AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of the Philippines and the Government of the Kingdom of Thailand, hereinafter referred to as "Contracting Parties".

Considering the Agreement among the Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand for the Promotion and Protection of Investments done in Manila on 15th December 1987,

Desiring to intensify economic cooperation between both countries,

Intending to create favourable condition for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party.

Recognising that the encouragement and protection of such investments under this Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both countries,

Convinced of the friendly and cooperative relations existing between both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of assets invested by nationals and companies of one Contracting Party in the territory of the other Contracting Party, in accordance with the respective laws and regulations of the latter Contracting Party, including, in particular, but not exclusively:

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

(b) Shares, stocks and debentures of companies or interests in the property of such companies;

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

(d) Intellectual and industrial property rights, patents, trade marks, technical processes, know how, goodwill and any other similar rights; and

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, 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 2.

2. The term "nationals" shall mean:

a) In respect of the Republic of the Philippines, any natural person who is a citizen of the Republic of the Philippines according to its Constitution.

b) In respect of the Kingdom of Thailand, any natural person who possesses Thai nationality under the law in force in the Kingdom of Thailand;

3. The term "companies" shall mean:

a) In respect of the Republic of the Philippines, legal entities, including companies, associations of companies, trading corporate entities and other organizations that are incorporated or constituted or registered as juridical persons under the law of the Republic of the Philippines.

b) In respect of the Kingdom of Thailand any juridical person incorporated or constituted under the law in force in the Kingdom of Thailand whether or not limited liability and whether or not for pecuniary profit;

4. The term "returns" shall mean amounts yielded by an investment, particularly, though not exclusively, profits, interest, capital gains, dividends, royalties or fees.

5. The term "freely usable currencies" shall mean currencies that the International Monetary Fund determines, from time to time, as freely usable currencies in accordance with the Articles of Agreement of the International Monetary Fund and amendments thereafter.

6. The term "host country" shall mean the Contracting Party wherein the investment is made.

7. The term "territory" shall mean:

a) With respect to the Republic of the Philippines, comprising the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestial fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines;

b) With respect to the Kingdom of Thailand, the national territory of the Kingdom of Thailand including the maritime areas, seabed and subsoil, over which the Kingdom of Thailand exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Applicability or Scope

1. This Agreement shall apply only to investments brought into derived from or directly connected with investments brought into the territory of one. Contracting Party by nationals or companies of the other Contracting Party, as well as to investments made prior to the entry into force of this Agreement, and which are specifically approved in writing or admitted, where applicable by the competent authority of the host country and upon such conditions as it deems fit for the purposes of this Agreement.

2. This Agreement shall not affect the rights and obligations of the Contracting Parties with respect to investments which, under the provisions of paragraph 1 of this Article, do not fall within the scope of the Agreement.

Article 3. General Obligations

1. Each Contracting Party shall, having regard to its plan and policies, encourage and create favourable conditions in its territory for investments from the other Contracting Party. All investments to which this Agreement relates shall, subject to this Agreement, be governed by the laws and regulations of the host country, including rules of registration and valuation of such investments

2. Investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party, and also the returns therefrom, shall at all times be accorded fair and equitable treatment and shall enjoy the constant protection and security in the territory of the host country.

3. Each Contracting Party shall observe any obligation arising from a particular commitment it may have entered into with regard to a specific investment of nationals or companies of the other Contracting Party.

Article 4. Treatment of Investments

1. Investments made by nationals or companies of either Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be subject to a treatment no less favourable than that accorded to investments and returns made by its own nationals or companies or by the nationals or companies of any third State, whichever is more favourable to the nationals and companies, in areas allowed by existing laws, rules and regulations.

2. Each Contracting Party shall in its territory accord to nationals or companies of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments made in accordance with the host country's existing laws,

rules and regulations, treatment which is fair and equitable and no less favourable than that which it accords to its own nationals and companies or to the nationals and companies of any third State.

Article 5. Exceptions

The provisions of this Agreement relative to the granting of treatment no less favourable than that accorded to the nationals or companies of either Contracting Party or to the nationals or companies of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

a) The formation or extension of a customs union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation or a regional arrangement for specific projects; or

b) The adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

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

Article 6. Compensation

Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the same Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement for the investment suffered, no less favourable than that accorded to its own nationals or companies or to the nationals or companies of any third State, whichever is more favourable to the nationals of companies.

Article 7. Expropriation

1. a) In any case where investments of a national or company of one Contracting Party are subjected, directly or indirectly, to any measure of expropriation, or nationalization or any measure equivalent thereto, the national or company concerned shall be accorded in the territory of the other Contracting Party fair and equitable treatment on a non-discriminatory basis in relation to any such measure. No such measure shall be taken except for public purposes and against payment of compensation. Such compensation shall amount to the market value of the investments affected, immediately before the measure became public knowledge and it shall be made without delay and freely transferable in freely usable currency from the host country.

b) The legality of any expropriation and the amount and method of payment of compensation shall be subject to review by due process of law.

2. Where a Contracting Party expropriates assets of a company which is incorporated or constituted under the law in force in any part of its territory and in which a national or company of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee compensation as specified therein to such national or company of the other Contracting Party who is the owner of those shares.

Article 8. Free Transfer

1. Each Contracting Party shall allow without delay the free transfer in freely usable currencies of payments in connection with approved investments under Article 2 and returns therefrom, in particular, but not exclusively, of:

a) The capital, net profits, dividends, royalties, technical fees, interests and other income, accruing from any investments of the nationals or companies of the other Contracting Party;

b) The proceeds from the total or partial liquidation of any investments made by nationals or companies of the other Contracting Party:

c) Funds in repayment of loans given by nationals or companies of one Contracting Party to the nationals or companies of the other Contracting Party which the Contracting Parties have recognized as investment;

d) The earnings of nationals of the other Contracting Party who are employed and allowed to work in connection with an

investment in its territory; and

e) Payments or compensation under Articles 6 and 7.

2. The exchange rate applicable to such transfer shall be the market rate of exchange prevailing at the time of remittance.

3. Each Contracting Party shall undertake to accord to transfers referred to in paragraph 1 of this Article, a treatment no less favourable than that accorded to transfers originating from investments made by nationals or companies of any third State.

Article 9. Subrogation

1. In case one Contracting Party or an agency designated by it has granted any insurance or guarantee agreement against non-commercial risks in respect of an investment or any part thereof made by its own nationals and companies in the territory of the other Contracting Party and has made payment to such nationals and companies under the insurance or guarantee, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Articles 11 and 12, recognise the transfer of the rights or claims, as well as their assignment, whether under law or pursuant to a legal transaction, of the nationals and companies to the said Contracting Party.

2. The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.

This, however, does not necessarily imply a recognition on the part of the latter Contracting Party of the merits of any case on the amount of any claim arising therefrom.

Article 10. Consultation

The Contracting Parties agree to consult each other at the request of any Contracting Party on any matter relating to investments covered by this Agreement, or otherwise affecting the implementation of this Agreement

Article 11. Settlement of Disputes between a Contracting Party and a National and Company of the other Contracting Party

1. In case of dispute with respect to investments between a Contracting Party and a national and company of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case amicably.

2. If these consultations do not result in a solution within three months from the date of request for settlement, the national and company may submit the dispute, at his choice, for settlement to:

a) The competent courts of the Contracting Party in the territory of which the investment has been made;

b) The International Centre for Settlement of Investment Disputes in case both Contracting Parties are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on March 18, 1965; and

c) An ad hoc arbitral tribunal, if both parties to the dispute so agreed.

Article 12. 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 negotiation.

2. If a dispute between the Contracting Parties cannot thus be settled within six months, it shall at the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case as follows:

a) Each Contracting Party shall appoint one member, and these 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;

b) The said members shall be appointed within three months, and the Chairman within four months, from the date on which either Contracting Party shall have informed the other Contracting Party that it proposes to submit the dispute to an arbitral tribunal.

4. If, within the periods specified in paragraph 3 of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other relevant agreement, invite the President of the international Court of Justice to make the necessary appointments. 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 the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, 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 necessary appointments.

5. a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Parties.

b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the cost of its own member and of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the Chairman and the remaining costs shall be borne in equal parts by the of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force three months after the notification between the Contracting Parties of the accomplishment of their respective internal procedures for the entry into force of this Agreement. It shall remain in force for a period of ten years and shall continue in force thereafter for another period of ten years and so forth unless denounced in writing by either Contracting Party one year before its expiration,

2. In respect of investments approved or admitted under Article 11 prior to the date of termination of this Agreement, its provisions shall continue to be effective for a further period of ten years from the date of termination of this Agreement.

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

DONE in duplicate in Manila on this 30th day of September 1995 A.D. in the English language.