

LOAN AGREEMENT

(SUBIC BAY FREEPORT PROJECT) BETWEEN INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT AND SUBIC BAY METROPOLITAN AUTHORITY

LOAN NUMBER 3745 PH

AGREEMENT, dated June 3, 1994, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the "Bank") and SUBIC BAY METROPOLITAN AUTHORITY (the "Borrower").

WHEREAS (A) : The Republic of the Philippines (the "Guarantor") and the Borrower, having been satisfied as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, have requested the Bank to assist in the financing of the Project;

WHEREAS (B): By an agreement (the "Guarantee Agreement") of even date herewith between the Guarantor and the Bank, the Guarantor has agreed to guarantee the obligations of the Borrower in respect of the Loan and to undertake such other obligations as set forth in the Guarantee Agreement; and

WHEREAS (C) : The Bank has agreed, on the basis, inter alia, of the foregoing, to extend the Loan to the Borrower upon the terms and conditions set forth in this Agreement.

NOW THEREFORE the parties hereto hereby agree as follows :

ARTICLE I GENERAL CONDITIONS; DEFINITIONS

Section I.01 The "General Conditions Applicable to Loan and Guarantee Agreements" of the Bank, dated January I, 1985, with the modifications set forth below (the "General Conditions") constitute an integral part of this Agreement:

(a) The last sentence of Section 3.02 is deleted.

(b) In Section 6.02, sub-paragraph (k) is re-lettered as sub-paragraph (1) and a new sub-paragraph (k) is added to read:

"(k) An extraordinary situation shall have arisen under which any further withdrawals under the Loan would be inconsistent with the provisions of Article III, Section 3 of the Bank's Articles of Agreement."

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "By-laws" means the Borrower's corporate by-laws as adopted by the Borrower's Board of Directors pursuant to its Resolution No. 93-060, dated July 27, 1993;

(b) "Ecology Center" means the Center established by the Borrower, pursuant to Section 10 (j) of the Borrower's Rules and Regulations (as referred to in Paragraph (i) hereinafter) for the adoption and implementation of measures and standards for environmental pollution control of all areas under the Borrower's jurisdiction;

(c) "Environmental Management Plan" means the Plan, to be adopted by the Borrower in form and substance satisfactory to the Bank, setting forth the minimum standards for managing the environmental protection of all land and sea areas under the Borrower's jurisdiction, which Plan is referred to in Sections 4.08 and 7.01 (a) of this Agreement;

(d) "Environment Procedures Manual" means the Manual, adopted by the Borrower pursuant to its Resolution No. 94-013, dated April 6, 1994, setting forth the modalities and procedures for implementing the environmental standards, policies and regulations of the Borrower, which Manual is referred to in Section 4.08 of this Agreement;

(e) "Fiscal Year" means the twelve (12)-month period corresponding to any of the Borrower's fiscal years, which period commences on January 1 and ends on December 31 in each calendar year ;

(f) "Freeport Status" means the Borrower's legal status and related incentives regime establishing the Borrower as a separate customs territory for the free flow and movement of goods and capital within, into and exported out of the Subic Special Economic Zone, which status is legislated under the Guarantor's laws and regulations pursuant to the provisions of Section 12 of the Guarantor's Republic Act No. 7227 which is referred to in Paragraph (a) hereinabove;

(g) "Investment Plan" means the Borrower's investment program and related financing plan for the 1994-1998 period, to be prepared and adopted by the Borrower pursuant to the provisions of Section 4.06 of this Agreement;

(h) "Land Use Plan" means the Plan adopted by the Borrower, pursuant to its Resolution No. 94-013, dated April 6, 1994, specifying the general civilian uses and related economic activities to be promoted within the SBF Area (as such term is defined hereinafter) , which Plan is referred to in Section 4.07 of this Agreement;

(i) "Law" means, collectively, the following act, executive orders and implementing rules and regulations: the Guarantor's Republic Act No. 7227 on Accelerating The Conversion Of Military Reservations Into Other Productive Uses, Creating The Bases Conversion And Development Authority For This Purpose, Providing Funds Therefor And For Other Purposes, dated July 22, 1991 (also known as the "Bases Conversion and Development Act of 1992"); the Guarantor's Presidential Proclamation No. 50 Proclaiming The Adoption And Implementation Of The Subic Conversion Program As A Priority National Program For Economic

Development And Directing All Heads Of Departments, Bureaus, Offices, Agencies And Instrumentalities of Government To Support The Program, dated September 18, 1992; the Guarantor's Executive Order No. 62 Prescribing Policies And Guidelines To Implement Republic Act No. 7227, dated February 27, 1993; the Guarantor's Executive Order No. 97 Clarifying The Tax And Duty Free Incentive Within the Subic Special Economic Zone Pursuant To Republic Act No. 7227, dated June 10, 1993; the Guarantor's Executive Order No. 97-A Further Clarifying The Tax and Duty Free Privilege Within The Subic Special Economic and Freeport Zone, dated June 19, 1993; and the Borrower's Rules and Regulations Implementing The Provisions Relative To The Subic Special Economic And Freeport Zone And The Subic Bay Metropolitan Authority Under Republic Act No. 7227, as approved by the Borrower's Board of Directors on November 3, 1992, and as published in the Guarantor's Official Gazette, dated March 8, 1993;

(j) "SBF Area" means the Subic Bay Freeport as such area is defined and its territory is delineated in Section 12 of the Guarantor's Republic Act No. 7227 referred to in Paragraph (j) above, which Area is subject to the administration and management of the Borrower under the Guarantor's applicable laws and regulations; and

(k) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement.

