AGREEMENT

BETWEEN

THE GOVERNMENT OF MALAYSIA AND

THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

FOR THE PROMOTION AND PROTECTION

OF INVESTMENTS

The Government of Malaysia and the Government of the Republic of Namibia, hereinafter referred to as the "Contracting Parties;"

Desiring to expand and deepen economic and industrial cooperation on a long term basis, and in particular, to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to protect investments by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to the economic prosperity of both Contracting Parties;

Have agreed as follows:

ARTICLE 1

Definitions

1. For the purpose of this Agreement:

(a) "investments" means every kind of asset and in particular, though not exclusively, includes:

(i) movable and immovable property and any other property rights such as mortgages, liens and pledges;

(ii) shares, stocks and debentures of companies or interests in the property of such companies;

(iii) a claim to money or a claim to any performance having financial value;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, tradenames, industrial designs, trade secrets, technical processes and know-how and goodwill;

(v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources;

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees;

(c) "investor" means:

(i) any natural person possessing the citizenship of or permanently residing in a Contracting Party in accordance with its laws; or

(ii) any corporation, partnership, trust, joint-venture, organisation, association or enterprise incorporated or duly constituted in accordance with applicable laws of that Contracting Party;

(d) "territory" means:

(i) with respect to Malaysia, all land territory comprising the Federation of Malaysia, the territorial sea, its bed and subsoil and airspace above;

(ii) with respect to Namibia, all land territory comprising the Republic of Namibia, the territorial sea, its bed and subsoil and airspace above.

(e) "freely usable currency" means the United States dollar, pound sterling, Deutschemark, French franc, Japanese yen or any other currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets.

2. (i) The term "investments" referred to in paragraph 1(a) shall only refer to all investments that are made in accordance with the laws, regulations and national policies of the Contracting Parties.

(ii) Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.

ARTICLE 2

Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory and subject to its rights to exercise powers conferred by its laws, regulations and national policies, shall admit such investments.

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

ARTICLE 3

Most-Favoured-Nation Provisions

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments made by investors of any third State.

2. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the

territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to investors of any third State.

3. The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or 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

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

ARTICLE 4

Expropriation

Neither Contracting Party shall take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or 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 and under due process of law;

(b) the measures are non discriminatory;

(c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments affected immediately before the measure of dispossession became public knowledge, and it shall be freely transferable in freely usable currencies from the Contracting Party. Any unreasonable delay in payment of compensation shall carry an appropriate interest at commercially reasonable rate as agreed upon by both parties or at such rate as prescribed by law.

ARTICLE 5

Repatriation of Investment

1. Each Contracting Party shall, subject to its laws, regulations and national policies allow without unreasonable delay the transfer in any freely usable currency:

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

   (b) the proceeds from the total or partial liquidation of any investment made by investors of the other Contracting Party;

   (c) funds in repayment of borrowings/loans given by investors of one Contracting Party to the investors of the other Contracting Party which both Contracting Parties have recognised as investment; and

   (d) the earnings and compensations of nationals of the Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

2. The exchange rate applicable to such transfer in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

3. The Contracting Parties undertake to accord to the transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.

4. Transfers are subject to the right of each Contracting Party to exercise equitably and in good faith powers conferred upon it by its laws and regulations at the time the investment is made as well as new laws and regulations thereafter, provided that no investor shall be put in a less favourable position than at the time of commencement of the investment.

ARTICLE 6

Settlement of Investment Disputes Between A Contracting Party And An Investor Of The Other Contracting Party

1. Each Contracting Party consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature

at Washington D.C. on 18 March 1965 any dispute arising between that Contracting Party and an investor of the other Contracting Party which involves:

(i) an obligation entered into by that Contracting Party with the investor of the other Contracting Party regarding an investment by such investor; or

(ii) an alleged breach of any right conferred or created by this Agreement with respect to an investment by such investor.

2. A company which is incorporated or constituted under the laws in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by investors of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purpose of this Convention as a company of the other Contracting Party.

3. (i) If any dispute of the type referred to in paragraph 1 should arise, the Contracting Party and the investor concerned shall seek to resolve the dispute through consultation and negotiation. If the dispute cannot thus be resolved within three (3) months, then if the investor concerned also consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention,

either Contracting Party to the dispute may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as set forth in Articles 28 and 36 of the Convention, provided that the investor concerned has not submitted the dispute to the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Contracting Party that is party to the dispute.

(ii) In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure, the opinion of the investor concerned shall prevail. The Contracting Party which is a party to the dispute shall not raise as an objection, defence, or right of set-off at any stage of the proceedings or enforcement of an award the fact that the investor which is the other party to the dispute has received or will receive, pursuant to an insurance or guarantee contract, an indemnity or other compensation for all or part of his or its losses and damages.

4. Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless:

(i) the Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre; or

(ii) the other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

ARTICLE 7

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 diplomatic channels.

2. If a dispute 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 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 the 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 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 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. 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 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 8

Subrogation

If a Contracting Party makes a payment to any of its investors under a guarantee it has granted in respect of an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 6, recognize the transfer of any right or title of such national or company to the former Contracting Party and the subrogation of the former Contracting Party to any right or title.

ARTICLE 9

Application to Investments

This Agreement shall apply to all investments made in the territory of either Contracting Party in accordance with its legislation, rules or regulations by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement.

ARTICLE 10

Entry into Force, Duration and Termination

1. This Agreement shall enter into force thirty (30) days after the later date on which the Government of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notification letter is sent.

2. This Agreement shall remain in force for a period of ten (10) years, and shall thereafter continue in force, unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may by giving one (1) year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten (10) year period or anytime thereafter.

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

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

Done in duplicate at Windhoek this 12 day of August 1994 in Bahasa Malaysia and the English Language, both texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

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FOR THE GOVERNMENT OF MALAYSIA	FOR THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA