Agreement between the Government of the Republic of Korea and the Government of Romania on the Mutual Promotion and Protection of Investments

The Government of the Republic of Korea and the Government of Romania (hereinafter referred to as "the Contracting Parties"),

Desiring to develop economic cooperation of both countries on the basis of equality and mutual benefit,

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

Recognizing that the mutual promotion and protection of investments, according to the present Agreement, stimulate the business initiatives in this field and increase the economic prosperity of both countries,

Have agreed as follows:

Article 1. Promotion and Protection of Investments

(1) Each Contracting Party shall promote, in its territory, the investments of the investors of the other Contracting Party.

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

Article 2. Definitions

(1) "Investments" means every kind of asset, invested by an investor of one Contracting Party, provided that they have been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

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

(b) Shares, stocks and any other form of participation in a company, or in companies incorporated in the territory of either Contracting Party;

(c) Reinvested returns, claims to money or to any performance under contract having a financial value;

(d) Intellectual and industrial property rights, including, but not limited to, rights with respect to copyrights, patents, trade marks, trade names, industrial designs, trade secrets, technical processes, know-how and goodwill;

(e) Any right conferred by law or under contract and any licences and permits issued pursuant to law, including the right to search for, prospect, extract, cultivate or exploit natural resources on the territory of either Contracting Party.

Any alternation of the form in which assets are invested or reinvested shall not affect their classification as investment.

(2) "Returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties or fees.

(3) "Investor" means with regard to either Contracting Party:

(a) Natural person having the nationality or citizenship of that Contracting Party in accordance with its laws;

(b) Juridical person incorporated or constituted in accordance with, and recognized as juridical person by its laws;

Provided that natural person or juridical person is competent, in accordance with laws of that Contracting Party, to make

investments in the territory of the other Contracting Party.

(4) "Territory" means:

(a) With respect to the Republic of Korea, the territory over which the Republic of Korea has sovereignty or jurisdiction;

(b) With respect to Romania, the territory over which Romania has sovereignty or jurisdiction.

(5) "Freely convertible currency" means the currency that is widely used to make payments for international transactions and widely traded in international principal exchange markets.

Article 3. Treatment of Investments

(1) Investments of investors of one Contracting Party in the territory of the other Contracting Party, as also the returns and therefrom, shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments and returns of investors of any third State.

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

(3) Each Contracting Party shall accord, in accordance with its applicable laws and regulations, treatment to the investments and returns of investors of the other Contracting Party as it accords to the investments and returns of its own investors.

(4) The provisions of paragraph 1, 2 and 3 of this Article, relating to the grant of the above mentioned treatment, shall not be construed so as to oblige one of the Contracting Parties to accord to investors of the other Contracting Party the advantages resulting from an international agreement including an economic or custom union, free trade area or regional economic organization or any domestic legislation relating wholly or mainly to taxation.

(5) Each Contracting Party shall observe any other obligation entered into with regard to investments made in its territory by investors of the other Contracting Party.

Article 4. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except:

(a) The measures are adopted in the public interest and through a legal procedure;

(b) The measures are not discriminatory;

(c) There is established a proper procedure to determine the amount and method of payment of compensation.

Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge and be freely transferable. Compensation shall be effective, adequate and be paid out without an undue delay. In the event the payment of compensation is delayed, it shall include interests at a normal commercial rate from the date of expropriation.

(2) The investor whose investment was expropriated, shall have the right under the law of expropriating Contracting Party to prompt review by a judicial or other appropriate authority of that Contracting Party of his case and of valuation of his investment in accordance with the principles set out in this paragraph.

Article 5. Compensation for Losses

Investors of one Contracting Party, whose investments in the territory of the other Contracting Party suffered losses owing to war or armed conflict, state of emergency or other similar events shall, as regards compensation or other forms of settlement, be accorded by the other Contracting Party treatment not less favourable than that which the Contracting Party accords to its own investors or the investors of any third State.

Article 6. Repatriation of Investments and Returns

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party, in respect of the investment, the

transfer in freely convertible currency in which the investment has been made or in another freely convertible currency, of:

(a) The net profits, dividends, royalties, technical assistance and technical service fees, interest and other current income, accruing from any investment by an investor of the other Contracting Party;

(b) The proceeds accruing from the sale or the total or partial liquidation of any investment made by an investor of the other Contracting Party;

(c) Funds in repayment of borrowings;

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

(e) Amounts spent for the management of the investment in the territory of the other Contracting Party or a third State; and

(f) Additional funds necessary for the maintenance of the investment.

(2) Transfer of proceeds mentioned in paragraph (1) of this Article may be effected under the condition that the transferred convertible currency originates in the investment or in its returns.

(3) Each Contracting Party shall take, after fulfillment of the "legal obligations pertaining to the investors, the necessary steps in order to ensure the execution without delay of the transfers mentioned in paragraph (1) of the present Article.

(4) For the purpose of this Agreement, exchange rates shall be the rates effective for the current transactions or those which are determined in accordance with the official rate of exchange in force at the date of transfer.

Article 7. Subrogation

(1) If a Contracting Party or its designated agency makes payment to the benefit of the investor of the Contracting Party under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated agency by law or legal transaction, all the rights and claims of the investor to whom compensation was paid in full.

(2) The other Contracting Party shall also recognize, except the right of that Contracting Party to deduct any unpaid taxes or public obligations due from the investor, the acquirement by the first Contracting Party of any rights and claims in pursuance of which that Contracting Party will be entitled to in the same extent as its legal predecessor.

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

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

(2) The legal 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.

(3) If any dispute cannot be settled within six(6) months from the date either party requested amicable settlement, it shall, by agreement of parties to the disputes upon request of either the investor or the Contracting Party, be submitted to the International Centre for the Settlement of Investment Disputes established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States.

Article 9. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations between the two Contracting Parties. If such a dispute cannot be settled within six(6) months after the commencement of negotiations, then, upon the request of either Contracting Party, dispute shall be submitted to an arbitral tribunal.

(2) The arbitral tribunal is constituted in the following way:

Each Contracting Party appoints one arbitrator; the two arbitrators propose, by mutual agreement, to both Contracting Parties, a Chairman who should be a citizen of a third state, designated by the two Contracting Parties. The arbitrators are appointed within three(3) months and the Chairman within five(5) months from the date one of the Contracting Parties

notified the other that it intends to submit the dispute to an arbitral tribunal. If the arbitrators are not appointed within the agreed period, the Contracting Party failing to appoint its arbitrator agrees that he would be appointed by the President of the International Court of Justice. If the two Contracting Parties cannot reach agreement on the appointment of the Chairman, they also agree that he were appointed by the President of the International Court of Justice.

(3) The arbitral tribunal shall issue its decisions on the basis of the provisions of the present Agreement and of other similar agreements concluded by the Contracting Parties, as well as on the general principles and rules of international law, the arbitral tribunal reaches its decisions by a majority of votes and its decision shall be final and binding. Only the two Contracting Parties can submit suits to the arbitral tribunal and participate in the proceedings.

(4) Each Contracting Party bears the costs of the arbitrator it has appointed and of its representations in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

(5) The tribunal shall determine its own procedure.

Article 10. Application of Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which was settled before its entry into force.

Article 11. 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.

Article 12. Entry Into Force, Duration and Termination

(1) Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force thirty(30) days after the date of the second notification.

(2) This Agreement shall remain in force for a period of ten(10) years and continue in force thereafter unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement; in such case it shall terminate upon the expiration of one (1) year from the date of the written notice.

(3) In respect of investments made whilst the Agreement is in force, its provisions shall remain in force for a period of ten (10) years from the date of termination.

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

DONE in duplicate at Bucharest this 7 day of August, 1990 in the Korean, Romanian and English languages, all three texts being equally authentic. In case of divergence of interpretation between the texts of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF ROMANIA

Exchange of Notes for the Amendment the Agreement between the Government of the Republic of Korea and the Government of Romania on the Mutual Promotion and Protection of Investments

Romanian Proposing Note

Bucharest, 22 May 1996

Your Excellency,

I have the honour to refer to the Agreement between the Government of Romania and the Government of the Republic of Korea on the Mutual Promotion and Protection of Investments, signed at Bucharest, on 7 August 1990 and entered into force on 30 December 1994, and to propose the amendments to articles 2, 8 and 10 of the said Agreement, as follows:

1. Article 2 - Definitions, paragraph (1), letter (a) will read: "movable and immovable property and any other related rights such as mortgages, liens and pledges".

2. Article 2, paragraph (1), letter (d) will read: "intellectual property rights, including, but not limited to, rights with respect to copyrights, patents, trade marks, trade names, industrial designs, trade secrets, technical processes, know-how and goodwill".

3. Article 2, paragraph (4) will read:

"Territory" means:

(a) With respect to Romania, the territory of Romania including the territorial sea, as well as the exclusive economic zone, over which Romania exercises, in accordance with internal and international law, sovereignty, sovereign rights or jurisdiction;

(b) With respect to the Republic of Korea, the territory of the Republic of Korea, including its territorial sea, as well as itsexclusive economic zone and continental shelf, over which the Republic of Korea exercises sovereignty, sovereign rights, jurisdiction and other rights in accordance with international law including the 1982 United Nations Convention on the Law of the Sea."

4. Article 8 - Settlement of Investment Disputes between a Contracting Party and an investor of the other Contracting Party will read:

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

(2) The legal 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.

(3) If any dispute cannot be settled within six (6) months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement to:

(a) The International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and ationals of the other States, done at Washington, on March 18, 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) The Contracting Party which is a pary to the dispute shall, at no time whatsoever during the procedures involving investment disputes, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss."

5. Article 10 - Application of the Agreement will read: "The present Agreement shall also apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party prior to the entry into force of this Agreement. However, the Agreement shall not be applicable to disputes that have arisen before its entry into force."

All other provisions of the concerned Agreement remain valid.

If the proposed amendments are acceptable to the Government of the Republic of Korea, I have further the honour to propose that the present Letter together with Your Excellency's Letter in reply to that effect shall constitute an agreement between the Government of Romania and the Government of the Republic of Korea to amend the Agreement between the Government of Romania and the Government of the Republic of Korea on the Mutual Protection and Promotion of Investments, signed at Bucharest, on 7 August 1990 and entered into force on 30 December 1994.

This Agreement shall enter into force on the date of the last notification by the Contracting Parties concerning the fulfilment of their domestic legal requirements for its entry into force.

Please accept, Excellency, the assurances of my highest consideration.

Teodor Viorel Melescanu

Minister of State

Minister of Foreign Affairs of Romania

His Excellency

Lee Ki-choo

Vice Minister of Foreign Affairs of the Republic of Korea

Korean Reply Note

Excellency,

I have the honour to confirm the receipt of Your Excellency's Letter of 22 May 1996 which reads as follows:

".....Romanian Proposing Note ....."

I have further the honour to confirm that the foregoing provisions are acceptable to the Government of the Republic of Korea and that Your Excellency's Letter together with this Letter in reply to that effect shall constitute an agreement between the Government of the Republic of Korea and the Government of Romania to amend the Agreement between the Government of the Republic of Korea and the Government of Romania on the Mutual Promotion and Protection of Investments, signed at Bucharest, on 7 August 1990 and entered into force on 30 December 1994.

This Agreement shall enter into force on the date of the last notification by the Contracting Parties concerning the fulfilment of their domestic legal requirements for its entry into force.

Please accept, Excellency, the assurances of my highest consideration.

Lee Ki-choo

Vice Minister of Foreign Affairs of the Republic of Korea

His Excellency

Teodor Viorel Melescanu

Secretary of State

Ministry of Foreign Affairs of Romania

PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF ROMANIA ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Korea and the Government of Romania (hereinafter referred to as the "Contracting Parties"),

Having in mind the necessity to amend the Agreement between the Government of the Republic of Korea and the Government of Romania on the Mutual Promotion and Protection of Investments, signed at Bucharest, on August 7, 1990 (hereinafter referred to as "the Agreement") in the light of the obligations of the Government of Romania as a future Member State of the European Union;

Have agreed to amend the Agreement as follows:

Section I

Paragraph (4) of Article 3 of the Agreement shall be replaced with the following:

(4) The provisions of paragraphs (1) to (3) of this Article, relating to the grant of the above mentioned treatment, shall not apply to all actual or future advantages accorded by either Contracting Party by virtue of its membership to, or association

with, a customs, economic or monetary union, such as the European Union, a common market or a free trade area, to investors of its own, or, of Member States of such union, common market or free trade area. Nor shall these provisions be construed so as to oblige one Contracting Party to accord the other Contracting Party all actual or future advantages accorded to investors of a third State by virtue of any international agreement or arrangement relating wholly or mainly to taxation."

Section Ii

Article 6 of this Agreement shall be amended by adding new paragraphs (5) and (6) as follows:

(5) Notwithstanding paragraphs (1) to (4) above, a Contracting Party may adopt or maintain measures relating to cross-border capital transaction:

a) In the event of serious balance of payments and external financial difficulties or threats thereof;

b) In case where, in exceptional circumstances, movements of capital cause or threaten serious difficulties for macro-economical management, in particular, monetary and exchange rate policies; and

c) Through the equitable, non-discriminatory and good faith application of its laws relating to:

(i) Bankruptcy, insolvency or the protection of the rights of creditor;

(ii) Issuing, trading or dealing in securities;

(iii) Criminal or penal offences; or

(iv) Ensuring the satisfaction of judgments in adjudicatory proceedings;

d) For the implementation of its essential foreign and security policy on grounds of necessity and urgency.

(6) Measures referred to in paragraph (5) of this article:

a) Shall not exceed those necessary to deal with the circumstances set out in paragraph (5) of this article;

b) Shall be temporary and eliminated as soon as conditions permit;

c) Shall be promptly notified to the other Contracting Party; and

d) Shall be consistent with the Articles of Agreement of the International Monetary Fund insomuch as the Contracting Party taking the measures is a party to the Articles of Agreement of the International Monetary Fund.

Section Iii

Article 12 of this Agreement shall be amended by adding a new paragraph (4) as follows:

(4) In case of future evolutions of the European Community Law that may take place after Romania's accession to the European Union, the present Agreement shall be amended, if necessary, by mutual consent of the Contracting Parties, so as to ensure the conformity of its provisions with the obligations of the Government of Romania arising from its membership to the European Union member status.

Section Iv

This Protocol shall form an integral part of the Agreement.

This Protocol shall enter into force on the date of receipt of the last notification by which the Contracting Parties inform each other of the completion of the procedures required by its laws for its entry into force and shall remain in force so long as the Agreement remains in force.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their Governments, have signed this Protocol.

Done at Bucharest on September 6, 2006, in duplicate, each in the Korean, Romanian and English languages, all texts 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 ROMANIA