of the tax partnership's books, unless the transferor and the tax matters partner designated in Section 5.04(h) agree upon some other method under Section 706 of the Code, in which case that method shall be used.

(b) Transfers Resulting in Termination for Tax Purposes. In the case of a transfer which results in a termination of the Venture for tax purposes under Code Section 708(b), the provisions of Section 16.02 shall be deemed to apply and the capital accounts of the Parties as adjusted by that Section shall govern the constructive liquidation of the partnership under that Section and paragraph (b)(1)(iv) of Treas. Regs. § 1.708-1; and the Venture shall be deemed to be reconstituted and all of the Properties recontributed, under paragraph (b)(i)(iv) of Treas. Regs. § 1.708-1. For purposes of this Operating Agreement, the Venture shall treat separately, as a separately contributed property, the undivided interest in each property deemed recontributed to the Venture under the previous sentence.

ARTICLE XV

DEFAULT

15.01 Event of Default. In the event any Party (the "Defaulting Party") commits or suffers one of the specific

events of default listed below, the other Party (the "Non-Defaulting Party"), may serve upon the Defaulting Party notice of default, alleging the specific event or events of default. The Defaulting Party shall have twenty (20) days from receipt of notice of default in which to cure or diligently commence to cure the events of default listed in subparagraphs (a), (b) and (h) below and sixty (60) days from receipt of notice of default in which to cure, by obtaining a dismissal, discharge or stay, as appropriate, the events of default listed in subparagraphs (c), (d), (e), (f) or (g) below. If the Defaulting Party fails to cure or, with respect to the events listed in subparagraphs (a), (b) or (h), diligently commence to cure a default for which notice has been given within the period provided for such purpose herein, the Non-Defaulting Party may elect to terminate this Operating Agreement without diminishing any other remedy the Non-Defaulting Party may have against the Defaulting Party at law or in equity, and the Non-Defaulting Party shall, if necessary, choose a new Operator. In addition to the foregoing, the Defaulting Party shall lose its right to vote on decisions by the Management Committee until the default has been cured. Events of default shall include, but shall not be limited to, the following:

(a) the violation by a Party of any of the restrictions upon that Party's right to transfer its Working Interest;

(b) the failure of a Party's transferee to assume in writing and agree to be bound by the transferor's obligations as provided in Section 14.02;

(c) institution by a Party of proceedings of any nature under any laws of the United States or any state relating to the relief of debtors wherein such Party is seeking relief as a debtor;

(d) a general assignment by a Party for the benefit of its creditors;

(e) the appointment of a trustee or receiver to take possession of substantially all of a Party's assets;

(f) the entry by any court of a charging order with respect to a Party's interest in the Venture;

(g) a petition to have a Party adjudged bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy, is filed by or against such Party; and

(h) default in performance of or failure to comply with any material agreement, obligation, undertaking or representation of a Party contained in this Operating Agreement; provided that, in the event a Party is serving as Operator, the default by the Operator of its duties or obligations hereunder shall not constitute a default by such Party for the purposes of this Section 15.01(h).

15.02 Remedies. Subject to the provisions hereof, upon the occurrence of an event of default, the remedies available to the Non-Defaulting Party with respect to the Defaulting Party, in addition to the termination of this Agreement, shall include:

(a) instituting any action or proceeding for specific performance, injunction or other equitable relief;

(b) instituting any action at law as may be permitted in order to recover damages; and

(c) instituting such proceedings as may be necessary or appropriate to secure an accounting and to terminate and liquidate the Venture.

ARTICLE XVI

TERMINATION

16.01 Termination of Operating Agreement. This Operating Agreement may be terminated in the event (i) the Parties agree in writing to terminate this Operating Agreement, or (ii) an event of default occurs, as defined in Section 15.01 hereof, which the Defaulting Party fails to cure within the period provided in Section 15.01 hereof, and the Non-Defaulting Party elects, at its sole option, to terminate this Operating Agreement by giving written notice to the Defaulting Party of such termination. The termination of this Operating Agreement hereunder shall be effective as of the date the notice of termination is given, or deemed to be given, to the Defaulting Party pursuant to Section 17.06 hereof. If this Operating Agreement is so terminated, the joint venture relationship between the Parties shall be dissolved and the Liquidating Party (as defined in Section 16.03) shall wind up the Operations of the Venture as provided in Section 16.03 hereof.

