

AGREEMENT, ASSIGNMENT  
AND CONVEYANCE OF NET  
PROFITS ROYALTY INTEREST

THIS AGREEMENT, ASSIGNMENT AND CONVEYANCE OF NET PROFITS ROYALTY INTEREST (this "Agreement") is made as of the 31st day of October, 1986 by and between NICOR MINERAL VENTURES INC., an Illinois corporation ("NMV"), having offices at the address stated below and NICOR MINERALS INC., a Delaware corporation ("NMI"), having offices at the address stated below.

In consideration of the mutual covenants contained herein, NMV and NMI agree as follows:

1. Grant of Net Profits Royalty. NMV hereby sells, assigns, conveys, transfers and sets over to NMI a net profits royalty interest (the "Net Profits Royalty") in the net profits, if any, realized from the extraction and sale of minerals from the properties described in Exhibit A attached hereto and made a part hereof for all purposes (the "Subject Properties"), it being expressly understood that the Subject Properties shall be defined by vertical boundaries, and in certain proceeds received by NMV in connection with a "Free-and-Clear Transfer or Conveyance," as such term is defined in Section 3(c) below. It is further expressly understood that the Subject Properties include solely: (i) all interests which are now held by NMV in the properties described in Exhibit A; and (ii) all interests which are hereafter held by NMV in (A) all extensions, renewals or replacements of any leases described in Exhibit A, (B) all relocated unpatented mining claims covering lands now covered by unpatented claims identified in Exhibit A and (C) all patents issued on the basis of unpatented claims identified in Exhibit A, provided, however, that each of the NMV interests described in foregoing clauses (A), (B) and (C) is included in the Subject Properties only to the extent that it covers the same lands in which NMV now holds an interest and does not exceed the quantum of interest which NMV now holds in such lands, and represents at any given time NMV's share net of interests joint ventured or otherwise granted to others.

TO HAVE AND TO HOLD the Net Profits Royalty, together with all and singular, all rights, privileges, options, hereditaments, and appurtenances thereto in anywise belonging, unto NMI, its successors and assigns, subject to the terms, conditions, exceptions, reservations, covenants, and agreements herein set forth.

2. Term of Net Profits Royalty. The Net Profits Royalty will be effective as of the Effective Date (as defined in Section 5(f) below) and will remain in effect until the date which is the tenth anniversary of the last day of the month in which the first commercial sale of Subject Minerals (which latter term is defined in Section 3(a) below) occurs. The "first commercial sale" means the time, after a decision has been made by NMV to commence commercial production, at which the first payment for sale of commercial quantities of Subject Minerals is received, without regard to any subsequent increase or decrease in the level of production of Subject Minerals. As used in this instrument the term "first commercial sale" shall not mean sales made of minerals mined in the course of exploration activities or pilot plant operations.

3. Provisions and Covenants Applicable to the Net Profits Royalty. The following shall apply to the Net Profits Royalty:

(a) Interest in Net Profits Only. The Net Profits Royalty does not include any right, title, or interest in and to

any of the personal property, fixtures, or equipment now (or hereafter placed) upon, in or under the Subject Properties. Subject to the operation of Section 3(c) below, the Net Profits Royalty is exclusively an interest in net profits from mining activities conducted on or associated with the Subject Properties, and NMI shall look exclusively to the proceeds from the sale or other transfer of the gold, silver and other minerals produced from the Subject Properties by NMV pursuant to its interests therein (such minerals, after extraction, being herein called "Subject Minerals"), as herein provided, for the satisfaction and realization of the Net Profits Royalty.

(b) NMV to Operate Properties. NMI shall have neither any right to control the marketing of any of the Subject Minerals nor any right to collect or receive any of the proceeds of the sale of any such production.

(c) Proceeds of Sale of Properties. The Net Profits Royalty is a real property interest in the Subject Properties, and shall burden and run with any transfer thereof, except as provided in this Subsection 3(c). NMV and NMI expressly agree that NMV shall be free, in its sole discretion, to sell, transfer or otherwise dispose of all or any portion of the Subject Properties free and clear of the Net Profits Royalty on such terms as NMV or its successor may elect. Any instrument of conveyance or transfer (to any Person other than an Affiliate) of an interest in the Subject Properties executed and delivered by NMV or its successor which provides expressly that such conveyance or transfer is free and clear of the Net Profits Royalty (a "Free-and-Clear Transfer or Conveyance") shall terminate the Net Profits Royalty with respect to the interest in the Subject Properties conveyed, and NMI expressly agrees that any assignee or transferee of such interest from NMV may rely thereon. Any non-refundable cash proceeds received by NMV from such Free-and-Clear Transfer or Conveyance shall be credited to the Net Profits Account (as hereinafter defined). Any non-refundable interests (other than security interests) in the Subject Properties or the Subject Minerals received by NMV in connection with any such Free-and-Clear Transfer or Conveyance shall automatically be burdened with the Net Profits Royalty, and NMV will promptly execute and record evidence thereof reasonably satisfactory to NMI. Any other non-refundable consideration received by NMV in connection with any Free-and-Clear Transfer or Conveyance shall be reasonably valued by NMV on a then current cash fair market basis, and such amount shall be credited to the Net Profits Account. As used in this Subsection 3(c), the term "non-refundable" means any portion of the consideration received by NMV in a Free-and-Clear Transfer or Conveyance which NMV would not be required to refund to the transferee, under the instruments and agreements executed by NMV or which are otherwise binding upon NMV in connection with such transaction. At such time as any other refundable portion of such consideration becomes non-refundable, such portion shall be credited to the Net Profits Account or burdened by the Net Profits Royalty, as appropriate.

(d) NMI Not Directly Liable. NMI shall never personally be responsible for payment of any part of the costs and expenses charged against the Net Profits Account nor for any other liabilities related to the Subject Properties, including, but not limited to, liabilities incurred in developing, exploring, equipping, and operating the Subject Properties after the Effective Date, and NMV hereby agrees to indemnify and save NMI harmless against any and all such responsibility and liability; provided, however, all such costs and expenses shall nevertheless be charged against the Net Profits Account as and to the extent herein provided.

(e) NMI To Have Access. During the term of the Net Profits Royalty, NMI and its accredited representatives shall, at the risk and expense of NMI and to the extent permitted by existing agreements covering the Subject Properties and upon reasonable advance notice to NMV, have access at all reasonable times to the Subject Properties and to milling and processing operations of NMV related to the Subject Properties and the right to observe operations conducted thereon, and also access to the books, records and data of NMV relating to the Subject Properties, but such rights of access and observation shall be exercised solely for the purpose and to the extent necessary to verify the amount of payments due hereunder or as a basis for the elections provided for in that certain "Agreement Relating to Net Profits Interest" dated the date hereof between the undersigned, and in no case will the operations of NMV be interfered with. NMV shall upon request furnish NMI with all information concerning quantities of Subject Minerals produced and sold and prices paid therefor necessary for NMI to monitor and audit the Net Profits Account.

#### 4. Net Profits Account.

(a) Establishment of Account. Concurrently herewith NMV shall establish, and until the Net Profits Royalty terminates, NMV shall maintain a Net Profits Account in accordance with the terms of this instrument. The books of account and records of the Net Profits Account shall at all reasonable times be open for examination, inspection, copying, and audit by NMI and its accredited representatives at NMI's expense. The Net Profits Account shall be and remain a non-interest bearing account subject to the operation of Subsection 4(b)(iii) below.

(b) Account to be a Profit/Loss Account. The Net Profits Account shall be a profit-loss account prepared in conformity with Generally Accepted Accounting Principles ("GAAP") applied on a consistent basis and shall present fairly NMV's share of the net profits or losses generated by mining on the Subject Properties. The Net Profits Royalty shall be calculated on the basis of deducting, from NMV's share of gross revenues realized (or deemed to be realized in the case of a sale to an Affiliate and as determined in accordance with Section 4(c) hereof) from the sale of Subject Minerals (subject, however, to Section 3(c) hereof), NMV's share of costs and expenses (expressly excluding all state and federal income taxes) that are attributable to (among other appropriate matters) the maintenance, evaluation, exploration, development, mining, processing, refining, smelting and marketing of Subject Minerals from the Subject Properties. Specifically included within the costs and expenses chargeable to the Net Profits Account are the following: (i) costs and expenses incurred by NMV and its Affiliates which are directly attributable to the Subject Properties, the operation thereof, or any activity related thereto; (ii) an amount equal to a reasonable charge for overhead of NMV to cover the portion thereof properly allocable to the Subject Minerals, the Subject Properties, milling and processing facilities and marketing activities (such amounts however not to exceed (a) 10% of NMV's share of the costs (which costs shall not include capital expenditures on property, plant and equipment and shall not include imputed interest referred to in clause 4(b)(iii) below) with respect to the project prior to making of the first commercial sale, or (b) 3% of the greater of such costs of the project or of NMV's share of gross sales revenues after the first commercial sale); and (iii) during all periods when the Net Profits Account has a negative balance, an amount equal to imputed interest on such negative balance at an annual rate, adjusted at the end of each calendar quarter, equal to the prime rate, or any successor reference rate of interest announced

publicly from time to time by First National Bank of Chicago; provided, however, that no such imputed interest charges to the Net Profits Account shall be considered in calculating the existence or size of any negative balance thereof for purposes of calculating any charge pursuant to this Subsection 4(b)(iii).

(c) Treatment of Affiliates. For purposes of this Agreement, "Affiliate" is defined as any person or entity (including natural persons, corporations, partnerships and joint ventures) which directly or indirectly controls, is controlled by or is under common control with NMV. For purposes hereof, "control" means the power to direct or cause the direction of the management policies of the person or entity. In the case of a disposition of Subject Minerals by NMV by taking such minerals in kind, or by selling or otherwise transferring such minerals to an Affiliate, the Net Profits Account will be credited with (i) an amount determined by reference to the average, over the ten trading days immediately preceding the date of disposition of the Subject Minerals, of the Comex average daily spot price over such period for the payable metal content of the Subject Minerals in question plus the fair market value of other commercial constituents, or (ii) the actual proceeds received by NMV, whichever is greater. If, at the time of their disposition, the Subject Minerals are not a refined metal, applicable smelting and/or refining charges and transportation charges shall be deducted in determining the amount to be credited to the Net Proceeds Account.

(d) Combined Operation. In the event the Subject Properties, or milling and processing facilities related thereto, are operated in conjunction with or for the benefit of properties in addition to the Subject Properties, the charges and credits to the Net Profits Account shall be proportionally reduced to reflect fairly the portion of all charges and credits which are properly allocable to the Subject Properties and to the Subject Minerals produced therefrom.

(e) Payments. Payments will be made by NMV on a provisional basis for each calendar quarter and on a final basis for each calendar year after the first commercial sale of the Subject Minerals, in accordance with the following:

- (i) Within 45 days after the end of each calendar quarter (except the last quarter of the year), NMV shall furnish a statement reflecting the condition of the Net Profits Account as of the close of business on the last day of such calendar quarter. Any deficit or loss (i.e., excess of debits over credits) reflected by any such statement shall be carried forward until such deficit or loss has been liquidated. In case a net profit (i.e., excess of credits over debits) is reflected by any such statement, NMV will pay to NMI on a provisional basis an amount equal to ten percent (10%) (hereinafter called "Assignee's Net Profits Fraction") of any such net profit in the Net Profits Account for such quarter, which payment, if any, shall be enclosed with the statements rendered to NMI, and the Net Profits Account shall then be debited on a provisional basis with the full credit amount upon which such Net Profits Royalty was calculated, and the credit balance reduced to zero.
- (ii) Within 90 days after the end of each calendar year, NMV shall furnish to NMI a statement reflecting the condition of the Net Profits Account on the first day (or as of the Effective



publicly from time to time by First National Bank of Chicago; provided, however, that no such imputed interest charges to the Net Profits Account shall be considered in calculating the existence or size of any negative balance thereof for purposes of calculating any charge pursuant to this Subsection 4(b)(iii).

