AGREEMENT BETWEEN THE REPUBLIC OF GUATEMALA AND THE REPUBLIC OF CUBA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Guatemala and gives the Government of the Republic of Cuba, hereinafter referred to as the Contracting Parties;

Desiring to intensify economic cooperation in the mutual benefit of both States;

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other party, involving transfers of capital;

Recognizing the need to promote and protect foreign investment with a view to promoting the economic prosperity of both States.

Have agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. The term "investor" designates the following subjects who have made investments in the territory of the other Contracting Party in accordance with this Agreement:

a) Natural persons or individuals:

i) With respect to the Republic of Cuba: those who are citizens of that Contracting Party in accordance with its legislation and permanently residing in the national territory;

ii) With respect to the Republic of Guatemala: any natural person or individual that gives under the law of that Contracting Party is deemed to be a national of the same, and that has no Cuban citizenship.

b) Entities or legal entities, including companies, corporations, business associations or any other duly constituted or otherwise organized under the law of that Contracting Party, having their seat, as well as their effective economic activities in the territory of that Contracting Party; or individual natural persons:

2. The term "investment" refers to any kind of property or rights related thereto, provided that it has been made in accordance with the laws and regulations of the Contracting Party in whose territory it is made and shall include, in particular, but not exclusively:

a) Property rights on movable and immovable property as well as any other rights in rem;

b) Shares and social quotas and any other kind of participation in companies or enterprises;

c) Rights of claim or any other performance having economic value associated with the investment;

d) Intellectual Property Rights, including copyrights and industrial property rights, within which shall include technical processes, patents, trademarks or trade names, trademarks, industrial designs, business names, know-how and goodwill;

e) Concessions conferred by law, by an administrative act or under a contract, including concessions to cultivate, extract, explore or exploit natural resources.

Any change in the form in which the investment has been made shall not affect their character as investments.

3. The term "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, include

profit, capital gains, interest, dividends, royalties.

Returns from investments and in case of reinvestment, profit derived from such, shall enjoy the same protection as the initial investments.

4. The term "territory" includes, in addition to the land, sea and air space under the sovereignty of each Contracting Party, marine and submarine areas over which they exercise sovereign rights and jurisdiction in accordance with their respective laws and international law.

Article II. Scope

1. This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party, according to the laws of the other Contracting Party in the territory of the latter.

2. However, this Agreement shall not apply to differences or disputes which have arisen prior to its validity or directly related to events before its Entry into Force.

Article III. Admission, Promotion and Protection of Investments

1. Each Contracting Party shall, subject to its general policy in the field of investment, encourage investments in its territory of investors of the other Contracting Party and shall admit in accordance with its laws and regulations.

2. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment, extension and sale and liquidation of such investments by unreasonable or discriminatory measures.

Article IV. Treatment of Investments

1. Each Contracting Party shall ensure fair and equitable treatment within its territory to investments of investors of the other Contracting Party and shall ensure that the exercise of the rights recognized shall not be hindered in practice.

2. Each Contracting Party shall accord to investments of investors of the other Contracting Party in its territory treatment no less favourable than that accorded to its own investments of investors in similar categories, or to investors of any third country, if the latter is more favourable treatment.

3. Where a Contracting Party grants special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union, economic union, a Common Market or any other form of regional economic organization or by virtue of any agreement relating wholly or mainly to taxation matters, that Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article V. Free Transfer

1. Each Contracting Party shall allow investors to without delay of the other Contracting Party, after the completion of tax obligations, the transfer of funds in freely convertible currency agreed by the investor and the Contracting Party, related to investment and in particular, though not exclusively:

(a) Dividends, interests, income, profits and other returns;

(b) Repayments of loans from abroad in connection with an investment:

(c) The capital or the proceeds of the total or partial sale or liquidation of an investment;

(d) The proceeds of the settlement of a dispute; and compensation pursuant to Article VI.

2. Transfers shall be made at the rate of exchange in force at the market at the date of transfer in accordance with the legislation of the Contracting Party which has admitted the investment.

Article VI. Expropriation and Compensation

1. Neither of the Contracting Parties shall take measures of expropriation or nationalization or any other measures having the same effect against investments within its territory and belonging to investors of the other Contracting Party unless the following conditions are met:

(a) The measures are taken for a public purpose or social interest, national interest and in accordance with the law;

(b) The measures are not discriminatory;

(c) The measures are accompanied by provisions for the payment of prompt, effective and adequate compensation.

2. The compensation shall be based on:

(a) The present value of the affected investments for the purpose of this Agreement shall be determined by the market value of the same date immediately preceding the date on which the measure adopted reaches public knowledge;

(b) Where it is difficult to determine the value, the compensation shall be determined in accordance with generally recognized principles of valuation and equitable, taking into account the invested capital depreciation, capital, repatriated until that date, replacement value and other relevant factors;

(c) Any delay in the page of compensation shall accrue interest at a commercial rate established on the basis of the market value, from the date of expropriation or lost until the date of payment.

3. The Investor affected shall have a right, under the legislation of the Contracting Party making the expropriation, to prompt review of its case and the amount of compensation by agencies and judicial or other independent authority of that Contracting Party in accordance with the principles set out in this article.