16.02 Liquidation and Distribution.

(a) Upon the dissolution of the joint venture relationship between the Parties, the Party identified herein

as the "Liquidating Party" shall have the right and authority, including the rights and authority provided to the Management Committee hereunder, to take all action necessary to wind up the Operations of the Venture. In the event the Parties agree to terminate this Operating Agreement, the Management Committee shall appoint the Liquidating Party. If this Operating Agreement is terminated as a result of an uncured default by either party, the Party designated as the Non-Defaulting Party in Section 15.01 shall be the Liquidating Party. All revenues, costs, and expenses incurred by the Liquidating Party in winding up the Operations shall be charged to and reflected in the Joint Account. The Liquidating Party shall conclude such windup as soon as reasonably practicable and as required by law following the termination of this Operating Agreement. Termination of this Operating Agreement shall not relieve either Party of any liability or obligation which has accrued or attached prior to the date of termination hereof. The Liquidating Party may liquidate all or some of the Joint Assets in the course of winding up the Venture. The Liquidating Party shall satisfy all liabilities resulting from Operations out of the proceeds of liquidation or otherwise.

(b) The Liquidating Party shall establish by independent appraisal the fair market value of the Joint Assets, taking into account all liabilities and debts of the Venture.

(c) Notwithstanding Article XII of this Operating Agreement, gain recognized upon the sale of all or some of the Joint Assets incident to liquidation (but only to the extent that such gain exceeds any Built-In Gain as defined for purposes of Article XII in the case of contributed property) shall be allocated in the following order: first to Western, to the extent of the Preference (as defined below), and second, (i) in the event that the Parties each have 50% Working Interests, any additional gain shall be allocated between the Parties in such proportions as necessary to cause Western's capital account balance to exceed TDC's capital account balance by the amount of the Preference (as defined below) and (ii) in the event that the Parties do not each have 50% Working Interests, the additional gain shall be allocated between the Parties in such proportions as are necessary to cause Western's capital account balance to exceed, by the amount of the Preference, that amount which bears the same ratio to TDC's capital account balance as Western's Working Interest bears to TDC's Working Interest. Joint Assets which are not liquidated by the Operator shall be valued at their market value and the unrealized gain or loss, as the case may be, shall be allocated between the Parties in the manner provided herein as if the assets had been sold at fair market

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value. The Liquidating Party shall establish by independent appraisal the fair market value of any Joint Assets which are not liquidated by the Operation. For purposes of this Section 16.02, "Preference" shall mean the excess, if any, of that portion of the Special Contribution which has not yet been recouped by Western under Section 13.02 (treating all distributable Cash Flow as if distributed) under this Section 16.02(c), or under corresponding provisions of the Exploration Agreement or other operating agreement entered into pursuant hereto, together with the Additional Amount (as defined in Section 3.03 of the Exploration Agreement) in respect of such unrecouped portion.

(d) Any Joint Assets which are not liquidated by the Operation shall be distributed to the Parties in accordance with the balances in their respective capital accounts (taking properties distributed in kind into account at fair market value). Any Party with a capital account deficit shall contribute to the Venture an amount of cash equal to that deficit. The Operator shall have sole discretion to determine which portion of each Party's distribution shall be in cash and which portion shall be in kind.

16.03 Right to Data After Termination. If this Operating Agreement is terminated as provided in this Article XVI upon the mutual agreement of the Parties, each Party shall be entitled to copies of all information acquired hereunder as of the date of the termination and not previously furnished to it. If this Operating Agreement is terminated as provided in this Article XVI because of the occurrence of an event of default as set forth in Section 15.01 hereof, the Defaulting Party shall have no right to information acquired hereunder not previously furnished to it. The Defaulting Party shall furnish to the Non-Defaulting Parties copies of all such information the Defaulting Party may have acquired and the Defaulting Party shall make no further use of any information acquired hereunder or disclose any such information to any third party.

ARTICLE XVII

GENERAL PROVISIONS

17.01 Indemnification. Each Party hereby agrees to indemnify and to hold the Venture and the other Parties, their directors, officers and agents, harmless from and against any and all claims, demands, losses, damages, liabilities, costs, fees, expenses (including attorneys' fees), actions, lawsuits and other proceedings in law or in equity of every kind and nature whatsoever resulting, directly or indirectly in whole

or in part from, or occurring in connection with, any public or private offering or sale of any securities of or interests in such first-mentioned Party.

