AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Korea and the Government of the Republic of South Africa (hereinafter referred to as "the Contracting parties"),

Wishing to intensify economic cooperation to the mutual benefit of both States,

Desiring to create favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting party, and

Recognizing that the encouragement and reciprocal protection of investments on the basis of this Agreement stimulates business initiative in both States,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investments" means every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party and in Particular, though not exclusively, includes:

(a) Movable and immovable property and any other property rights such as mortgages, lines or pledges;

(b) Shares in, stocks and debentures of, and any other form of participation in a company or any business enterprise;

(c) Claims to money or to any performance under contract having an economic value;

(d) Intellectual property rights including copyrights, trademarks, trade names, patents, industrial designs, technical processes, know-how, trade secrets and goodwill;

(e) Business concessions having economic value conferred by law or under contract including concessions to search for, extract, cultivate, or exploit natural resources;

(f) Goods that, under a leasing agreement, are placed at the disposal of a lessee in the territory of a Contracting Party in conformity with its laws and regulations. Any change of the form in which assets are invested or reinvested shall not affect their character as an investment.

(2) The term "investor" means any natural or juridical person who invests in the territory of the other Contracting Party.

(a) The term "natural person" means with respect to either Contracting Party, a natural person having the nationality or citizenship of that Contracting Party in accordance with its laws.

(b) The term "juridical person" means with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as a juridical person by its laws, such as public institutions, corporations, foundations, companies, partnerships and associations irrespective of whether their liabilities are limited or otherwise, and whether or not organized for pecuniary profit.

(3) The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, fees and other incomes.

(4) The term "territory" means the territory of the Republic of Korea or the territory of the Republic of South Africa respectively, as well as those maritime areas, including the seabed and subsoil, adjacent to the outer limit of the territorial

sea of the above territories over which the Contracting Party concerned exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration, exploitation and preservation of the natural resources of such areas.

(5) The term "freely convertible currency" means any currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage the creation of favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall grant, in accordance with its laws and regulations, the necessary permits in connection with such investments and with the carrying out of licensing agreements and contracts for technical, commercial and administrative assistance.

(3) Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

(4) Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracing Pary.

Article 3. National and Most-favoured-nation Treatment

(1) Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of its own investors or of investors of any third State.

(2) Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards management, maintenance, use, enjoyment of disposal of their investment not less favourable than that which it accords to its own investors or to the investors of any third State.

(3) The Provisions of paragraphs(1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) Any existing or future customs union, free trade area, common external tariff area, a monetary union or similar international agreement or other forms of regional cooperation to which either Contracting Party is or may become a Party; or

(b) Any agreement or arrangement relating to special advantages accorded to development finance institutions; or

(c) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Compensation for Losses

(1) When investments by investors of either Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar situations in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other forms of settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

(2) Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situation referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities of the latter Contracting Party; or

(b) Destruction of their property by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation

Shall be accorded restitution or adequate compensation not less favourable than that would be accorded under the same circumstances to an investor of the other Contracting Party or of any third State.

Article 5. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose", under due process of law, on a non-discriminatory basis and provided that it is accompanied by prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or impending expropriation became public knowledge, whichever is the earlier, shall include interest from the date of expropriation at a normal commercial rate and shall be made without undue delay, be effectively realizable and be freely transferable.

(2) The investor of one Contracting Party claiming that all or part of his or its investment has been expropriated shall have a right to prompt review by a judicial or other independent authority of the other Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraph (1) of this Article.

(3) Where a Contracting Party expropriates assets of a company which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party own shares or other forms of participation, the provisions of paragraphs (1) and (2) of this Article shall apply.

Article 6. Transfer

(1) Pursuant to its own legislation, each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments related to their investments and returns. Such transfers shall include in particular, though not exclusively:

(a) Returns from investment as defined in paragraph (3) of Article 1;

(b) Proceeds accruing from the sale or the total or partial liquidation of any investment;

(c) Payments under contract, repayment of loans, and other payments resulting from licenses, franchises, concessions and similar rights;

(d) Net earnings of nationals of the other Contracting Party who are allowed to work in connection with the investment in its territory;

(e) Additional funds necessary for the maintenance or development of an existing investment;

(f) Compensation pursuant to Articles 4 and 5.

(2) All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, at the market rate of exchange in force on the date of transfers.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee it has accorded in respect of an investment, the latter Contracting Party shall recognize:

(a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any rights or claims from the investor to the former Contracting Party or its designated agency, and

(b) That the former Contracting Party or its designated agency it entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor or the other Contracting Party

(1) Any dispute between a Contracting Party and an investor of the other Contracting Party, including expropriation of the investment, shall, as far as possible, be settled by the parties to the dispute in an amicable way.

(2) The local remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made are available for the investor of the other Contracting Party on the basis of treatment not less favourable than that accorded to investment of its own investors or investors of any third State whichever is more favourable to the investor.

(3) If the dispute cannot thus be settled within six (6) months from the date on which the disputed has been raised by either party, it shall be submitted upon request of either the investor or the Contracting Party to either;

(a) The International Centre for th Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washing D.C. on 18 March 1965; or

(b) An ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law(UNCITRAL)

(4) For the time being whilst the Republic of South Africa is not a party to the convention referred to in sub-paragraph (a) of paragraph (3), the dispute may be settled under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes.

(5) The award made by either arbitral tribunal of paragraph (3) shall be final and binding for the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

Article 9. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or diplomatic channels.

(2) If a dispute cannot be settled within six (6) months, it shall, upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted for each individual case in the following way, Within two(2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State, who on approval of the two Contracting parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "chairman"). The Chairman shall be appointed within three (3) months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, a request may be made by either Contracting Party to the president of the International of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President also happens to be a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the appointments.

(5) The Tribunal shall decide the dispute according to this Agreement and to the principles of international law. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

Article 10. Application of other Rules

(1) Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, or by general principles of international law, nothing in this Agreement shall prevent either contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are the more favourable to his case.

(2) If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions or contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

(3) Either Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party.

Article 11. Application of the Agreement

This Agreement shall apply to all investments whether made before or after its entry into force, but shall not apply to any

dispute or claim concerning an investment which was settled before its entry into force.

Article 12. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force thirty(30) days after the Contracting Parties have notified each other in writing that their respective internal constitutional procedures have been fulfilled.

(2) This Agreement shall remain in force for a period of fifteen (15) years and shall continue in force thereafter unless one(1) year before the expiry of the initial or subsequent period either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement.

(3) In respect of investment made prior to the termination of this Agreement, the previsions of this Agreement shall continue to be effective for a period of twenty(20) years from the date of termination.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at seoul on the 7th day of July 1995, in the Korean and English languages, all tests being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA