

PRODUCTION SHARING AGREEMENT

This PRODUCTION SHARING AGREEMENT (this "Agreement") is made and entered into in Metro Manila, Philippines, this _____ day of _____, 1994, by and between:

THE REPUBLIC OF THE PHILIPPINES, referred to as the "Government", represented by the Secretary of the Department of Environment and Natural Resources, Hon. Angel C. Alcala, with offices at the Department of Environment and Natural Resources Building, Visayas Avenue, Diliman, Quezon City, Metro Manila

and

PHILNICO MINING AND INDUSTRIAL CORPORATION, a corporation duly organized and existing under the laws of the Republic of the Philippines, hereinafter referred to as the "Contractor", with offices at 2283 Pasong Tamo Extension, Makati, Metro Manila, represented in this act by its President and Chairman of the Board JESUS S. CABARRUS, as authorized by the Board under Annex A which forms an integral part hereof.

WITNESSETH

WHEREAS, the 1987 Constitution of the Republic of the Philippines (the "Constitution") provides in Article XII, Section 2 that all lands of the public domain, waters, minerals, coal, petroleum, and other natural resources are owned by the State and that the exploration development and utilization of natural resources shall be under the full control and supervision of the State; and

WHEREAS, the Constitution further provides that the State may directly undertake such activities or it may enter into co-production, joint venture or production sharing agreements with Filipino citizens or corporations or associations at least sixty per centum of whose capital is owned by such citizens; and

WHEREAS, Republic Act No. 1828, as amended, authorized the development, exploitation, and utilization of the mineral deposits in the Surigao Mineral Reservation and granted authority to the President of the Philippines to engage the services of independent contractors for that purpose; and

WHEREAS, by Executive Order No. 279 issued on July 25, 1987, the Secretary of the Department of Environment and Natural Resources is authorized to enter into production sharing agreements in furtherance of the objectives of the Government and the Constitution to bolster the national economy through systematic development and exploitation of mineral lands; and

WHEREAS, pursuant to Letter of Instructions No. 1447 (LOI 1447) issued on February 12, 1985, all the rights and privileges granted to an operator of the Surigao Mineral Reservation under Section 3 of Republic Act No. 1828 were granted to the contractor therein; and

WHEREAS, the Government desires to avail itself of the financial resources, technical competence and skill which Contractor is capable of applying in the Mining Operations at the project contemplated herein; and

WHEREAS, Contractor desires to join and assist the Government in the development and exploitation for commercial purposes of nickel, cobalt, chrome and iron deposits existing in the Contract Area (as hereinafter defined) and any other minerals which may be discovered in such Contract Area; and

WHEREAS, Contractor has available to it the capital, technical competence and skills necessary to carry out the Mining Operations herein described.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants, terms and conditions hereinafter set forth, it is hereby stipulated and agreed as follows:

SECTION I

SCOPE

1.1 This Agreement is a production sharing agreement entered into pursuant to Executive Order No. 279.

1.2 The primary purpose of this Agreement is to provide for the exploration, development and commercial utilization of nickel, cobalt, chrome, iron and other deposits existing within the Contract Area, with all necessary services, technology and financing to be furnished or arranged for by the Contractor in accordance with the provisions of this Agreement. The Contractor shall not, by virtue of this Agreement, acquire any title to lands encompassed within the Contract Area.

1.3 The Contractor shall undertake and execute, for and on behalf of the Government, Mining Operations in accordance with the provisions of this Agreement, and is hereby constituted and appointed for the purposes of this Agreement the exclusive entity to conduct Mining Operations in the Contract Area.

1.4 The Contractor shall assume all exploration risk such that if no Minerals in commercial quantity are developed and produced, it will not be entitled for reimbursement.

1.5 During the term of this Agreement, the total value of production and sale of marketable products derived from the Mining Operations contemplated herein shall be accounted for and divided between the Government and Contractor in

accordance with Section VII hereof.

SECTION II DEFINITIONS

As used in this Agreement, the following words and terms, whether in the singular or plural, shall have the following respective meanings:

- 2.1 Agreement means this Production Sharing Agreement.
- 2.2 Associated Minerals means ore minerals which occur together with the principal ore mineral.
- 2.3 Budget means an estimate of expenditures to be made by Contractor in Mining Operations contemplated hereunder to accomplish the Work Program for each particular period.
- 2.4 Calendar Year or Year means a period of twelve (12) consecutive months starting with first of January and ending on December 31, while Calendar Quarter means a period consisting of three (3) consecutive months with the first calendar quarter starting with the first day of January.
- 2.5 Central Bank means the Bangko Sentral ng Pilipinas.
- 2.6 Commercial Production means the production of sufficient quantity of minerals to sustain economic viability of mining and refining operations as specified in the approved Work Program and as determined and declared by the Contractor after completion of the debugging of the mining and refining facilities. Production of minerals from ores extracted or required to sample, test and/or develop a viable processing system or supply a pilot plant used for such testing in quality and volume specified in the Work Program, shall not be considered in the determination of the Commercial Production.
- 2.7 Constitution or Philippine Constitution means the 1987 Constitution of the Republic of the Philippines adopted by the Constitutional Commission of 1986 on October 15, 1986 and ratified by the People of the Philippines on February 2, 1987.
- 2.8 Contract Area means the area within the jurisdiction of the Republic of the Philippines which is the subject of this Contract, as diminished pursuant to the relinquishment obligations of the Contractor as herein set forth.
- 2.9 Contract Year means a period of twelve (12) consecutive months counted from the Effective Date of this Agreement or from the Anniversary of such Effective Date.

2.10 Contractor means Nonoc Mining and Industrial Corporation, and assignee or assignees of any interest of Nonoc Mining and Industrial Corporation under this Agreement provided such assignment of any such interest is accomplished pursuant to the provision hereof.

2.11 Declaration of Mining Feasibility means a document proclaiming the presence of minerals in a specific site that are recoverable by socially acceptable, environmentally safe and economically sound methods included in the Mine Development Plan for a period of three (3) years in the case of Integrated Agreement.

2.12 Definitive Agreement means the agreement, dated as of October 12, 1990, among the Republic of the Philippines, acting through the Asset Privatization Trust established pursuant to Proclamation No. 50, as amended, Philnico Mining and Industrial Corporation and contractor.

2.13 Effective Date means the Date appearing as the date of approval of the President of the Republic of the Philippines.

2.14 Environment means physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odors, tastes and biological factors of animals and plants and the social factors of aesthetics.

2.15 Executive Order means that certain order of the President of the Philippines issued on July 25, 1987 and known as Executive Order No. 279.

2.16 Exploration means the examination and investigation of lands and offshore areas supposed to contain valuable minerals by drilling, trenching, shaft sinking, tunneling, test pitting and other means, for the purpose of probing the presence of mineral deposits and the extent thereof.

2.17 Exploration Period shall mean the time period from the Effective Date of this Agreement, and actual activities in the Contract Area shall commence not later than three (3) months after signing the Contract. The Exploration Period shall be for at most two (2) years from the Effective Date, as may be extended with the consent of the Government by not more than two (2) years, or a total of four (4) years from Effective Date of this Agreement.

2.18 Force Majeure means acts or circumstances beyond the reasonable control of the Party to this Agreement effected thereby, including, without limitation, war (declared or not), insurrection, civil disturbance, blockade, sabotage, embargo, strike and other labor conflict, riot, epidemic, earthquake, storm, flood, landslide or other adverse weather conditions, explosion, fire, adverse order or direction of any Government *de jure* or *de facto* or any instrumentality or subdivision thereof, act of God or the public enemy, breakdown of machinery having a major effect on the operations, and any cause (whether or not of the kind hereinbefore described) over which the affected party has no reasonable control and which, is of such a nature as to

delay, curtail or prevent timely action by the party affected.

The *force majeure* mentioned in this section, except those of general knowledge, shall be reported to DENR Regional Office concerned within fifteen (15) calendar days from occurrence.

2.19 Foreign Exchange means any currency other than that of the Republic of the Philippines acceptable to the Government and the Contractor.

2.20 Government means the government of the Republic of the Philippines or any of its agencies or instrumentalities.

2.21 Gross Mining Revenues means the gross sales receipts of production derived by the Contractor from Mining Operations within the Contract Area, less freight, insurance, smelting and refining costs specified in Schedule 1.

2.22 Mine Development refers to steps necessarily taken to reach an orebody or mineral deposit so that it can be mined.

2.23 Minerals means all naturally occurring substances in solid, liquid or any intermediate state.

2.24 Mineral Products means things produced and prepared in a marketable state by simple treatment processes such as washing or drying, but without undergoing any chemical change or processes or manufacturing.

2.25 Mining Area means that portion of the Contract Area delineated for mine development and production as specified in the Declaration of Mining Feasibility.

2.26 Mining Operations means mineral exploration, development, production and all other operations necessary to discover, develop and extract minerals.

2.27 Net Mining Revenue shall have the meaning attributed to it under Section 8.4.

2.28 Notices means notice in writing, or by telex or telecopy (authenticated by answer back or confirmation received) addressed or sent as provided in Section 17.1 of this Agreement.

2.29 Ore means mineral or rock that can be extracted for profit.

2.30 Ore Mineral means a mineral that can be extracted from ore and contributes to the value of the ore.

2.31 Pollution means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the Environment by discharging, emitting or depositing wastes so as to materially affect any beneficial use adversely, or to cause a condition which is hazardous to public health, safety or welfare, or to animals.

birds, wildlife, fish or aquatic life, or to plants, and "pollute" has a corresponding meaning.

2.32 Secretary means the Secretary of the Department of Environment and Natural Resources.

2.33 Department or DENR means the Department of Environment and Natural Resources.

2.34 Work Program means a document which presents the plan of major mining activities and the corresponding expenditures and Budget of the Contractor in its Contract Area during a given period of time, including the plan and expenditures for Environmental protection and rehabilitation, development of host and neighboring communities and of local geoscience and mineral technology, as submitted and approved pursuant to this Agreement.

SECTION III

TERM OF AGREEMENT

3.1 The term of this Agreement shall be TWENTY-FIVE (25) CONTRACT YEARS from the Effective Date, subject to termination as provided herein.

SECTION IV

CONTRACT AREA

4.1 Size, Shape and Location of Contract Area. The Contract Area shall be the area of land located within Parcel II and Parcel III of the Surigao Mineral Reservation, comprised of:

| <u>Island</u> | | <u>Area, Hectares</u> |
|---------------|---|-----------------------|
| 1. Nonoc | - | 4,372 |
| 2. Awasan | - | 916 |
| 3. Hanigad | - | 976 |
| 4. Dinagat | - | 18,736* |
| Total | - | 25,000 |

A portion of Dinagat Island starting from the Eastern end of the boundary of Parcel II and Parcel IV which is designated as Point No. 1 with coordinates latitude $10^{\circ}-04'-51.76''$ and longitude $125^{\circ}-41'-26.60''$; Thence following the coastline towards the South direction to Point No. 2 with latitude $9^{\circ}-51'-57.89''$ and longitude $125^{\circ}-42'-01.06''$; thence following the coastline towards the west direction to Point No. 3 with latitude $9^{\circ}-53'-07.87''$ and longitude $125^{\circ}-38'-28.56''$; thence along the west coastline to the North direction to Point No. 4 with latitude $9^{\circ}-56'-25.61''$ and longitude $125^{\circ}-37'-36.86''$; Thence

5,350 meters due North to Point No. 5 with latitude 9°-59'-19.75" and longitude 125°-37'-36.86"; Thence 1,045 meters due West to Point No. 6 with latitude 9°-59'-19.75" and longitude 125°-37'-02.55"; Thence 13,055 meters due North to Point No. 7 with latitude 10°-06'-24.69" and longitude 125°-37'-02.55"; Thence 6,345 meters due East to Point No. 8 with latitude 10°-06'-24.69" and longitude 125°-40'-30.81"; Thence following the coastline in South direction to close at Point No. 1 with an estimated land area of 18,736 hectares.

If and when the Government shall decide to award available or expired contract areas of the Surigao Mineral Reservation operated by an independent contractor in accordance with Sec. 6.7 and 6.8 of R.A. 1828 as amended, the Contractor shall have a preferential right; but in no case to exceed a total land area of twenty-five thousand hectares in accordance with Sec. 5.2 of the same law.

The specific size and shape of the Contract Area are indicated in a map/sketch with corresponding geographical coordinates shown in Annex B.

SECTION V

EXPLORATION PERIOD

5.1 Timetable for Exploration. - Contractor shall commence Exploration Operations hereunder not later than three (3) months after the Effective Date. This Exploration phase shall be extended for not more than two (2) years upon request by the Contractor and upon Government being satisfied that the Contractor has complied with the terms of this Agreement and of reasonable expectation of success during the extension.

5.2 Work Program and Budgets - The Contractor shall strictly comply with the Exploration Work Program submitted to and approved by the Government. Please refer to Annex C for the 2-year exploration work program and budget.

The amount to be spent by Contractor in conducting Exploration Operations under the terms of this Agreement during the Exploration Period shall, in the aggregate, be not less than that hereinafter specified for each of the below specified Contract Years as follows:

First Contract Year : (P2,461,295.00) Phil. Currency

Second Contract Year: (P2,661,600.00) Phil. Currency

In the event of the termination of this Agreement, Contractor shall only be obliged to expend the pro-rata amount for the period of such Contract Year prior to termination.

In the event of extension, the amount to be spent every year shall first be agreed upon by the parties.

If during any Contract Year, Contractor should expend more than the amount required to be expended as provided above, the excess may be subtracted from the amount of money required to be expended by Contractor during the succeeding Contract Years; and should Contractor, due to unforeseen circumstances or with the consent of the Government expend less during a Contract Year than the amount required to be so expended, the deficiency shall be applied to the amount of money required to be expended by Contractor during the succeeding Contract Year.

5.3 Reporting -

a) Annual Report. - During the Exploration Period, the Contractor shall supply all geological, geophysical, radiometric and other information relating to the exploration areas and its activities by annual reports to be submitted to the DENR Secretary thru the Director of the concerned DENR Regional Office, copy furnished the Mines and Geo-sciences Bureau within sixty (60) days from the end of each Contract Year. Such information shall include financial expenditures, raw and processed analytical data, copies of originals of assay results, duplicate samples, field data, copies of originals from drilling reports, and all other information of any kind collected during exploration activities. All such information shall be confidential, subject to the provisions provided elsewhere herein.

b) Final Report. - The Contractor shall submit to the DENR Secretary thru the Director of the concerned DENR Regional Office, copy furnished the Mines and Geo-sciences Bureau a final report within six (6) months from the expiration of the Exploration Period which shall be in the form and substance comparable to published professional reports of respected international institutions and shall incorporate all the findings in the Contract Area, including locations of samples, assays, chemical analyses, and assessment of mineral potential. Such report shall also include complete detailed expenditures incurred during the Exploration Period.

c) Mining Feasibility. - During the Exploration Period, the Contractor shall conduct feasibility studies for any part of the Contract Area as may be warranted. Within the Period, the Contractor shall submit to the DENR Secretary thru the Director of the concerned DENR Regional Office, copy furnished the Mines and Geo-sciences Bureau a Declaration of Mining Feasibility with a Work Program for development for the next succeeding three (3) years indicating therein the Mining Area. The Secretary shall act on the declaration of mining feasibility and work program within two (2) months from receipt thereof, otherwise they shall be deemed approved and the Contractor may proceed with the execution of the Work Program. Areas not delineated as part of the Mining Area shall be deemed relinquished in favor of the Government.

Failure of the Contractor to submit a Declaration of Mining Feasibility shall be considered a substantial breach of this Agreement.

SECTION VI

DEVELOPMENT AND CONSTRUCTION PERIOD

6.1 Timetable. - The Contractor shall complete the development of the mine including the construction of production facilities within thirty-six (36) months from the submission of the Declaration of Mining Feasibility, subject to such extension based on justifiable reasons as the Secretary may approve.

6.2 Reporting. -

a) Annual. - The Contractor shall submit to the DENR Secretary thru the Director of the concerned DENR Regional Office, copy furnished the Mines and Geo-sciences Bureau an annual report within sixty (60) days after December 31 of each year which states the major activities, achievements and expenditures during the year covered, including maps, assays, rock and mineral analysis and progress geological and similar reports during the development and construction period.

b) Final Report. - Within six (6) months from the completion of the development and construction activities, the Contractor shall submit to the DENR Secretary thru the Director of the concerned DENR Regional Office, copy furnished the Mines and Geo-sciences Bureau a final report to the Government. Such report shall integrate all information in maps of appropriate scale and quality as well as in monographs or reports in accordance with international standards.

SECTION VII

OPERATING PERIOD

7.1 Timetable. - The Contractor shall submit to the DENR Secretary thru the Director of the concerned DENR Regional Office, copy furnished the Mines and Geo-sciences Bureau within thirty (30) days from the completion of construction facilities a Work Program for a period of three (3) years. The Secretary shall act on the work program within two (2) months from receipt thereof, otherwise it shall be deemed approved and the contractor may proceed with its execution. The contractor shall commence Commercial Production immediately upon the approval of the said Work Program.

7.2 Work Programs. - During the Operating Period, the Contractor shall submit to the DENR Secretary thru the Director of the concerned DENR Regional Office, copy furnished the Mines and Geo-sciences Bureau Work Programs covering a period of three (3) years each which shall be submitted not later than thirty (30) days before the expiration of the period covered by the previous Work Programs.

The Contractor shall conduct Mining Operations and other activities for the duration of the Operating Period in accordance with the duly approved Work Programs and any modification thereof approved by the Secretary.