17.02 Confidentiality. The Parties hereto agree to treat as confidential the terms and provisions of this Operating Agreement, the terms and provisions of all contracts and agreements pertaining to the Venture's interest in the Premises, and all data, drill logs, assays, samples, reports, records, and other information relating to the Premises, the Operations and the affairs of the Operator, and such information shall not be disclosed to any other person except when such disclosure is required by any law, rule, regulation, or order, including, without limitation, any such disclosure required in connection with a public or private offering or sale of any securities of or interests in any Party, or consented to in writing by the other Parties.

17.03 Memorandum for Recording. The Parties agree to execute a written Memorandum of this Operating Agreement, for the sole purpose of recording, in form and substance mutually acceptable to the Parties.

17.04 Laws and Regulations. This Operating Agreement shall be deemed made and entered into in the State of Arizona, and it shall be governed by the laws of Arizona and be subject to all applicable state and federal laws and rules and regulations of public bodies exercising jurisdiction over this Operating Agreement of the exploration, development, or operation of the Premises.

17.05 Force Majeure. Except for the obligations to make money payments when due hereunder, the obligations of any Party under this Operating Agreement shall be suspended and no Party shall be deemed in default or liable for damages or other remedies while such Party is prevented from performance thereof by acts of God, the elements, riots, acts or failure to act on the part of federal, state, or local government agencies, inability to obtain necessary permits or approvals from federal, state, or local government agencies, inability to secure materials or to obtain access to the location of Operations, strikes, lockouts, damage to, destruction, or unavoidable shutdown of necessary facilities, or any other matters (whether or not similar to those mentioned above) beyond their reasonable control; provided, however, that settlement of strikes or lockouts shall be entirely within the discretion of the Party experiencing the difficulty; and provided further that the Party so prevented from complying with its obligations hereunder shall promptly notify the other Parties thereof and shall exercise diligence in an effort to remove or overcome the cause of such inability to perform.

17.06 Notices. Any notice, election, proposal, objection or other document required or permitted to be given hereunder shall be in writing and either (a) delivered personally to the Party or an officer of the Party to whom directed; (b) sent by registered or certified United States mail, postage prepaid, return receipt requested; or (c) sent by telegraph or telex with all necessary charges fully prepaid, confirmation of delivery requested. All such notices shall be addressed to the Parties as follows:

If to TDC:

Tombstone Development Company, Inc.

Attn: _____

If to Western:

Western States Minerals Corporation
4975 Van Gordon Street
Wheatridge, Colorado 80033
Attn: President

Any Party may from time to time change its address or addresses for future notices hereunder by notice to the other Parties in accordance with this Section 17.06. Notices and all other documents shall be complete and deemed to have been given, and payments shall be sufficiently tendered, immediately if delivered personally, three (3) days after the date postmarked thereon if sent by mail, or the day following transmission if sent by telegraph or telex.

17.07 Severability. In the event any provision of this Operating Agreement is, or the operations contemplated hereby are found to be, inconsistent with or contrary to any such laws, rules, or regulations, the latter shall be deemed to control, and this Operating Agreement shall be regarded as modified accordingly and, as so modified, shall continue in full force and effect.

17.08 Rule Against Perpetuities. Any right or option to acquire any interest in real or personal property under this Operating Agreement must be exercised, if at all, so as to vest such interest in the acquirer within 21 years after any present life in being.

17.09 Currency. All dollar sums specified herein shall be in lawful money of the United States and shall not in any way be diminished or impaired by any fluctuation in the exchange rate of any foreign currency.

17.10 Sole Agreement. This Operating Agreement shall constitute the sole understanding of the Parties with respect to the Premises and the subject matter hereof, all previous agreements with respect thereto, being expressly superseded and replaced hereby, and no modifications or alteration of this Operating Agreement shall be effective unless in writing executed subsequent to the date hereof by the Parties. No prior or contemporaneous written or oral promises, representations, or agreements shall be binding upon the Parties.

17.11 Title Headings. The title headings of the respective articles and sections of this Operating Agreement are inserted for convenience only and shall not be deemed to be a part of this Operating Agreement or considered in construing this Operating Agreement.