ARTICLE II THE LOAN

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, various currencies that shall have an aggregate value equivalent to the amount of forty million dollars (\$40,000,000), being the sum of withdrawals of the proceeds of the Loan, with each withdrawal valued by the Bank as of the date of such withdrawal.

Section 2.02 . (a) The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project described in Schedule 2 to this Agreement and to be financed out of the proceeds of the Loan.

(b) The Borrower shall, for the purposes of the Project, open and maintain in dollars a special deposit account in the Bangko Sentral ng Pilipinas on terms and conditions satisfactory to the Bank, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

Section 2.03. The Closing Date shall be June 30, 1999 or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower and the Guarantor of such later date.

Section 2.04. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one percent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Loan not withdrawn from time to time .

Section 2.05. (a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Interest

Period equal to the Cost of Qualified Borrowings determined in respect of the preceding Semester, plus one-half of one percent (1/2 of 1%). On each of the dates specified in Section 2.06 of this Agreement, the Borrower shall pay interest accrued on the principal amount outstanding during the preceding Interest Period, calculated at the rate applicable during such Interest Period.

(b) As soon as practicable after the end of each Semester, the Bank shall notify the Borrower and the Guarantor of the Cost of Qualified Borrowings determined in respect of such Semester.

(c) For the purposes of this Section:

(i) "Interest Period" means a six (6)-month period ending on the date immediately preceding each date specified in Section 2.06 of this Agreement, beginning with the Interest period in which this Agreement is signed.

(ii) "Cost of Qualified Borrowings" means the cost, as reasonably determined by the Bank and expressed as a percentage per annum, of the outstanding borrowings of the Bank drawn down after June 30, 1982, excluding such borrowings or portions thereof as the Bank has allocated to fund: (A) the Bank's investments; and (B) loans which may be made by the Bank after July 1, 1989, bearing interest rates determined otherwise than as provided in paragraph (a) of this Section.

(iii) "Semester" means the first six (6) months or the second six (6) months of a calendar year.

(d) On such date as the Bank may specify by no less than six (6) months' notice to the Borrower, paragraphs (a) , (b) and (c) {iii) of this Section shall be amended to read as follows:

"(a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Quarter equal to the Cost of Qualified Borrowings determined in respect of the preceding Quarter, plus one-half of one percent (1/2 of 1%) . On each of the dates specified in Section 2.06 of this Agreement, the Borrower shall pay interest accrued on the principal amount outstanding during the preceding Interest Period, calculated at the rates applicable during such Interest Period."

"(b) As soon as practicable after the end of each Quarter, the Bank shall notify the Borrower and the Guarantor of the Cost of Qualified Borrowings determined in respect of such Quarter."

"(c) (iii) 'Quarter' means a three (3)-month period commencing on January 1, April 1, July 1 or October 1 in a calendar year."

Section 2.06. Interest and other charges shall be payable semiannually on February 15 and August 15 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 3 to this Agreement.

ARTICLE III

EXECUTION OF THE PROJECT

Section 3.01. The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall: (a) carry out the Project with due diligence and efficiency: (i) in a manner at all times consistent with the Environmental Management Plan and the Land Use Plan, (ii) in conformity with sound administrative, commercial, economic, financial and engineering practices, and (iii) in accordance with, appropriate safety, health and environmental standards acceptable to the Bank; and (b) provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

Section 3.02. In order to ensure the proper carrying of the works under Part A of the Project, the Borrower shall employ, not later than June 30, 1995, and in accordance with the provisions of Section 3.06 of, and Section II of Schedule 4 to, this Agreement, qualified consultants to assist in supervising the carrying out of said works and in strengthening the Borrower's capabilities in the management and proper development of its assets and facilities so as to, inter alia, attract viable economic activity to the SBF area, each with responsibilities, qualifications and terms of employment satisfactory to the Bank.

Section 3.03. The Borrower shall, not later than June 30, 1995, appoint a duly qualified Chief Operating Officer possessing the requisite responsibilities, qualifications and terms of employment.

Section 3.04. The Borrower shall, not later than December 31, 1994, furnish to the Bank for its approval: (i) a time-based action plan for the provision of water, sewerage and solid waste management services within the SBF Area; and (ii) a time-based action plan for the recruitment of consultants, in accordance with the provisions of Section 3.06 of, and Section II of Schedule 4 to, this Agreement, and the carrying out of their respective technical assistance services in respect of the institutional strengthening activities under Part B of the Project. Thereafter, the Borrower shall promptly carry out said action plans with due diligence and efficiency and shall at all times take all action necessary to achieve their respective objectives.

Section 3.05. Not later than July 31, 1995, the Borrower shall carry out, jointly with the Bank, a review of the progress achieved by the Borrower in: (i) carrying out the Project; and (ii) implementing its Freeport Status and operating and managing the SBF Area and its facilities.

Section 3.06. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 4 to this Agreement.

ARTICLE IV

MANAGEMENT AND OPERATIONS OF THE BORROWER

Section 4.01. The Borrower shall carry on its operations and conduct its affairs in accordance with sound administrative, commercial, economic, financial and engineering practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.