7.3 Reporting -

a) Quarterly Reports. - Beginning with the first Calendar Quarter following the commencement of the Operating Period, the Contractor shall submit to the DENR Secretary thru the Director of the concerned DENR Regional Office, copy furnished the Mines and Geo-sciences Bureau within thirty (30) days after the end of each Calendar Quarter a Quarterly Report stating the tonnage of production in terms of ores, concentrates, and their corresponding grades and other types of products; value, destination of sales or exports and to whom sold; terms of sales and expenditures.

b) Annual Reports. - During the Operating Period, the Contractor shall submit to the DENR Secretary thru the Director of the concerned DENR Regional Office, copy furnished the Mines and Geo-sciences Bureau within sixty (60) days from the end of each Calendar Year an Annual Report indicating in sufficient detail:

- i) The total tonnage of ore reserves whether proven, probable, or inferred; the total tonnage of ores, kind-by-kind, broken down between tonnages mined, tonnages transported from the mines and their corresponding destination, tonnages stockpiled in the mines and elsewhere in the Philippines, tonnages sold or committed to be sold or committed for export (whether actually shipped from the Philippines or not), tonnages actually shipped from the Philippines (with full details as to purchaser, destination and terms of sale), and if known to the Contractor, tonnages refined, processed or manufactured in the Philippines with full specifications as to the intermediate products, by-products or final products and of the terms at which they were disposed.
- ii) Work accomplished and work in progress at the end of the year in question with respect to all of the installations and facilities related to the utilization program, including the investments actually made or committed.
- iii) Profile of work force, including management and staff, stating particularly their nationalities, and for Filipinos, their place of origin (i.e., barangay, town, province, region).
- iv) Ownership of the Contractor, particularly with respect to nationality.

7.4 Expansion and Modification of Facilities. - The Contractor may take expansions, modifications, improvements and replacements of the mining facilities and may add new facilities as the Contractor shall consider necessary for the operations, provided such plans shall be embodied in an appropriate Work Program approved by the Secretary.

SECTION VIII

FISCAL REGIME

8.1 General Principles. - The financial regime of this Agreement shall be governed by the principle according to which the Government expects a reasonable return in economic value for the utilization of non-renewable natural resources under the natural sovereignty while the Contractor expects reasonable return on its investment with special account to be taken for the high risks of exploitation, the terms and conditions prevailing elsewhere in the industry and any special efficiency to be gained by particularly good performance of the Contractor.

8.2 Occupation Fees. - From the date of registration of this Agreement and every year thereafter, the Contractor shall pay to the Government an annual occupation fee of ONE HUNDRED PESOS (P100.00) per hectare over the Contractor's Area less those relinquished in favor of the Government. The occupation fee herein provided shall constitute full payment of the occupation fee and/or rental fee provided in the existing National Internal Revenue Code.

8.3 Regulatory Fees. - There shall be due the Government for regulatory purposes during the Exploration Period, the amount of TEN PESOS (P10.00) per hectare per year on the actual Contract Area as above described plus a yearly increment of FIVE PESOS (P5.00) per hectare per year. The regulatory fees corresponding to the first two contract years shall be payable within 30 days from receipt of the approved MPSA to the DENR Office while the regulatory fees for the extension period shall be due within 30 days from approval of the request for extension of the exploration period.

8.4 Production Share of the Government. - There shall be due the Government a Production Share equivalent to:

- a) 2% of Gross Mining Revenues; plus
- b) 10% of Net Mining Revenues, which means Gross Mining Revenues.

Less:

- 1) depreciation and depletion computed for tax purposes and under other incentive laws; and
- 2) 15% investment allowance (Return on Assets) based on net assets, which means property,

plant and equipment as reflected in the audited financial statements;

- 3) debt service - interest expense on rehabilitation loan;
- 4) capital expenditures pertaining to the acquisition of assets and repairs and maintenance of existing assets whose individual monetary value is above P20,000;
- 5) payments to Contractor's creditors identified prior to the date of the Definitive Agreement;
- 6) taxes, customs duties, and royalties/government share in gross mining revenue;
- 7) extraordinary expenses incurred due to fortuitous events; events such as restoration cost on destruction caused by earthquakes, typhoons, fires, wars, flood; and
- 8) loss on foreign exchange arising from foreign currency denominated transactions.

Audited financial statements shall be net of depreciation, as computed for tax purposes and shall exclude appraisal increases.

Any excise tax currently imposed and paid by the Contractor shall be charged against the Production Sharing Fee payable to the Government, Provided that if the excise tax in any Contract Year shall exceed the Production Sharing Fee as determined in accordance with this Section, Contractor shall not have the right to recover the excess from the Government; Provided, Further, That, if the value of the Production Sharing Fee is less than the value of the excise law, the Contractor shall pay the excise tax instead.

Notwithstanding this immediately foregoing paragraph, for the duration that Contractor is required to pay to the Republic of the Philippines the price participation specified in Section 2.05 of the Definitive Agreement, Contractor shall not be required to pay the Production Sharing Fee specified in (b) above if in any year in which such fee is otherwise due under this Agreement, Contractor shall have paid at least one price participation to the Republic of the Philippines pursuant to Section 2.05 of the Definitive Agreement, Provided that if the value of the Production Sharing Fee specified in (a) and (b) above is less than the value of the excise tax currently imposed and paid by Contractor, Contractor shall pay the excise tax instead.

For purposes of determining the amount of the herein production share of the Government, the Contractor shall strictly comply with auditing and accounting requirements prescribed under existing laws, rules and regulations.

8.5 Pricing of Sales. - The Contractor shall endeavor to obtain the best achievable price for its production and pay the lowest achievable marketing commission and related fees. Contractor shall seek to strike a balance between long-term sales and short-term sales comparable to policies followed by independent producers in the international mining industry.

The Contractor shall likewise seek a balanced distribution among consumers. Insofar as sales to Contractor's affiliates are concerned, prices shall be at arm's length standards and competing offers for large scale and long-term contracts shall be procured.

8.6 Associated Minerals. - If Minerals, other than nickel and cobalt are discovered in commercial quantities in the Contract Areas, the value thereof shall be added to the value of the principal minerals in computing the share of the Government.

8.7 The production share of the Government referred to in Section 8.4 for any calendar year, if any, less the excise or mine product tax paid to the Bureau of Internal Revenue provided in the preceding paragraph, shall be paid to the pertinent Regional Office of the DENR within three (3) months after the end of each calendar year.

SECTION IX

WORK PROGRAMS

9.1 Submission to Government. - Within the periods stated herein, the Contractor shall prepare and submit to the DENR Secretary thru the Director of the concerned DENR Regional Office, copy furnished the Mines and Geo-sciences Bureau the Work Program and Budget for the Contract Area stating the Mining Operations which Contractor proposes to carry out during the period covered with the details and particulars set forth elsewhere in this Agreement or in the Guidelines (DENR Administrative Order No. 57, series of 1989).

9.2 Examination, Revision. - Should the Government wish to propose a revision as to certain specific features of said Work Program or Budget, it shall within thirty (30) days after receipt thereof provide Notice to Contractor specifying in reasonable detail its reasons therefor. Promptly thereafter, the Government and Contractor will meet and endeavor to agree on the revision proposed by the Government. In any event any portion of said Work Program or Budget as to which the Government shall fail to notify Contractor of proposed revision shall insofar as possible be carried out as prescribed herein. If the Government shall fail within sixty (60) days from receipt thereof to notify Contractor of proposed revisions, the Work Program and Budget proposed by Contractor shall be deemed to be approved.

9.3 It is recognized by the Government and Contractor that the details of any Work Program may require changes in the light of changing circumstances. The Contractor may make such changes provided they do not change the general objective of any Work Program and provided, further, that changes which entail a variance of at least twenty per centum (20%) of the approved original budget shall be subject to the approval of the Secretary.

9.4 The Government's approval of a proposed Work Program and Budget will not be unreasonably withheld.

SECTION X

RIGHTS AND OBLIGATION OF THE PARTIES

10.1 Obligations of the Contractor. -

The Contractor shall:

- a) Perform all Mining Operations in accordance with the most efficient and internationally accepted mining and engineering practices providing all necessary services, technology and financing in connection therewith;
- b) After the Exploration Period, shall relinquish to the Government any portion of the Contract Area which shall not be necessary for Mining Operations and not covered by any Declaration of Mining Feasibility;
- c) Perform its activities within the periods expressed in this Agreement, Plans and Work Programs, save as may be excused by *Force Majeure*;
- d) Furnish all materials, labor, equipment, and other installations that may be required for carrying on all Mining Operations. To the maximum extent compatible with efficient operations, the Contractor shall give preference to products and services produced and offered in the Philippines of comparative quality. In particular, the Contractor shall give preference to Filipino construction enterprises and use buildings which can be constructed by using materials and skills available in the Philippines, employ Filipino subcontractors for road construction and transportation and purchase Philippine household equipment, furniture and food;
- e) To the extent feasible and acceptable in view of the rates and conditions available, maximize the use of Filipino vessels and other means of transport available in the Philippines. If necessary, the Contractor shall set joint arrangements with Filipino concerns for the transportation of concentrates;
- f) Keep accurate technical records about the operations as well as financial and marketing accounts and make them available to Government representatives authorized by the Secretary for purposes of assessing performance and

compliance of the Contractor with the terms of this Agreement. Authorized representatives of other Government agencies may also have access to such accounts in accordance with existing laws, rules and regulations;

g) Hold the government free and harmless from all claims and accounts of all kinds, as well as demands and actions arising out of the accidents or injuries to persons or property caused by Mining Operations of the Contractor and indemnify the Government for any expenses or cost incurred by the Government by reason of any such claims, accounts, demands or actions;

h) Pay taxes or obligations in accordance with existing laws, rules and regulations.

i) Conform to laws and regulations regarding among others, labor safety, demarcation of the Contract Area, and non-interference with the rights of other mining operators;

j) Allow access to exploration and production sites and operations by inspectors authorized by the Government;

k) Recognize and respect the rights, customs and traditions of indigenous tribal communities over their ancestral lands;

l) Contribute to National development by helping develop the host and neighboring communities of the Contract Area, local geo-science and mining technology, and mitigating Environment effects of Mining Operations.

Development of Host and Neighboring Communities:

- i) The Contractor shall coordinate with proper authorities in providing development plans for the host and neighboring communities.
- ii) The Contractor shall help create self-sustaining, income-generating activities, such as but not limited to reforestation and production of goods and services needed by the mine.
- iii) The Contractor shall give preference to Filipino citizens, particularly residents of its host and neighboring communities in hiring personnel for its Mining Operations.

If necessary skills and expertise are currently not available, the Contractor must prepare and undertake a training and recruitment program within the first year of Commercial Production at its expense.

Development of Geosciences and Mineral Technology:

- (i) The Contractor, in the course of its operations

shall produce geological, geophysical, geochemical and other types of maps and reports in scale, format and nomenclature consistent with internationally accepted practices and standards.

- (ii) The Contractor shall systematically keep the data generated from the Contract Area such as cores, assays and other related information, including economic and financial, and shall make them accessible to students, researchers and other persons responsible for developing geoscience and mineral technology after declassification.

Environmental Protection and Industrial Safety:

- i) The Contractor shall prepare a plan of mining so that its damage to the environment will be minimal. To the extent possible, control of pollution and the transformation of the mined-out areas or materials into economically and socially productive forms must be done simultaneously with mining.

An Initial Environmental Examination (IEE) shall be required as part of the exploration program and appropriate Environmental Impact Statement (EIS) shall be required as component of any of the feasibility studies of the mine and shall be prepared in forms prescribed by proper government authorities.

An Environmental Compliance Certificate (ECC) shall be secured first by the Contractor prior to its conduct of any mine development.

These activities must be reflected clearly in the appropriate Work Programs.

- m) Cause the registration of this Agreement with the DENR Regional Office concerned within thirty (30) calendar days of its approval.

- n) The Contractor shall maintain at least sixty percent (60%) Filipino equity during the effectivity of this Agreement.

10.2 Rights of the Contractor.

The Contractor shall:

- a) Have the exclusive right to conduct Mining Operations in the Contract Area in accordance with the terms and conditions hereof;

- b) Have the right of possession of the Contract Area, with full right of ingress and egress and the right to occupy the same subject to surface and easement rights;

- c) Have the right to use and have access to all declassified geological, geophysical, drilling, production and other information held by the Government or any agency or enterprise thereof now or in the future, relating to the

Contract Area;

- d) Have the right to utilize, explore and process all minerals that may be found in the Contract Area;
- e) Have the right to erect, install or place on the Contract Area any type of improvements, supplies, machinery and other equipment and to use, sell or otherwise dispose of, modify, improve, remove or diminish any and all parts thereof;
- f) Have the right to construct roadways, mining, drainage, power generation and transmission facilities and all other types of works on the Contract Area;
- g) Have the right to extract and carry away any mineral from the Contract Area for the purpose of conducting tests and studies in respect thereof;
- h) Have the right to determine the use and application of technical services and equipment provided or made available under this Agreement;
- i) Have the right to sell, assign, transfer convey or otherwise dispose of all its rights, interests and obligations under this Agreement subject to the approval of the Government;
- j) Subject to applicable laws and regulations, have the right to employ or bring into the Philippines foreign technical and specialized personnel (including the immediate members of their families) as may be required in the operations of the Contractor, provided, that, if the employment connection of such foreign persons with the Contractor ceases, the applicable laws and regulations on immigration shall apply to them;
- k) Enjoy, subject to pertinent laws, rules and regulations and the rights of third parties, easement rights and use of timber, water and other natural resources in the Contract Area;
- l) Have the right of repatriation of capital and remittance of profits, dividends and interest on loans, subject to existing laws, and Bangko Sentral ng Pilipinas rules, and regulations; and
- m) Have the right to import when necessary all equipment, spare parts, and raw materials required in the operations in accordance with existing laws and regulations.

10.3 Obligations of the Government.

The Government shall:

- a) Subject to the provisions of this Agreement the Secretary hereby grants to the Contractor exclusive possession of, and the exclusive privilege and right to exploit, utilize, process and dispose of all minerals and mineral products and by-products thereof that maybe derived or produced from the Contract Area and to otherwise conduct

mining operations within the Contract Area.

b) Ensure that Contractor has the Government's full cooperation in the exercise of the rights granted it under this Agreement.

c) Use its best efforts to ensure the timely issuance of necessary permits and similar authorizing documents for use of surface of the Contract Area.

d) Cooperate, if Contractor seeks to obtain financing contemplated herein from banks or other financial institutions, with Contractor in such efforts provided that such financing arrangements will in no event reduce Contractor's obligations or the Government's rights hereunder.

e) Ensure that there are no mortgages, pledges, charges, liens, private royalties, options, operating contracts, production sharing agreements or other encumbrances against or affecting the Contract Area and the Secretary is not aware of any notices, objections or other proceedings or litigation pending or threatened concerning the Contract Area.

SECTION XI

FUTURE LEGISLATION

11.1 Any term and condition more favorable to Production Sharing Agreement resulting from the repeal or amendment of any existing law or regulation or from the enactment of a law, regulation, or administrative order shall inure to the benefit of the Contractor and such law, regulation, or administrative order shall be considered a part of this Agreement.

11.2 The Contractor and the Secretary shall review from time to time the infrastructure and other requirements of the Mining Operations including, without limitation, transportation and port requirements, and the Secretary shall use his best endeavours to give effect to any agreement reached between the Secretary and the Contractor regarding such infrastructure and requirements.

SECTION XII

ASSETS AND EQUIPMENT

12.1 Contractor shall acquire for the Mining Operations only such assets as are reasonably estimated to be required in carrying out such Mining Operations.

12.2 All materials, equipment, plant and other installations erected or placed on the Contract Area of the

movable nature by the Contractor shall remain the property of the Contractor and the Contractor shall have the right to remove and export such materials, equipment, plant and other installations from the Philippines, subject to existing laws and regulations.

Further, that said materials, equipment, plants and other installations shall be removed from the Contract Area within twelve (12) months from the termination of the Agreement, otherwise these will be forfeited in favor of the Government.

SECTION XIII

EMPLOYMENT AND TRAINING OF PHILIPPINE PERSONNEL

13.1 The Contractor agrees to employ, to the extent possible, qualified Filipino personnel in its Mining Operations; and after Commercial Production commences shall in consultation and with the consent of the Government, elaborate an extensive training programme for employment of suitable Filipino nationals at all levels of employment. The objective of said programme shall be to reach within the time-table set forth below the following targets of "Filipinization":

| | <u>Unskilled</u> | <u>Skilled</u> | <u>Clerical</u> | <u>Professional</u> | <u>Management</u> |
|---------|------------------|----------------|-----------------|---------------------|-------------------|
| Year 3 | 100% | 100% | 100% | 80% | 70% |
| Year 5 | 100% | 100% | 100% | 90% | 90% |
| Year 7 | 100% | 100% | 100% | 100% | 95% |
| Year 10 | 100% | 100% | 100% | 100% | 99% |
| Year 15 | 100% | 100% | 100% | 100% | 99% |

13.2 Costs and expenses of training such Filipino personnel and the Contractor's own employees shall be included in Operating Expenses.

SECTION XIV

ARBITRATION

14.1 The Government and the Contractor shall consult with each other in good faith and shall exhaust all available remedies to settle any and all disputes or interpretations, enforceability, or relating to the validity before resorting to arbitration.

14.2 Any disagreement or dispute which cannot be solved amicably shall be settled by a tribunal of three (3) arbitrators, one to be appointed by the Contractor, another to be appointed by the Government, and the third by the arbitrators so appointed who shall serve as Chairman. The first two appointed arbitrators shall continue to consider names of qualified persons until agreement on a mutually

acceptable Chairman of the tribunal is reached. Such arbitration shall be initiated and conducted pursuant to Republic Act No. 876 otherwise known as the Arbitration Act.