17.12 Further Instruments. The Parties hereto agree that they will execute any and all other instruments which may be necessary or required to carry out and effectuate any and all of the provisions hereof.

17.13 Binding Effect. This Operating Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Exploration Agreement effective as of the date first above written.

TOMBSTONE DEVELOPMENT COMPANY, INC.

By _____
President

WESTERN STATES MINERALS CORPORATION

By _____
President

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EXHIBIT E
TO
JOINT VENTURE AGREEMENT
BETWEEN
TOMBSTONE DEVELOPMENT CORPORATION
AND
WESTERN STATES MINERALS CORPORATION

NET PROFITS INTEREST

1. Definition of Terms. Unless otherwise defined in this Exhibit, all terms used in this Exhibit shall have the meaning assigned to them in the Agreement to which this Exhibit is attached.

2. Calculation and Payment. In the event any Party (the "Payee") is entitled to a payment based upon the net profits derived from the Property the amounts due Payee shall be determined as of the end of each calendar quarter and shall be accounted for and distributed as follows:

(a) The Party or Parties (collectively the "Payor") responsible for making payments to the Payee shall establish and maintain on its books a separate net profits account (the "Account") in accordance with good accounting practices. The Account shall be a noninterest-bearing account. The books and records of the Account shall be open for examination, inspection, copying and audit by Payee and its accredited representatives at all reasonable times and at Payee's sole expense.

(b) The Account shall be credited with an amount equal to the sale proceeds actually received by Payor for all Valuable Minerals produced from the Property, the net sale proceeds received by Payor from the sale of any equipment, materials or supplies the cost of which was charged to the Account, the amount of any judgments, awards or revenues collected by Payor on account of its ownership interest in the Property, and the amount received by Payor from the sale, lease or other disposition of the Property, or any portion thereof.

(c) The Account shall be charged with the following items pertaining to Payor's activities insofar and to the extent the same are properly allocable to the Property, to wit:

(i) an amount equal to the cost of all direct labor (including all ordinary and reasonable fringe benefits); transportation; and all other direct costs and services necessary for exploring, evaluating, developing, equipping, operating, and maintaining the Property and the material, equipment and improvements thereon; all costs of material, equipment and supplies purchased, leased, rented or supplied by Payor and used on any portion of the Property; and all other costs and expenses otherwise chargeable to the Account;

(ii) an amount equal to the expenses of litigation, liens, judgments and liquidated liabilities and claims incurred and paid by Payor on account of its ownership of the Property or the material and equipment used thereon, or incident to the development, exploration, operation, or maintenance thereof;

(iii) an amount equal to all taxes, except income taxes, paid by Payor, relating to the Subject Property and the material, equipment and improvements thereon, including, by way of example and not limitation, ad valorem, property, production, severance, occupation, and any other taxes assessed against or attributable to the Property or material, equipment or improvements thereon;

(iv) an amount equal to insurance premiums paid by Payor on account of its operations relating to the Property, together with all expenditures incurred and paid in settlement of any and all losses, claims, damages, judgments and other expenses, including legal services, relating to the Property or its operation, or any material, equipment or improvements thereon;

(v) an amount equal to a reasonable charge for overhead to cover the portion properly allocable to the Property for compensation or salaries paid to the managing officers of Payor and of its employees whose time is not allocated directly to the Property and for the office expenses of Payor; and

(vi) an amount equal to all other expenditures reasonably incurred by Payor for the necessary or proper development, exploration, operation, maintenance and utilization of the Property, including without limitation all rent, royalty, overriding royalty, penalties and other payments based on production or otherwise, to lessors

or owners of other interests in the property comprising the Property or to purchasers of production therefrom.

(d) Amounts due Payee with respect to its Net Profits Interest shall be determined for each calendar quarter by deducting the aggregate of any charge balance existing in the Account at the first of such quarter, plus the total charges properly made thereto during such quarter, from the sum of any credit balance existing in the Account at the first of such quarter and total credits properly made thereto during such quarter. Payee shall receive payments attributable to its Net Profits Interest only for such calendar quarters when such credits exceed such charges plus a reserve for 60 days' estimated working capital requirements. On or before the last day of the month following the close of each calendar quarter, Payor shall furnish to Payee a detailed statement clearly reflecting the condition of the Account as of the close of business on the last day of the preceding calendar quarter. Any deficit or loss (i.e., an excess of charges over credits) reflected by any such statement shall be carried forward in the Account for the next and succeeding calendar quarters until such deficit or loss has been liquidated. In case of net profits in the Account (i.e., an excess of credits over charges) as reflected in any such statement, payment to Payee of the portion of such net profits attributable to its Net Profits Interest shall be enclosed with the statement rendered to Payee and the Account shall then be charged with an amount equal to the full amount on which the payment to Payee shall have been calculated.