(c) Treatment of Affiliates. For purposes of this Agreement, "Affiliate" is defined as any person or entity (including natural persons, corporations, partnerships and joint ventures) which directly or indirectly controls, is controlled by or is under common control with NMV. For purposes hereof, "control" means the power to direct or cause the direction of the management policies of the person or entity. In the case of a disposition of Subject Minerals by NMV by taking such minerals in kind, or by selling or otherwise transferring such minerals to an Affiliate, the Net Profits Account will be credited with (i) an amount determined by reference to the average, over the ten trading days immediately preceding the date of disposition of the Subject Minerals, of the Comex average daily spot price over such period for the payable metal content of the Subject Minerals in question plus the fair market value of other commercial constituents, or (ii) the actual proceeds received by NMV, whichever is greater. If, at the time of their disposition, the Subject Minerals are not a refined metal, applicable smelting and/or refining charges and transportation charges shall be deducted in determining the amount to be credited to the Net Proceeds Account.

(d) Combined Operation. In the event the Subject Properties, or milling and processing facilities related thereto, are operated in conjunction with or for the benefit of properties in addition to the Subject Properties, the charges and credits to the Net Profits Account shall be proportionally reduced to reflect fairly the portion of all charges and credits which are properly allocable to the Subject Properties and to the Subject Minerals produced therefrom.

(e) Payments. Payments will be made by NMV on a provisional basis for each calendar quarter and on a final basis for each calendar year after the first commercial sale of the Subject Minerals, in accordance with the following:

- (i) Within 45 days after the end of each calendar quarter (except the last quarter of the year), NMV shall furnish a statement reflecting the condition of the Net Profits Account as of the close of business on the last day of such calendar quarter. Any deficit or loss (i.e., excess of debits over credits) reflected by any such statement shall be carried forward until such deficit or loss has been liquidated. In case a net profit (i.e., excess of credits over debits) is reflected by any such statement, NMV will pay to NMI on a provisional basis an amount equal to ten percent (10%) (hereinafter called "Assignee's Net Profits Fraction") of any such net profit in the Net Profits Account for such quarter, which payment, if any, shall be enclosed with the statements rendered to NMI, and the Net Profits Account shall then be debited on a provisional basis with the full credit amount upon which such Net Profits Royalty was calculated, and the credit balance reduced to zero.
- (ii) Within 90 days after the end of each calendar year, NMV shall furnish to NMI a statement reflecting the condition of the Net Profits Account on the first day (or as of the Effective

Date with respect to the first partial year) and as of the close of business on the last day of such calendar year, and financial statements pertaining to the Subject Properties accompanied by a certificate of the chief financial officer of NMV certifying that such financial statements have been prepared in conformity with GAAP applied on a consistent basis and present fairly NMV's share of the net profits or losses generated from mining on the Subject Properties. The Net Profits Royalty liability for such calendar year (or first partial year) shall be determined in accordance with Section 4(e)(i) above mutatis mutandis. If the total Net Profits Royalty so determined to be payable for such calendar year is less than the sum of all provisional payments made pursuant to Section 4(e)(i) during such calendar year, an invoice shall be enclosed for such difference (which differences however shall not be greater than the total payments made under Section 4(e)(i) for such year) with the statements rendered under this subsection. Within 10 days after receipt of such invoice NMI shall pay the full amount of such invoice to NMV.

- (iii) Notwithstanding the foregoing, any amount payable to NMI pursuant to Sections 4(e)(i) and 4(e)(ii) shall be reduced by the amount of the Advance Payment (as defined in the Merger Agreement) from NMV to NMI pursuant to the Merger Agreement to the extent such Advance Payment has not previously been recovered by NMV as a credit against any Gold Payments as defined and provided for in the Merger Agreement.

## 5. General Provisions.

(a) Relationship of Parties. Nothing herein shall be deemed to create or imply any fiduciary relationship between the parties. NMV shall have no obligation to explore, develop, or maintain any of the Subject Properties, but will use its best efforts to act as a prudent operator in maintaining and operating the Subject Properties; provided, however, that, notwithstanding anything to the contrary herein, NMV shall not be liable to NMI for any losses sustained or liabilities incurred as a result of NMV's failure to act as a prudent operator except to the extent that such losses or liabilities result from NMV's gross negligence or willful misconduct. NMV may at any time relinquish, surrender or abandon any of the Subject Properties without thereby incurring any obligation or liability to NMI, including, without limitation, any obligation to reassign any of NMV's interest to NMI.

