AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF CAMBODIA AND THE GOVERNMENT OF THE REPUBLIC OF CUBA CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Cambodia and the Government of the Republic of Cuba and (hereinafter referred to as "Contracting Parties");

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

Intending to create favorable conditions for investments by nationals of one Contracting Party on the basis of sovereign equality and mutual benefit, and

Recognizing that the Agreement on the Promotion and Protection of such Investments will be conductive to the stimulation of investment activities in both countries;

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

1. The term "investment" shall mean any kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, including but not exclusively:

a. Movable and immovable property as well as other rights, such as mortgages, privileges and guarantees and any other similar rights;

b. Rights derived from shares, bonds or any other form of interest in companies or joint venture in the territory of the other Contracting Party;

c. Claims to money or to any performance having a financial value;

d. Intellectual property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical process, goodwill and know-how;

e. Business concessions having an economic value conferred by law or under contract related to an investment including concessions to search for or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as an investment, provided that such alteration has also been approved or admitted under article II and that it is in accordance with the legislation in force covering foreign investment. 2. The term "investor" means national of one Contracting Party who invests in the territory of the other Contracting Party. The term "national" shall comprise:

a. (i) With regards to the Republic of Cuba: natural persons having the citizenship and permanent residence of that Contracting Party in accordance with its law.

(ii) "Legal person" means in respect of Cuba: any entity legally established in its territory and recognized by it, such as public entities, partnerships, corporations, foundations and associations, irrespective of whether or not their liability is limited.

b. (i) With regards to the Kingdom of Cambodia: Natural person having the nationality of that Contracting Party in accordance with its law.

(ii) "Legal person" means in respect of Cambodia: any entity legally established in its territory and recognized by it, such as public entities, partnerships, corporations, foundations and associations, irrespective of whether or not their liability is

limited.

3. The term "Territory" shall mean:

a. In respect of the Republic of Cuba:

The Territory of the Republic of Cuba as defined in its laws (it means, the areas within its land boundaries, the air space and the marine and submarine areas over which the State has sovereignty and, in accordance with International Law, exercises sovereign rights and jurisdiction.)

b. In respect of the territory of the Kingdom of Cambodia respectively, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of territorial sea over which the State concerned exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas.

Article II. Promotion and Protection of Investments

1. Either Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to invest in its territory, and shall admit such capital in accordance with its laws and regulations.

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

Article III. Most-favoured-nation Provisions

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, benefit or disposal thereof by those investors. Each Contracting Party shall accord to such investment adequate physical security and protection.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favorable than that accorded to investments of investor of any third state.

3. For the avoidance of doubt, it is confirmed that the investments referred to in paragraphs (1) and (2) above are those governed by the national legislation covering foreign investments and that the treatment provided for by paragraphs (1) and (2) above shall apply to the provisions of Articles I to XII of this agreement.

4. If a Contracting Party has accorded special advantages to investors of any third state by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, that Contracting Party shall not be obliged to accord such advantage to investors of the other Contracting Party.

5. The provision of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by any Avoidance of Double Taxation Treaty between the two Contracting Parties and by the domestic laws of each Contracting Party.

Article IV. Expropriation

Each Contracting Party shall not take measures of expropriation, nationalization, or otherwise subjected to any other measures having legal nature similar to nationalization or expropriation (hereinafter referred to as "expropriation") against the investments of an investor of the other Contracting Party except under the following conditions:

a. The measures are taken for a lawful purpose, for public interest and under due process of law;

b. The measures are non discriminatory basis;

c. The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value of the investments affected immediately before the measures of expropriation became a public knowledge. Such market value shall be determined in accordance with internationally acknowledged practices and methods or, where such fair market value cannot be determined, it shall be such reasonable amount as may be mutually agreed between the Contracting Parties hereto, and it shall be freely transferable in the freely convertible currency in which the investment was made or in any other currency agreed upon by both Contracting Parties.

Article V. Compensation for Losses

1. Investors of one Contracting Party, whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, civil disturb or a state of emergency in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party adequate treatment as regards restitution, indemnification, compensation or other settlement.

2. The treatment shall not be less favorable than that which the latter Contraction Party accords to its own investors or investors of any third state.

Article VI. Transfer

1. Each Contracting Party shall, subject to its laws and regulations, allow without unreasonable delay the free transfer of investments made by investors of the other Contracting Party after all relevant fiscal obligations have been complied with. Such transfers shall include, in particular, though not exclusively:

a. Profits, interests, dividends, and other current income accruing from investments;

b. Funds necessary: (i) For the acquisition of raw or auxiliary materials, semi fabricated or finished products; or

(ii) To replace capital assets in the order to safeguard the continuity of an investment;

c. Additional funds necessary for the development of an investment;

d. Funds in repayment of loans related to investments;

e. Royalties or fees;

f. Earning of natural persons;

g. Proceeds accruing from sale or liquidation of the investment;

h. Compensation for losses pursuant to Article V;

i. Compensation for expropriation pursuant to Article IV.

2. The term "without delay" shall be deemed to be fulfilled if a transfer is made within such period as is normally required by international finance practices.

3. The exchange rate applicable to such transfer in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time the transfer is made and in conformity with the legislation of the country receiving the investment.

4. Transfers shall be made in the freely convertible currency in which the investment was made or in any other currency agreed upon by both Contracting Parties.

Article VII. Subrogation

If the investments of an investor of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer to the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party, provided, however, that the insurer or the re-insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

Article VIII. Settlement of Disputes between Investors and the Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party, concerning an investment of the latter in the territory of the former, shall be settled amicably through consultations and negotiations.

2. If such a dispute cannot be settled within a period of six months from the date of a written notification by either party requested amicable settlement, the dispute shall, at the request of the investor concerned, be submitted either to the judicial procedures provided by the Contracting Party concerned or to international arbitration or conciliation.

3. In case that the dispute is submitted to arbitration or conciliation the investor shall be entitled to refer the dispute to:

a) Relevant tribunals of the Contracting Party;

b) Arbitration Court of the International Chamber of Commerce; or

c) An ad hoc tribunal to be established under the arbitration rules of the United Nations Commissions on International Trade Law (UNCITRAL). The arbitral award shall be final and binding on both parties to the disputes.

4. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceeding have terminated or a Contracting Party has failed to abide by or comply with the award rendered by the Arbitral Tribunal.

Article IX. Settlement of Disputes between the Contracting Parties Concerning Interpretation and Application of the Agreement

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. If disputes between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who on approval by the Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members and shall be a national of a State having diplomatic relations with both Contracting Parties.

4. If within the period specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other Agreement, invite the President of the International Court of Justice to make any necessary appointment. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make necessary appointment. If the Vice-President is a national of either Contracting Party or he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority that is not a national of either Contracting Party shall be invited to make the necessary appointment.

5. 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 member of the Tribunal and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal part by the Contracting Parties. The Tribunal may, however, in its decision direct than a higher proportion of costs shall be borne by one of the two Contracting Parties, and its award shall be binding on both Contracting Parties. The Tribunal shall determine its own procedures.

Article X. Applicability of this Agreement

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its laws and regulations concerning foreign investment prior to the entry into force of this agreement in the territory of either Contracting Party or any law amending or replacing it, but shall not apply to any dispute, claim or difference which arose before its entry into force.

Article XI. Application of other Provisions

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter in conformity with the international law between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investment by investors of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favorable, prevail over the present Agreement.

Article XII. Consultation and Amendment

1. Either Contracting Party may request that consultations be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

2. This Agreement may be amended at any time, if deemed necessary, by mutual consent of both Contracting Parties.

Article XIII. Entry Into Force, Duration and Termination

1. The present Agreement shall enter into force thirty (30) days after the latter date on which the Contracting parties have notified each other, through diplomatic channels, that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for a period of ten (10) years and so forth unless, after the expiry of the initial period of ten years, either contracting party notifies in writing of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

2. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination.

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

Done in the Capital of Phnom Penh on the 28th day of May, 2001, in triplicate in the Khmer, Spanish and English languages, all texts being equally authentic. If there is any divergence concerning the interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF CAMBODIA H.E. Mr. KEAT CHHON Senior Minister, Minister of Economy and Finance

FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA H.E. Mr. Ruben Perez VALDES Ambassador Extraordinary and Plenipotentiary of the Republic of Cuba to the Kingdom of Cambodia