(d) a general assignment by a Party for the benefit of its creditors;

(e) the appointment of a trustee or receiver to take possession of substantially all of a Party's assets;

(f) the entry by any court of a charging order with respect to a Party's interest in the Venture;

(g) a petition to have a Party adjudged bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy, is filed by or against such Party; and

(h) default in performance of or failure to comply with any material agreement, obligation, undertaking or representation of a Party contained in this Exploration Agreement; provided that, in the event a Party is serving as Operator, the default by the Operator of its duties or obligations hereunder shall not constitute a default by such Party for the purposes of this Section 15.01(h).

15.02 Remedies. Subject to the provisions hereof, upon the occurrence of an event of default, the remedies available to the Non-Defaulting Party with respect to the Defaulting Party, in addition to the termination of this Agreement, shall include:

(a) instituting any action or proceeding for specific performance, injunction or other equitable relief;

(b) instituting any action at law as may be permitted in order to recover damages; and

(c) instituting such proceedings as may be necessary or appropriate to secure an accounting and to terminate and liquidate the Venture.

ARTICLE XVI

TERMINATION

16.01 Termination During Earning Period. This Exploration Agreement shall terminate and the joint venture relationship of the Parties shall dissolve, at the election of either Party, in the event (i) the Parties agree in writing to terminate this Exploration Agreement, (ii) an event of default occurs, as defined in Section 15.01 hereof, which the defaulting Party fails to cure, and the Non-Defaulting Party elects, at its sole option, to terminate this Exploration Agreement by giving written notice of such termination to the Defaulting Party, (iii) Western elects to terminate this

Exploration Agreement, or (iv) Western fails or elects not to make one or more cash contributions pursuant to the Cash Calls of the Operator during the Earning Period. If this Exploration Agreement terminates during the Earning Period as provided herein, Western shall have no further interest whatsoever in the Property; provided, however, the Parties shall have equal rights and interests in the remainder of the Joint Assets. Except as otherwise provided herein, no payments made by or amounts contributed by Western to the Venture or TDC prior to the time of such termination shall be refunded, credited or returned to Western by either the Venture or TDC. In the event TDC fails to cure its default of any obligation or representation hereunder, including, but not limited to the representations set forth in Section 11.07 hereof, Western may elect to terminate this Exploration Agreement, and, in addition to any other remedy which may be available to Western hereunder, Western shall have the right to recover all sums previously paid to the Venture pursuant to Section 3.02 hereof. At the request of TDC in the event this Exploration Agreement is terminated during the Earning Period, Western shall execute a recordable deed, without warranty of title, conveying to TDC all of Western's right, title and interest in and to the Joint Assets.

16.02 Termination Subsequent to Earning Period.

This Exploration Agreement may be terminated subsequent to the Earning Period in the event (i) the Parties agree in writing to terminate this Exploration Agreement, or (ii) an event of default occurs, as defined in Section 15.01 hereof, which the Defaulting Party fails to cure within the period provided in Section 15.01 hereof, and the Non-Defaulting Party elects, at its sole option, to terminate this Exploration Agreement by giving written notice to the Defaulting Party of such termination. The termination of this Exploration Agreement hereunder shall be effective as of the date the notice of termination is given, or deemed to be given, to the Defaulting Party pursuant to Section 17.06 hereof. If this Exploration Agreement is so terminated, the joint venture relationship between the Parties shall be dissolved and the Liquidating Party (as defined in Section 16.03) shall wind up the Operations of the Venture as provided in Section 16.03 hereof.

16.03 Liquidation and Distribution.

(a) Upon the dissolution of the joint venture relationship between the Parties, the party identified herein as the "Liquidating Party" shall have the right and authority, including the rights and authority provided to the Management Committee hereunder, to take all action necessary to wind up the Operations of the Venture. In the event the Parties agree to terminate this Exploration Agreement, the Management Committee shall appoint the Liquidating Party. If this Exploration Agreement is terminated as a result of an uncured

default by either party, the Party designated as the Non-Defaulting Party in Section 15.01 shall be the Liquidating Party. All revenues, costs, and expenses incurred by the Liquidating Party in winding up the Operations shall be charged to and reflected in the Joint Account. The Liquidating Party shall conclude such windup as soon as reasonably practicable and as required by law following the termination of this Exploration Agreement. Termination of this Exploration Agreement shall not relieve either Party of any liability or obligation which has accrued or attached prior to the date of termination hereof. The Liquidating Party may liquidate all or some of the Joint Assets in the course of winding up the Venture. The Liquidating Party shall satisfy all liabilities resulting from Operations out of the proceeds of liquidation or otherwise.

(b) The Liquidating Party shall establish by independent appraisal the fair market value of the Joint Assets, taking into account all liabilities and debts of the Venture.

(c) Notwithstanding Section 12.02 of this Agreement, gain recognized upon the sale of all or some of the Joint Assets incident to liquidation (but only to the extent that such gain exceeds any Built-In Gain as defined in Section 12.02 in the case of contributed property) shall be allocated in the following order: first to Western, to the extent of the Preference (as defined below), and second, (i) in the event that the Parties each have 50% Participating Interests, any additional gain shall be allocated between the Parties in such proportions as necessary to cause Western's capital account balance to exceed TDC's capital account balance by the amount of the Preference (as defined below) and (ii) in the event that the Parties do not each have 50% Participating Interests, the additional gain shall be allocated between the Parties in such proportions as are necessary to cause Western's capital account balance to exceed, by the amount of the Preference, that amount which bears the same ratio to TDC's capital account balance as Western's Participating Interest bears to TDC's Participating Interest. Joint Assets which are not liquidated by the Operator shall be valued at their market value and the unrealized gain or loss, as the case may be, shall be allocated between the parties in the manner provided herein as if the assets had been sold at fair market value. The Liquidating Party shall establish by independent appraisal the fair market value of any Joint Assets which are not liquidated by the Operator. For purposes of this Section 16.03, "Preference" shall mean the excess, if any, of that portion of the Special Contribution which has not yet been recouped by Western under Section 13.02 (treating all distributable Cash Flow as if distributed) or under this Section 16.03(c), together with the Additional Amount in respect of such unrecouped portion.

(d) Any Joint Assets which are not liquidated by the Operator shall be distributed to the Parties in accordance with the balances in their respective capital accounts (taking properties distributed in kind into account at fair market value). Any Party with a capital account deficit shall contribute to the Venture an amount of cash equal to that deficit. The Operator shall have sole discretion to determine which portion of each Party's distribution shall be in cash and which portion shall be in kind.

16.04 Right to Data After Termination. If this Exploration Agreement is terminated as provided in this Article XVI upon the mutual agreement of the Parties, each Party shall be entitled to copies of all information acquired hereunder as of the date of the termination and not previously furnished to it. If this Exploration Agreement is terminated as provided in this Article XVI because of the occurrence of an event of default as set forth in Section 15.01 hereof, the Defaulting Party shall have no right to information acquired hereunder not previously furnished to it. The Defaulting Party shall furnish to the Non-Defaulting Parties copies of all such information the Defaulting Party may have acquired and the Defaulting Party shall make no further use of any information acquired hereunder or disclose any such information to any third party.

ARTICLE XVII

GENERAL PROVISIONS

17.01 Indemnification. Each Party hereby agrees to indemnify and to hold the Venture and the other Parties, their directors, officers and agents, harmless from and against any and all claims, demands, losses, damages, liabilities, costs, fees, expenses (including attorneys' fees), actions, lawsuits and other proceedings in law or in equity of every kind and nature whatsoever resulting, directly or indirectly in whole or in part from, or occurring in connection with, any public or private offering or sale of any securities of or interests in such first-mentioned Party.

