TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF THE CONGO CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT

The Government of the United States of America and the Government of the People's Republic of the Congo, desiring to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party; and

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties,

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources, and

Having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of investment,

Have agreed as follows:

Article 1.

1. For the purpose of this Treaty,

(a) "company of a Party" means any kind of corporation, company, association, or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned;

(b) "investment" means every kind of investment, in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes:

(i) Tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) A company or shares of stock or other interests in a company or interests in the assets thereof,

(iii) A claim to money or a claim to performance having economic value, and associated with an investment;

(iv) Intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill; and

(v) Any right conferred by law or contract, and any licenses and permits pursuant to law;

(c) "national" of a Party means a natural person who is a national of a Party under its applicable law;

(d) "return" means an amount derived from or associated with an investment, including profit; dividend; interest; capital gain; royalty payment; management, technical assistance or other fee; or returns in kind;

(e) "associated activities" include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports.

2. Each Party reserves the right to deny to any company the advantages of this Treaty if nationals of any third country control such company and, in the case of a company of the other Party, that company has no substantial business activities

in the territory of the other Party or is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.

2. Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

Article 2.

1. Each Party shall permit and treat investment, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the most favorable, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Annex. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters listed in the Annex, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exceptions shall not be less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country, except with respect to ownership of real property. Rights to engage in mining on the public domain shall be dependent on reciprocity.

2. Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. Each Party shall observe any obligation it may have entered into with regard to investments.

3. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party, that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

4. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

5. Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

6. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties.

7. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.

8. The treatment accorded by the United States of America to investments and associated activities under the provisions of this Article shall in any State, Territory or possession of the United States of America be the treatment accorded therein to companies legally constituted under the laws and regulations of other States, Territories or possessions of the United States of America.

9. The most favored nation provisions of this Article shall not apply to advantages accorded by either Party to nationals or companies of any third country by virtue of that Party's binding obligations that derive from full membership in a regional customs union or free trade area.

Article 3.

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article 11(2). Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known; be paid without delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation.Article 11(2). Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known; be paid without delay; include interest at a commercially reasonable rate from the date of expropriation;

be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation.

2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation therefor, conforms to the principles of international law.

3. Nationals or companies of either Party whose investments are losses in the territory of the other Party owing to war or armed conflict, revolution, state or national emergency, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or company of any third country, whichever is the most favorable treatment, as regards any measures it adopts in relation to such losses.

Article 4.

1. Each Party shall permit all transfers related to an investment be made freely and without delay into and out of its territory. Such transfers include: (a) returns; (b) compensation pursuant to article III; (c) payments arising out of an investment dispute; (d) agreements made under a contract, including amortization of principle and accrued interest payments made pursuant to a loan agreement; (e) proceeds from the sale or liquidation of all or any part of investment; and (f) additional contributions to capital for the maintenance or development of an investment.article III; (c) payments arising out of an investment dispute; (d) agreements made under a contract, including amortization of principle and accrued interest payments made pursuant to a loan agreement; (e) proceeds from the sale or liquidation of all or any part of investment; and (f) additional contributions to capital for the maintenance or development of an investment.

2. Except as provided in Article III paragraph 1, transfers shall made in a freely convertible currency at the prevailing market of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.Article III paragraph 1, transfers shall made in a freely convertible currency at the prevailing market of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

3. Notwithstanding the provisions of paragraphs 1 and 2, either may maintain laws and regulations (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or re the satisfaction of judgments in adjudicatory proceedings, rough the equitable, nondiscriminatory and good faith application of its law.paragraphs 1 and 2, either may maintain laws and regulations (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or re the satisfaction of judgments in adjudicatory proceedings, rough the equitable, nondiscriminatory and good faith application of its law.

Article 5.

The Parties agree to consult promptly, on the request of either, resolve any disputes in connection with the Treaty, or to discuss matters relating to the interpretation or application of the treaty.

Article 6.

1. For the purposes of this Article, an investment dispute is deed as a dispute involving (a) the interpretation or application of investment agreement between a Party and a national or company of the other Party; (b) the interpretation or application of a investment authorization granted by a Party's foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation, which may include the use of non-binding, third party procedures. Subject to Paragraph 3 of this Article, if the dispute cannot be resolved through consultation and negotiation, the dispute shall be submitted for settlement in accordance with previously agreed, applicable dispute-settlement procedures; any dispute-settlement procedures including those relating to expropriation and specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.Paragraph 3 of this Article, if the dispute cannot be resolved through consultation and negotiation, the dispute shall be submitted for settlement in accordance with previously agreed, applicable dispute-settlement procedures; any dispute-settlement procedures including those relating to expropriation and specified in the investment agreement shall remain

binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.