(b) Notices. All notices, communications and payments required or permitted to be given hereunder shall be deemed to be properly delivered if and when expressed in writing and deposited in the mail as certified mail, with adequate prepaid postage affixed thereto at these addresses:

- (1) If to NMV:

4949 South Syracuse Street  
Suite 4200  
Denver, Colorado 80237

(2) If to NMI:

1700 Ferry Road  
East-West Tollway at Route 59  
Naperville, Illinois 60566  
Attention: Vice President - Finance

Either party may specify as its proper address any other post office address by giving the other party at least fifteen (15) days written notice thereof.

(c) Disclosure. Except as necessary to comply with laws, rules or regulations or to negotiate a transfer of its interest under this Agreement, NMI shall not disclose to any person information relating to the Subject Properties without the prior consent of NMV.

(d) Enurement. All agreements and conditions between the parties hereto shall extend to and be binding upon their respective successors and assigns. No change of ownership of the Net Profits Royalty will be binding upon NMV until NMV is furnished with photocopies, satisfactory to NMV, of the documents evidencing such change. Except for a Free-and-Clear Transfer or Conveyance, no transfer by NMV of any of its rights and obligations hereunder shall relieve it of its obligations hereunder unless NMI should consent in writing to a release of such obligations.

(e) Title. The Net Profits Royalty is conveyed to NMI without any warranty of title or any other warranty, either express or implied, and NMV will have no liability on account of any recitation of ownership contained herein.

(f) Effective Date. The Effective Date of this instrument for all purposes shall be as of the 31st day of October, 1986.

IN WITNESS WHEREOF, this instrument is executed on the date of the acknowledgement hereto, but as of the Effective Date.

ATTEST:

NICOR MINERAL VENTURES INC.

Alexander C. Allison  
Alexander C. Allison,  
Assistant Secretary

By [Signature]  
Name: Alex F. Bissett  
Title: President

(SEAL) **SEAL  
Affixed**

ATTEST:

NICOR MINERALS INC.

Alexander C. Allison  
Alexander C. Allison,  
Assistant Secretary

By [Signature]  
Name: Philip S. Cali  
Title: Vice-President

(SEAL) **SEAL  
Affixed**

STATE OF ILLINOIS

COUNTY OF COOK

)  
) ss.  
)

On this 31 day of October, in the year 1986, before me, Marianne D. Martin a Notary Public of said State, duly qualified, commissioned and sworn, personally appeared Alex F. Bissett and Alexander C. Allison, known to me to be the President and Assistant Secretary of NICOR Mineral Ventures Inc., respectively, and Philip S. Cali and Alexander C. Allison known to me to be the Vice President and Assistant Secretary, respectively, of NICOR Minerals Inc., and acknowledged to me that such corporation executed the same.

California

Personally appeared before me each such persons, known to me to be the persons who executed the within instrument on behalf of the association set opposite their names, and acknowledged to me that such association executed the same.

Colorado

The foregoing instrument was acknowledged before me this day by each such persons on behalf of said corporation.

Illinois

The foregoing instrument was acknowledged before me this day by said persons as the designated officers of the corporation or association set opposite their names (or as Trustees, as the case may be) on behalf of said corporation or association (or themselves, as Trustees).

Nevada

On October 31, 1986 personally appeared before me a notary public, such persons who acknowledged that they executed the above instrument.

South  
Carolina



Personally appeared before me such persons who, being duly sworn, says that he saw the corporate seal of the said corporation affixed to the foregoing instrument and that he also saw the president and the secretary of said Corporation, sign and attest the same, and that he witnessed the execution and delivery thereof as the act and deed of such persons.

Witness my hand and official seal.

[SEAL]

Marianne D. Martin  
Notary Public  
Residing at Oak Forest, Illinois

My commission expires:

9-25-89



Unpatented Claims-

	Recording Data		Bureau of Land Management
	Location	Certificate	Serial Number
	Eureka County	NEVADA	
	Book	Page	
Joe	73	367	N-MC-92823
Don	73	368	N-MC-92824
Big Jim	0	45	N-MC-11196
Big Jim #1	0	46	N-MC-11197
Big Jim #2	0	47	N-MC-11198
Big Jim #3	0	48	N-MC-11199
Big Jim #4	0	49	N-MC-11200
Big Jim #5	0	50	N-MC-11201
Big Jim #6	0	51	N-MC-11202
Big Jim #7	0	52	N-MC-11203
Big Jim #8	0	53	N-MC-11204
Big Jim #9	0	54	N-MC-11205
Big Jim #10	0	55	N-MC-11206
Big Jim #11	0	56	N-MC-11207
Big Jim #12	0	57	N-MC-11208
Big Jim #13	0	58	N-MC-11209
Big Jim #14	0	59	N-MC-11210
Big Jim #15	0	60	N-MC-11211
Big Jim #16	0	61	N-MC-11212
Big Jim #17	0	62	N-MC-11213
Big Jim #18	0	63	N-MC-11214
Big Jim #19	0	64	N-MC-11215
Big Jim #20	0	65	N-MC-11216
Big Jim #21	0	66	N-MC-11217
Big Jim #22	0	67	N-MC-11218
Big Jim #23	0	68	N-MC-11219
Big Jim #24	0	69	N-MC-11220
Big Jim #25	0	70	N-MC-11221
Big Jim #26	0	71	N-MC-11222
Big Jim #27	0	72	N-MC-11223
Big Jim #28	0	73	N-MC-11224
Big Jim #29	0	74	N-MC-11225
Big Jim #30(MS)*	71	111	N-MC-72757
Big Jim #31(MS)*	71	112	N-MC-72758
Cracker Jack	0	24	N-MC-11174
Cracker Jack #1	0	24	N-MC-11175
Cracker Jack #2	0	25	N-MC-11176
Cracker Jack #3	0	26	N-MC-11177
Cracker Jack #4	0	27	N-MC-11178
Cracker Jack #5	0	28	N-MC-11179
Yellow Rose #6	--	--	--
Yellow Rose #7	--	--	--
Yellow Rose #8	0	31	N-MC-11182
Yellow Rose #9	0	32	N-MC-11183
Yellow Rose #10	0	33	N-MC-11184
Yellow Rose #11	0	34	N-MC-11185
Yellow Rose #12	0	35	N-MC-11186
Yellow Rose #13	0	36	N-MC-11187
Yellow Rose #14	0	37	N-MC-11188
Yellow Rose #15	0	38	N-MC-11189
Yellow Rose #16	0	39	N-MC-11190
Yellow Rose #17	0	40	N-MC-11191
Yellow Rose #18	0	41	N-MC-11192
Yellow Rose #19	0	42	N-MC-11193
Yellow Rose #20	0	43	N-MC-11194
Yellow Rose #21	0	44	N-MC-11195
Polar #1	54	385	N-MC-11154
Polar #2	54	386	N-MC-11155
Polar #3	54	387	N-MC-11156
Polar #4	54	388	N-MC-11157
Polar #5	54	389	N-MC-11158
Polar #6	54	390	N-MC-11159
Polar #7	54	391	N-MC-11160
Polar #8	54	392	N-MC-11161
Polar #9	54	393	N-MC-11162
Polar #10	54	394	N-MC-11163
Polar #11	54	395	N-MC-11164

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Unpatented Claims

<u>Unpatented Claims</u>	<u>Book</u>	<u>Page</u>	<u>Serial Number</u>
Polar #12	54	396	N-MC-11165
Polar #13	54	397	N-MC-11166
Polar #14	54	398	N-MC-11167
Polar #15	54	399	N-MC-11168
Polar #16	54	400	N-MC-11169
Polar #17	54	401	N-MC-11170
Polar #18	54	402	N-MC-11171
Polar #19	54	403	N-MC-11172
Polar #20	54	404	N-MC-11173
RJV 62	318		N-MC-13741
Paragon M	216		N-MC-11237
Paragon #1	M	217	N-MC-11238
Paragon #2	M	218	N-MC-11239
Paragon #3	62	318	N-MC-13741
Paragon Fraction	M	215	N-MC-11236
Bullion #1	70	563	N-MC-72752
Bullion #2	70	564	N-MC-72753
Bullion #3	70	565	N-MC-72754
Bullion #4	70	566	N-MC-72755
Bullion #5	70	567	N-MC-72756

RECORDED AT REQUEST OF  
*Davis, Graham & Stubbs*  
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OFFICIAL RECORDS  
EUREKA COUNTY, NEVADA  
M.N. REBALEAD, RECORDER  
FILE NO. 106207  
FEE \$ 13.00

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