Where substantial foreign interest are involved, the Contractor may elect within thirty (30) days from Effective Date, arbitration in accordance with the rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC") provided that in any case where the ICC or its successor is not in existence, the arbitration shall proceed in accordance with the UNCITRAL (United Nations Commission for International Trade Law) Arbitration Rules, as at present in force.

In any event, the arbitration shall be conducted applying the substantive laws of the Republic of the Philippines.

14.3 Each party shall pay fifty percent (50%) of the fees and expenses of the arbitrators and the costs of arbitration. Each party shall pay its own costs and attorney's fees.

SECTION XV

ASSIGNMENT

The Contractor may assign all or any part of its interest in this Agreement in whole or in part to any third party provided that (1) such assignment does not infringe the Filipino laws applicable to foreign ownership and (2) the President of the Republic of the Philippines thru the DENR Secretary consents to the proposed assignment, which consent shall not be unreasonably withheld. The assignee shall enter into a written covenant with the Secretary undertaking to be bound by the terms and conditions of this Agreement, whereupon the Contractor shall be released from its obligations under this Agreement to the extent of the interest assigned, with effect from the effective date of the assignment.

SECTION XVI

TERMINATION

This contract shall be terminated and the Parties shall be relieved of their respective obligations:

16.1 On expiration of the term, or extension thereof as provided elsewhere herein.

16.2 Termination by the President of the Republic of the Philippines thru the DENR Secretary upon the Contractor's substantial breach of this Agreement.

16.3 By withdrawal of Contractor. The Contractor may withdraw from this Agreement by giving three (3) months

notice in writing if in its business judgment the continuation of operations becomes technically or economically unfeasible. The withdrawal shall become effective six (6) months after notice of withdrawal has been received by the Government.

No delay or omissions or course of dealing by the Government shall impair any of its rights hereunder except for a written waiver. The Government's right to seek recourse and relief by all other means shall not be affected by the exercise of its right to terminate the Agreement. Any waiver of default shall not be construed to be a waiver of any succeeding or other default unless the contrary is expressly stated in writing signed by the party charged with the waiver.

In case of termination, the Contractor shall pay all fees and other liabilities due up to the end of the year in which the termination becomes effective, and shall further carry out such restoration of the Contract Area as is reasonable in accordance with good mining industry practice.

SECTION XVII OTHER PROVISIONS

17.1 Notice.

All notices, demands, and other communications required, or permitted hereunder shall be made in writing or by telex or telecopy and shall be deemed to have been duly given in the case of telex or telecopy notice if answer back or confirmation received, or if delivered by hand upon receipt or ten days after being deposited in the mail, airmail postage prepaid and addressed as follows:

If to the Government ---

The Secretary of the Department of Environment
and Natural Resources
DENR Building, Visayas Avenue, Diliman
Quezon City, Metro Manila

If to the Contractor ---

Nonoc Mining and Industrial Corporation
2283 Pasong Tamo Extension
Makati, Metro Manila

Either party may substitute or change such address on Notice thereof to the other Party.

17.2 Governing Laws.

This Agreement and the relation between the parties hereto shall be governed by and construed in accordance with the laws of the Republic of the Philippines.

17.3 Suspension of Obligations.

a) Any failure or delay on the part of any Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to *Force Majeure*.

b) If Mining Operations are delayed, curtailed or prevented by such *Force Majeure* causes, then the time for enjoying the rights and carrying out the obligations thereby affected, the term of this Agreement and all rights and obligations hereunder shall be extended for a period equal to the period thus involved.

c) The Party whose ability to perform its obligation is affected (i) shall promptly give Notice to the other in writing of any such delay or failure in performance, the expected duration thereof, and its anticipated effect on the Party expected to perform; and (ii) shall use its efforts to remedy such delay, except that neither Party shall be under any obligation to settle a labor dispute.

17.4 Amendments.

This Agreement shall not be annulled, amended or modified in any respect except by mutual consent in writing of the parties hereof and subject to the approval of the President of the Republic of the Philippines.

SECTION XVIII

RECORDING

This Agreement shall be recorded in the appropriate office of the DENR as may be provided under existing laws, rules and regulations.

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

THE REPUBLIC OF THE PHILIPPINES

PHILNICO MINING AND INDUSTRIAL CORPORATION

By:

By:

[Signature]
ANGEL C. ALCALA
Secretary of the Department
of Environment and
Natural Resources

[Signature]
JESUS S. CABARRUS
President and
Chairman of the Board

APPROVED
By Authority of the President

TEOFISTO GUINGONA, JR.
Executive Secretary

WITNESSES:

[Signature]

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
City of Quezon) S.S.

BEFORE ME, a Notary Public for and in
Quezon City, this 12th day of July, 1994,
personally appeared the following:

| Names | Res. Cert. No. | Place/Date Issued |
|----------------------|----------------|---------------------|
| Hon. Angel C. Alcala | 353495-58 | QC Feb. 7, 1994 |
| Jesus S. Cabarrus | 7236347 | makati Apr 18, 1994 |

all known to me and to me known to be the same persons who executed the foregoing instrument and they acknowledge to me that the same is their free act and deed and that of the principals they respectfully represent.

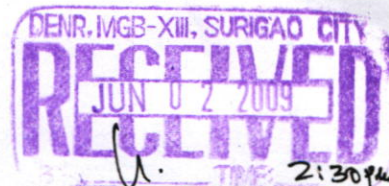
This instrument, consisting of twenty three (23) pages including this page of acknowledgment, signed by the parties and their instrumen witnesses and initialed at the left margin of every page, refers to the parties MINERAL PRODUCTION SHARING AGREEMENT.

WITNESS MY HAND AND SEAL on the date and at the place first herein abovementioned.

[Signature]
ANSELMO C. APUNGAN
NOTARY PUBLIC
UNTIL DEC 31, 1994
PTR No. 1946426-6C-2-24-94

Doc. No. 170 . ;
Page No. 61 ;
Book No. H ;
Series of 1994 .

SECRETARY'S CERTIFICATE

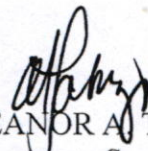


I, ELEANOR A. TABUZO, Filipino, of legal age, and Corporate Secretary of PACIFIC NICKEL PHILIPPINES INC., a corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at 10th Floor, JAKA 6780, Ayala Avenue, Makati City, do hereby certify that at a special meeting of its Board of Directors held on April 24, 2009, the following resolutions were approved:

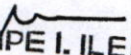
“RESOLVED THAT, the Board of Directors of Pacific Nickel Philippines Inc., (the “Corporation”), authorize, as it hereby authorizes the cancellation of the Ore Sales Contract executed with PAC Asia Minerals and Management Corporation (PAC Asia Minerals) on March 8, 2009.

RESOLVED FURTHER, that the Corporation be hereby authorized to enter into a Mines Operating Agreement in favor of Shuley Mine Incorporated, an affiliate of PAC Asia Minerals, under such terms and conditions as may be agreed upon by the parties.

RESOLVED FINALLY, that the Chairman and President, EVARISTO M. NARVAEZ JR., be, as he is hereby authorized, to sign the Mutual Cancellation of Ore Sales Contract of March 8, 2009 and thereafter, the Mines Operating Agreement with Shuley Mine Incorporated.”


ELEANOR A. TABUZO
Corporate Secretary

MAKATI CITY
SUBSCRIBED AND SWORN to before me this 28 day of APR 2009 by Eleanor A. Tabuzo who has satisfactorily proven her identity to me through her SSS ID No. 03-2528890-5.

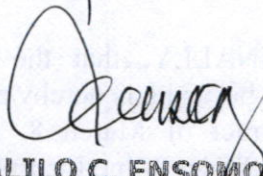

FELIPE I. ILEDAN, JR.
NOTARY PUBLIC
UNTIL DEC. 31, 2010
PTR MLA. 6278641 1/10/08
TIN: 166 897 808 000/ROLL 27625
4TH FLR., TMBC BLDG. 6772 AYALA MKTI
APPT. NO. M-20 C2009-20100

Doc. No. 486 ;
Page No. 98 ;
Book No. XV ;
Series of 2009.

CERTIFICATE OF REGISTRATION
MINES AND GEOSCIENCES BUREAU
Regional Office No. XIII, Surigao City

The registration fee henceforth having been paid, the foregoing instrument/s was filed for record in this Bureau at 2 o'clock and 30 minutes P M on the 2nd day of June A.D. 2009 and has been recorded in Book No. 1 of the records of Miscellaneous Documents Power of Attorney of this Region on Page 70 as Document No. 3.

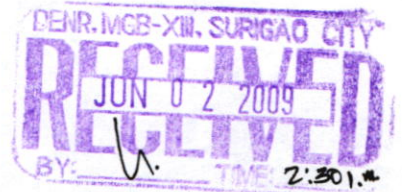
Filing Fee paid under Official Receipt No. 7881249-0 dated JUN 02 2009, 2009 in the amount of ₱ 220.00 FA.


ALILO C. ENSOMO, JR.
OIC Regional Director

COLATILLA

The Registration of this document's is a ministerial action on the part of this Office. Its validity shall be the full responsibility of the registrant or contracting parties.

REPUBLIC OF THE PHILIPPINES)
) S.S.



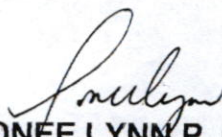
SECRETARY'S CERTIFICATE

I, **TONEE LYNN P. CO**, of legal age, Filipino, single, with office address at Unit 201, Summit One Tower, 530 Shaw Boulevard, Mandaluyong City, Philippines, the duly elected Corporate Secretary of **SHULEY MINE, INCORPORATED**, a duly organized and registered corporation under the laws of the Philippines, do hereby certify at the special meeting of the Board of Directors, during which a quorum was present and acting throughout, the following resolution was approved and adopted:

"**RESOLVED** as it is hereby resolved that the Corporation enters into a Mines Operating Agreement with Pacific Nickel Philippines, Inc. and for this purpose, **Antonio L. Co**, in his capacity as President of Shuley Mine, Inc., is hereby authorized to negotiate, agree on the terms and conditions, sign and execute and tender any and all documents or papers that may be required for the accomplishment of the foregoing purpose."

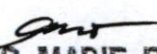
I further certify that the foregoing resolution is true and correct copy of the same as it appears in the minute book of the Corporation.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 27th day of April 2009, at **MAKATI CITY** City.


TONEE LYNN P. CO
Corporate Secretary

SUBSCRIBED AND SWORN to me this _____ day of **APR 27 2009**, 2009, affiant exhibited to me his Comm. Tax Cert. No. 19841630 issued on Jan. 15, 2009 at Manila.

Doc. No. 163
Page No. 33
Book No. 10
Series of 2009


ESTHER MARIE B. AMULAR
NOTARY PUBLIC
VALID UNTIL DEC. 31, 2009
IBP NO. 768454/01-02-03/ILOILO CITY
PTR NO. 1573103/01-08-09/MAKATI CITY
ROLL NO. 49181


SMI-SC-2009-00002

REPUBLIC OF THE PHILIPPINES

CERTIFICATE OF REGISTRATION
MINES AND GEOSCIENCES BUREAU
Regional Office No. XIII, Surigao City

The registration fee henceforth having been paid, the foregoing instrument/s was filed for record in this Bureau at 2 o'clock and 30 minutes PM on the 2nd day of June A.D. 2009 and has been recorded in Book No. 1 of the records of Miscellaneous Documents Power of Attorney of this Region on Page 70 as Document No. 2.

Filing Fee paid under Official Receipt No. 7881248-D dated JUN 02 2009, 200 in the amount of ₱ 220.00 PA.


ALILO C. ENSOMO, JR.
OIC Regional Director

COLATILLA

The Registration of this document's is a ministerial action on the part of this Office. Its validity shall be the full responsibility of the registrant or contracting parties.