17.02 Confidentiality. The Parties hereto agree to treat as confidential the terms and provisions of this Exploration Agreement, the terms and provisions of all contracts and agreements pertaining to the Venture's interest in the Property, and all data, drill logs, assays, samples, reports, records, and other information relating to the Property, the Operations and the affairs of the Operator, and such information shall not be disclosed to any other person except when such disclosure is required by any law, rule, regulation, or order, including, without limitation, any such

disclosure required in connection with a public or private offering or sale of any securities of or interests in any Party, or consented to in writing by the other Parties.

17.03 Memorandum for Recording. The Parties agree to execute a written Memorandum of this Exploration Agreement, for the sole purpose of recording, in form and substance mutually acceptable to the Parties.

17.04 Laws and Regulations. This Exploration Agreement shall be deemed made and entered into in the State of Colorado, and it shall be governed by the laws of Colorado and be subject to all applicable state and federal laws and rules and regulations of public bodies exercising jurisdiction over this Exploration Agreement of the exploration, development, or operation of the Property.

17.05 Force Majeure. Except for the obligations to make money payments when due hereunder, the obligations of any Party under this Exploration Agreement shall be suspended and no Party shall be deemed in default or liable for damages or other remedies while such Party is prevented from performance thereof by acts of God, the elements, riots, acts or failure to act on the part of federal, state, or local government agencies, inability to obtain necessary permits or approvals from federal, state, or local government agencies, inability to secure materials or to obtain access to the location of Operations, strikes, lockouts, damage to, destruction, or unavoidable shutdown of necessary facilities, or any other matters (whether or not similar to those mentioned above) beyond their reasonable control; provided, however, that settlement of strikes or lockouts shall be entirely within the discretion of the Party experiencing the difficulty; and provided further that the Party so prevented from complying with its obligations hereunder shall promptly notify the other Parties thereof and shall exercise diligence in an effort to remove or overcome the cause of such inability to perform.

17.06 Notices. Any notice, election, proposal, objection or other document required or permitted to be given hereunder shall be in writing and either (a) delivered personally to the Party or an officer of the Party to whom directed; (b) sent by registered or certified United States mail, postage prepaid, return receipt requested; or (c) sent by telegraph or telex with all necessary charges fully prepaid, confirmation of delivery requested. All such notices shall be addressed to the Parties as follows:

If to TDC:

Tombstone Development Company, Inc.

Attn: _____

If to Western:

Western States Minerals Corporation
4975 Van Gordon Street
Wheatridge, Colorado 80033

Attn: President

Any Party may from time to time change its address or addresses for future notices hereunder by notice to the other Parties in accordance with this Section 17.06. Notices and all other documents shall be complete and deemed to have been given, and payments shall be sufficiently tendered, immediately if delivered personally, three (3) days after the date postmarked thereon if sent by mail, or the day following transmission if sent by telegraph or telex.

17.07 Severability. In the event any provision of this Exploration Agreement is, or the operations contemplated hereby are found to be, inconsistent with or contrary to any such laws, rules, or regulations, the latter shall be deemed to control, and this Exploration Agreement shall be regarded as modified accordingly and, as so modified, shall continue in full force and effect.

17.08 Rule Against Perpetuities. Any right or option to acquire any interest in real or personal property under this Exploration Agreement must be exercised, if at all, so as to vest such interest in the acquirer within 21 years after any present life in being.

17.09 Currency. All dollar sums specified herein shall be in lawful money of the United States and shall not in any way be diminished or impaired by any fluctuation in the exchange rate of any foreign currency.

17.10 Sole Agreement. This Exploration Agreement shall constitute the sole understanding of the Parties with respect to the Property and the subject matter hereof, all previous agreements with respect thereto, being expressly superseded and replaced hereby, and no modifications or alteration of this Exploration Agreement shall be effective unless in writing executed subsequent to the date hereof by the Parties. No prior or contemporaneous written or oral promises, representations, or agreements shall be binding upon the Parties.

17.11 Title Headings. The title headings of the respective articles and sections of this Exploration Agreement are inserted for convenience only and shall not be deemed to be a part of this Exploration Agreement or considered in construing this Exploration Agreement.

17.12 Further Instruments. The Parties hereto agree that they will execute any and all other instruments which may be necessary or required to carry out and effectuate any and all of the provisions hereof.

17.13 Binding Effect. This Exploration Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Exploration Agreement effective as of the date first above written.

TOMBSTONE DEVELOPMENT COMPANY, INC.

By _____
President

WESTERN STATES MINERALS CORPORATION

By _____
President