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

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

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

Intending to create favourable conditions for investments by nationals and companies of one State in the territory of the other State on the basis of sovereign equality and mutual benefit; and

Recognizing the need to promote and protect such investments with a view to fostering the economic prosperity of both States,

Have agreed as follows:

Article 1. Promotion of Investments

Each Contracting Party shall promote in its territory as far as possible the investments by nationals and companies of the other Contracting Party, and admit such investments within the framework of this Agreement and subject to the laws and regulations in each State.

Article 2. Definitions

For the purpose of this Agreement:

(a) The term "national" means:

(□) With respect to the Republic of Korea, physical persons who are deemed to be nationals of the Republic of Korea in accordance with its laws;

(□) With respect to the Republic of the Philippines, citizens of the Philippines within the meaning of Article □ of its Constitution.

(b) The term "companies" means:

(□) With respect to the Republic of Korea, juridical persons or companies or associations, whether or not with limited liability and whether or not for pecuniary profit, incorporated in the territory of the Republic of Korea and existing in accordance with its laws;

(□) With respect to the Republic of the Philippines, corporations, partnerships or other associations, incorporated or constituted and actually doing business under its laws in force in any part of the territory of the Republic of the Philippines wherein a place of effective management is situated.

(c) The term "investments" means every kind of assets and in particular, though not exclusively includes:

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

(□) Shares, stocks and debentures of companies or interest in the property of such companies;

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

(□) Intellectual property rights and goodwill; and

(□) Any business concessions which have been or may be granted by the Contracting Parties in accordance with their respective laws, including concessions to search for, cultivate, extract or exploit natural resources.

(d) The term "returns" means the amounts yielded by an investment for a definite period of time, and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

(e) The term "territory" means:

(□) With respect to the Republic of Korea, the territory of the Republic of Korea, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of territorial sea of the Republic of Korea over which it exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such area;

(□) With respect to the Republic of the Philippines, the national territory of the Republic of the Philippines as defined in Article 1 of its Constitution.

Article 3. Treatment

1. Each Contracting Party shall in its territory accord to investments or returns of investments of nationals or companies of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of nationals or companies of any Third State.

2. Each Contracting Party shall in its territory accord to nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to nationals or companies of any Third State.

3. Notwithstanding paragraphs 1 and 2 of this Article, each Contracting Party shall accord, in accordance with its laws and regulations, to the nationals or companies of the other Contracting Party treatment not less favourable than that which it accords to its own nationals or companies.

4. The provisions of paragraphs 1, 2 and 3 of this Article 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 which may be extended by the former Contracting Party by virtue of:

(a) Any existing or future customs union, free trade area, common external tariff area, monetary union or similar international agreement including the organization for mutual economic assistance or other forms of regional cooperation to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or any domestic legislation relating wholly or mainly to taxation.

Article 4. Compensation for Losses

Investors of a 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 to the investors of any Third State.

Article 5. Expropriation

1. Each Contracting Party shall not take measures of expropriation, nationalization or dispossession, either direct or any measure equivalent thereto, against investments belonging to nationals or companies of the other Contracting Party, unless the measures are taken in the public interest, public use or in the interest of national defense on a non-discriminatory basis and under due process of law and upon payment of just compensation.

2. Such compensation shall amount to the market value of the expropriated investment immediately before the impending expropriation becomes public knowledge. The compensation shall be made without undue delay, and shall be effectively realizable and freely transferable.

Article 6. Transfer of Investment

Recognizing the principle of the freedom of transfer, each Contracting Party, within the scope of its existing laws and regulations, shall authorize, in conformity with its relevant most favourable rules, the transfer out of its territory without

undue restriction and delay in any freely convertible currency of payments resulting from investment activities and in particular of the following items:

a) Net profits, interest, dividends and other current income;

b) Funds necessary

(□) For the acquisition of raw or auxiliary materials, semifabricated or finished products, or

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

c) Additional funds necessary for the development of an investment, earnings of natural persons, the proceeds of liquidation of capital funds in repayment of loans, management fees and royalties.

Article 7. Promotion of Joint Venture

1. The Contracting Parties shall encourage and promote joint ventures between the two States in all possible fields subject to relevant laws and regulations.

2. The Contracting Parties shall also encourage and facilitate export trade of the products from such joint ventures to the third States and to their own States in accordance with the laws and regulations of the two States.

Article 8. Subrogation

1. If a Contracting Party or its designated agency makes a 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 acquisition 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 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute arising between a Party and a national or a company of the other Contracting Party shall be settled amicably.

2. In the event that such a dispute cannot be settled within three (3) months between the Parties to the dispute through pursuit of local remedies, then the national or the company affected may submit the dispute to the "International Center for the Settlement of Investment Disputes", for the application of the arbitration procedures provided by the Washington Convention of 18th of March 1965 on the "Settlement of Investment Disputes between States and National of other States".

Article 10. 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 the provisions of this Agreement should, if possible, be settled through diplomatic channels or other amicable means.

2. If a dispute between the Contracting Parties cannot thus be settled within a period of three(3) months, 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(2) months of the 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 two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two(2) months from the date of appointment of the other two members.

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

Article 11. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the day with both Contracting Parties having notified each other that they have complied with the legal requirements for entry into force of this Agreement.

2. This Agreement shall remain in force for a period of ten(10) years from its entry into force and shall thereafter continue in force, unless terminated by either Contracting Party by not less than six (6) months written notice through diplomatic channels, provided that, in respect of investments made while the Agreement is in force, its provisions shall remain in effect with respect to such investments for ten(10) years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at Manila on the 7th day of April 1994 in the Korean and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

Protocol

The Republic of Korea and the Republic of the Philippines,

Have agreed at the Signing of the Agreement between the two Governments for the Promotion and Protection of Investments upon the following provisions which form an integral part of the said Agreement.

Concerning the just compensation mentioned in Article 5, it is understood that such compensation shall include interest from the date of expropriation.

The Protocol has been done in duplicate at Manila on the 7th day of April 1994 in the Korean and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

/Sgd./

Lee Chang-soo

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

/Sgd./

Navarro