3.

(a) The national or company concerned may choose to consent in writing to the submission of the dispute to the International Settlement of Investment Disputes ("Centre") or to plying the rules of the Centre, for the settlement or binding arbitration, at any time after six upon which the dispute arose. Once the national or company concerned has so consented, either party to the dispute may institute such proceedings provided:

(i) The dispute has not been submitted by the national or company for resolution in accordance with any applicable previously agreed dispute settlement procedures; and

(ii) The national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a party to the dispute. If the parties disagree over whether conciliation or binding arbitration is the more appropriate procedure to be employed, the opinion of the national or company concerned shall prevail.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration, or, in the event the Centre is not available, to the submission of the dispute to ad hoc arbitration applying the rules of the Centre.

(c) Conciliation or binding arbitration of such disputes shall be done applying the provisions of the Convention of the Settlement of Investment Disputes Between States and Nationals of Other States done at Washington, March 18, 1965 ("Convention") and the Regulations and Rules or the Centre.Convention of the Settlement of Investment Disputes Between States and Nationals of Other States done at Washington, March 18, 1965 ("Convention") and the Regulations and Rules or the Centre.

4. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counter-claim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its. alleged damages.

5. For the purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party or a political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall, in accordance with Article 25 (2) (b) of the Convention, be treated as a national or company of such other Party.Article 25 (2) (b) of the Convention, be treated as a national or company of such other Party.

Article 7.

1. Any dispute between the Parties concerning the interpretation or application of the Treaty which is not resolved through consultations other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the Party or by the arbitrators, shall govern.arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the Party or by the arbitrators, shall govern.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitral as Chairman, who is a national of a third State. The UNCITRAL Rules for appointing members of three member panels shall apply mutatis mutandis to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the Centre.UNCITRAL Rules for appointing members of three member panels shall apply mutatis mutandis to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the Centre.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the Tribunal shall render its decision within two months of the date of the final submissions or the of the closing of the hearings, whichever is later.

4. Expenses incurred by the Chairman, the other arbitrators, an other costs of the proceedings shall be paid for equally by the Parties. The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

Article 8.

The provisions of Article VI and VII shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

Article 9.

This Treaty shall not derogate from:

(a) Laws and regulations, administrative practices or procedures, or administrative or adjudicators decisions of either Party;

(b) International legal obligations; or

(c) Obligations assumed by either Party, including those contained in an investment agreement or an investment authorization, that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in such situations.

Article 10.

1. This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

Article 11.

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.

2. Nevertheless, the provisions of this Treaty, and in particular Article VI and VII, shall apply to matters of taxation only with respect to the following:Article VI and VII, shall apply to matters of taxation only with respect to the following:

(a) Expropriation, pursuant to Article III;Article III;

(b) Transfers, pursuant to Article IV; orArticle IV; or

(c) The observance and enforcement of terms of an investment agreement or authorization as referred to in Article VI (1) (a) or (b), to the extent they are not subject to the dispute settlement provisions of a Convention for the avoidance of double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.Article VI (1) (a) or (b), to the extent they are not subject to the dispute settlement provisions of a Convention for the avoidance of double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.

Article 12.

This Treaty shall apply, mutatis mutandis, to the political subdivisions of the parties.

Article 13.

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end of the initial ten year period or at any time thereafter.

3. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a

further period of ten years from such date of termination.

4. The Annex shall form an integral part of the Treaty.

DONE in duplicate at Washington on the twelfth day of February, 1990, in the English and French languages, both texts being equally authentic.

For the Government People's Republic of the Congo ANTOINE NDINGA-OBA.

For the Government of the United States of America CARLA HILLS

Consistent with Article II paragraph 1, each Party reserves the right to maintain limited exceptions in the sectors or matters it has indicated below:

The United States of America

Air transportation; ocean and coastal shipping; banking; insurance; government grants; government insurance and loan programs; energy and power production; custom house brokers; ownership of real estate; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in the Communications Satellite Corporation; the provisions common carrier telephone and telegraph services; the provision of submarine cable services; use of land and natural resources; primary dealerships in government securities; land-based maritime transport facilities.

The People's Republic of the Congo

The insurance sector; government lending and insurance programs; energy production; certified customs agents; real estate, radio and television broadcasts; telephone and telegraph services drinking water supply; rail transportation; air transport.