4. Investors of either Contracting Party whose investments in the territory of the other Contracting Party are losses due to a war or any other armed conflict, a national state of emergency, civil disturbance or other similar events in the territory of the other Contracting Party, shall receive from this latter, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which the Contracting Party accords to domestic investors or any third State.

Article VII. Subrogation

1. If a Contracting Party or an agency authorised by it has granted a contract of insurance or other form of financial guarantee against non-commercial risks with any of investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party to the rights of subrogation of the investor, when it has made a payment under such conract or guarantee.

2. If a Contracting Party has paid to its investor and has taken by their rights, the investor shall not claim such rights to the other Contracting Party, except with the express authorization of the first Contracting Party.

Article VIII. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes arising under this agreement between one Contracting Party and an investor of the other Contracting Party which has made investments in the territory of the first, shall, as far as possible, be settled through amicable consultations.

2. If consultations fail to produce an solution within three tables, from the date of request for settlement, the investor may submit the dispute to:

(a) The competent courts of the Contracting Party in whose territory the investment was made;

(b) An ad hoc tribunal set up under the Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(c) An arbitration pursuant to the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC).

To this end, each Contracting Party consents to advance and irrevocably any difference cannot be referred to arbitration.

3. Once the investor has submitted the dispute to the competent court of the Contracting Party in whose territory the investment has been made or the arbitral tribunal, the choice of one or other of the procedure shall be final.

4. The arbitral awards shall be final and binding upon the parties to the dispute and shall be executed in accordance with the domestic law of the Contracting Party in whose territory the investment has been made.

5. The Contracting Parties shall seek, through diplomatic channels matters related to disputes submitted to court proceedings or international arbitration in accordance with the provisions of this article, until the relevant processes are completed, except where the other party in the dispute has not complied with the court decision or the decision of the

arbitral tribunal, under the terms established in the respective decision or award.

Article IX. Settlement of Disputes between the Contracting Parties

1. Disputes arising between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled as far as possible through amicable negotiations.

2. If an agreement cannot be achieved within six months of the date of the notification of the dispute, either Contracting Party may submit it to an ad hoc arbitral tribunal in accordance with the provisions of this article.

3. The arbitral tribunal shall consist of three members and shall be constituted in the following manner: within two months from the date of notification of the request for arbitration, each Contracting Party shall appoint an arbitrator. Those two arbitrators within one month from the appointment of the last one shall select a third member who shall be a national of a third State, who shall chair the Tribunal. The designation of the Chairman shall be approved by the Contracting Parties within one month from the date of his nomination.

4. If within the periods specified in paragraph 2 of this Article, the appointment has not been made or required the approval has granted, under either Contracting Party may request the President of the International to make the appointment of Justice. If the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the Vice-President shall make the appointment, and if the latter is prevented or is a national of either of the Contracting Parties, the judge of the Court who in seniority who is not a national of one of the Contracting Parties shall make the appointment.

5. The President of the Tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the principles of international law and the general principles of law recognized by the contracting parties. The Tribunal shall decide by a majority of votes and shall determine its own procedural rules.

7. Each of the Contracting Parties will cover the expenses of the respective arbitrator, as well as those related to their reappointment in the arbitration process. The expenses of the President and the other costs of the process will be paid in equal paries by the Contracting Parties unless they agree on another modality.

The Tribunal shall decide according to the general principles of law recognized by the Contracting Parties, by a majority of votes and shall determine its own procedural rules.

8. The decisions of the Tribunal shall be final and binding on both Contracting Parties.

Article X. Consultations

The Contracting Parties shall consult on any matter relating to the application or interpretation of this Agreement.

Article XI. Final Provisions

1. The Contracting Parties shall notify between if constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force one month after the date of the last notification.

2. This Agreement shall remain in force for a period of ten years and shall be extended indefinitely. After the first ten years, this Agreement may be denounced at any time by either Contracting Party giving 12 months, by notice communicated through diplomatic channels.

3. With respect to investments made prior to the date that was made effective notice of termination of this agreement its provisions shall remain in force for a further period of ten years from that date.

4. This Agreement shall apply irrespective of the existence of diplomatic relations between the two Contracting Parties.

Done at Havana, Cuba, on the twentieth day of August 1999, in duplicate in the Spanish language.

For the Government of the Republic of Cuba

For the Government of the Republic of Guatemala

Annex

The signing of the Agreement for the reciprocal promotion and protection of investments the Government of the Republic of Guatemala and the Government of the Republic of Cuba agreed on the following provisions which constitute an integral part of the Agreement.

1. The term "goodwill" used in Article I paragraph 2 (d) means, in respect of the Republic of Guatemala, as the right to use the names and business reputation acquired by an establishment trade, either through the sale or lease of that establishment.

2. The term "in similar categories" used in Article IV, paragraph 2, shall apply, in respect of the Republic of Cuba, to the treatment accorded to investments of nationals or aliens governed by national legislation covering foreign investment.

3. If in the future both Contracting Parties become party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965, the arbitration referred to in Article VIII can be carried out at the International Centre for Settlement of Investment Disputes (ICSID).