

No. 6936

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
PHILIPPINES**

**Guarantee Agreement—*Development Corporation Project*
(with annexed Loan Regulations No. 4, Loan Agree-
ment between the Bank and the Philippine National
Bank and Project Agreement between the Bank and the
Private Development Corporation of the Philippines).
Signed at Washington, on 15 February 1963**

Official text: English.

*Registered by the International Bank for Reconstruction and Development on 24 Sep-
tember 1963.*

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
PHILIPPINES**

**Contrat de garantie — *Projet relatif à la Development Cor-
poration* (avec, en annexe, le Règlement n° 4 sur les
emprunts, le Contrat d'emprunt entre la Banque et la
Philippine National Bank et le Contrat relatif au Projet
entre la Banque et la Private Development Corporation
of the Philippines). Signé à Washington, le 15 février
1963**

Texte officiel anglais.

*Enregistré par la Banque internationale pour la reconstruction et le développement le
24 septembre 1963.*

No. 6936. GUARANTEE AGREEMENT¹ (*DEVELOPMENT CORPORATION PROJECT*) BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 15 FEBRUARY 1963

AGREEMENT, dated February 15, 1963, between REPUBLIC OF THE PHILIPPINES (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith between the Bank and Philippine National Bank (hereinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement,² the Bank has agreed to make to the Borrower a loan in various currencies equivalent to fifteen million dollars (\$15,000,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided ; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower ;

Now THEREFORE the parties hereto hereby agree as follows :

Article I

Section 1.01. The parties to this Guarantee Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated February 15, 1961,³ subject, however, to the modifications thereof set forth in Schedule 1⁴ to the Loan Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Guarantee Agreement, unless the context shall otherwise require, the several terms defined in the Loan Agreement shall have the respective meanings therein set forth.

¹ Came into force on 13 July 1963, upon notification by the Bank to the Republic of the Philippines.

² See p. 170 of this volume.

³ See p. 168 of this volume.

⁴ See p. 186 of this volume.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, the principal of and interest on the Bonds, and the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, all as set forth in the Loan Agreement and in the Bonds.

Article III

Section 3.01. It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on governmental assets. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect ; provided, however, that the foregoing provisions of this Section shall not apply to : (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property ; (ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods ; or (iii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

The term "assets of the Guarantor" as used in this Section includes assets of the Guarantor or of any of its political subdivisions or of any agency of the Guarantor or of any such political subdivision, including Central Bank of the Philippines or any other institution performing the functions of a central bank.

Section 3.02. (a) The Guarantor and the Bank shall co-operate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor.

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the

Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(c) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

Section 3.03. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes imposed under the laws of the Guarantor or laws in effect in its territories ; provided, however, that the provisions of this Section shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 3.04. This Agreement, the Loan Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

Section 3.05. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid free from all restrictions imposed under the laws of the Guarantor or laws in effect in its territories.

Section 3.06. The Guarantor covenants that it will not take or permit any of its political subdivisions or any of its agencies or any agency of any political subdivision to take any action which would prevent or interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower in the Loan Agreement contained, or by the Corporation of any of the covenants, agreements and obligations of the Corporation in the Project Agreement¹ contained, and will take or cause to be taken all reasonable action which shall be necessary in order to enable the Borrower and the Corporation respectively to perform such covenants, agreements and obligations.

Article IV

Section 4.01. The Guarantor shall endorse, in accordance with the provisions of the Loan Regulations, its guarantee on the Bonds to be executed and delivered by the Borrower. The Secretary of Finance of the Guarantor and such person or persons as he shall designate in writing are designated as the authorized representatives of the Guarantor for the purposes of Section 6.12 (b) of the Loan Regulations.

Article V

Section 5.01. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

¹ See p. 192 of this volume.

For the Guarantor :

Central Bank of the Philippines
Manila
Philippines

Alternative address for telegrams, cables and radiograms :

Philcenbank
Manila
Philippines

For the Bank :

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington 25, D.C.
United States of America

Alternative address for telegrams, cables and radiograms :

Intbafrad
Washington, D.C.

Section 5.02. The Governor of the Central Bank of the Philippines is designated for the purposes of Section 8.03 of the Loan Regulations.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Guarantee Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

Republic of the Philippines :

By Amelito R. MUTUC
Authorized Representative

International Bank for Reconstruction and Development :

By George D. WOODS
President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
LOAN REGULATIONS No. 4, DATED 15 FEBRUARY 1961

REGULATIONS APPLICABLE TO LOANS MADE BY THE BANK TO BORROWERS OTHER THAN
MEMBER GOVERNMENTS

[Not published herein. See *United Nations, Treaty Series, Vol. 400, p. 212.*]

LOAN AGREEMENT
(DEVELOPMENT CORPORATION PROJECT)

AGREEMENT, dated February 15, 1963, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and PHILIPPINE NATIONAL BANK (hereinafter called the Borrower), a company organized and existing under the laws of the Republic of the Philippines (hereinafter called the Guarantor).

WHEREAS the Private Development Corporation of the Philippines (hereinafter called the Corporation), a company organized and existing under the laws of the Guarantor, has been incorporated to assist privately controlled industrial and other productive enterprises in the Philippines by providing capital for such enterprises in the form of credits or share participations ;

WHEREAS the Agency for International Development, an agency of the United States of America (hereinafter called AID), has agreed to make a loan to the Corporation in an aggregate principal amount of P27,500,000 ;

WHEREAS the Bank has been requested to make a loan to the Borrower the proceeds of which the Borrower intends to relend to the Corporation upon terms satisfactory to the Bank ;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

LOAN REGULATIONS ; SPECIAL DEFINITIONS

Section 1.01. The parties to this Loan Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated February 15, 1961,¹ subject, however, to the modifications thereof set forth in Schedule 1² to this Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Agreement, or any Schedule thereto :

(a) the term "AID Agreement" shall mean the agreement to be entered into between AID and the Corporation, providing for a loan by AID to the Corporation in an aggregate principal amount of twenty seven million five hundred thousand pesos (P27,500,000), and shall include such changes in such agreement as may from time to time be agreed by the parties thereto and the Bank ;

(b) the term "Subsidiary Loan Agreement" shall mean the agreement to be entered into between the Borrower and the Corporation under which the Borrower shall relend the proceeds of the Loan to the Corporation and shall include such changes therein as may from time to time be agreed by the parties thereto and the Bank ;

¹ See p. 168 of this volume.

² See p. 186 of this volume.

(c) the term "Project Agreement" shall mean the Project Agreement¹ (Development Corporation Project) to be entered into between the Bank and the Corporation and shall include such changes therein as may from time to time be agreed by the Bank and the Corporation ;

(d) the term "Investment Enterprise" shall mean an enterprise to which the Corporation shall grant a credit in accordance with and as provided in Section 3.01 of this Agreement ;

(e) the term "Investment Project" shall mean a specific investment project to be carried out by an Investment Enterprise in respect of which amounts shall be credited to the Loan Account pursuant to Section 2.02 (b) of this Agreement ;

(f) the term "pesos" and the symbol "P" shall mean currency of the Guarantor ; and

(g) the term "foreign currency" shall mean any currency other than currency of the Guarantor.

Article II

THE LOAN

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions in this Agreement set forth or referred to, an amount in various currencies equivalent to fifteen million dollars (\$15,000,000).

Section 2.02. (a) The Bank shall open a Loan Account on its books in the name of the Borrower. The amount of the Loan shall be credited to the Loan Account in instalments as provided in paragraph (b) of this Section.

(b) Investment Projects may be submitted to the Bank either pursuant to Section 2.03 (b) of the Project Agreement for approval, or pursuant to Section 2.03 (c) of the Project Agreement for credit to the Loan Account.

- (i) When an Investment Project submitted pursuant to Section 2.03 (b) of the Project Agreement shall have been so approved by the Bank, there shall be credited to the Loan Account, in respect of the estimated foreign currency cost of such Investment Project, such part of the Loan as the Corporation shall request and as the Bank shall have approved.
- (ii) When an Investment Project shall have been submitted to the Bank pursuant to Section 2.03 (c) of the Project Agreement, there shall be credited to the Loan Account, in respect of the estimated foreign currency costs of such Investment Project, such part of the Loan as the Corporation shall request, provided, however, that (a) the amount so credited shall not exceed with respect to any one Investment Project such limit as shall from time to time be agreed between the Bank and the Corporation, and (b) the aggregate amount of credits pursuant to this sub-paragraph (ii) shall not exceed such limit as shall from time to time be agreed between the Bank and the Corporation.

¹ See p. 192 of this volume.

(c) Except as the Bank and the Corporation shall otherwise agree, no amount shall be credited to the Loan Account pursuant to paragraph (b) (ii) of this Section in respect of any Investment Project, if the Corporation has made an earlier credit or credits out of the proceeds of the Loan to the Investment Enterprise carrying out such Investment Project and the amount to be credited to the Loan Account, together with the amount or amounts of such earlier credit or credits made by the Corporation to such Investment Enterprise and not repaid, would exceed such limit as shall from time to time be agreed by the Bank and the Corporation.

(d) The Loan Account may, by agreement between the Bank and the Corporation, be reduced by any amount credited thereto pursuant to paragraph (b) of this Section which will not be required for the Investment Project in respect of which it was so credited. No such reduction shall be deemed *ipso facto* to be a cancellation of any portion of the Loan.

Section 2.03. (a) Amounts credited to the Loan Account in respect of an Investment Project may be withdrawn from the Loan Account as provided in, and subject to the rights of cancellation and suspension set forth in, this Agreement and the Loan Regulations.

(b) Notwithstanding the first sentence of Section 4.01 of the Loan Regulations and except as the Bank and the Corporation shall otherwise agree, no withdrawals shall be made on account of expenditures made for any Investment Project more than ninety days prior to the submission of such Investment Project to the Bank for approval or, in the case of credits to the Loan Account pursuant to Section 2.02 (b) (ii) of this Agreement, more than ninety days prior to the request for credit to the Loan Account.

Section 2.04. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per annum on the amount of each part of the Loan standing to the credit of the Borrower from time to time in the Loan Account. Such commitment charge shall accrue from the several dates on which amounts shall be credited to the Loan Account to the respective dates on which (a) they are withdrawn from the Loan Account or are cancelled pursuant to Section 2.09 of this Agreement or Article V of the Loan Regulations or (b) the Loan Account is reduced in respect of such amounts pursuant to Section 2.02 (d) of this Agreement.

Section 2.05. The Borrower shall pay interest on the principal amount of each part of the Loan withdrawn from the Loan Account and outstanding from time to time at such rate as shall have been notified by the Bank to the Borrower and the Corporation at the time when such part of the principal amount of the Loan was credited to the Loan Account, or at such other time or times as shall have been agreed upon between the Bank and the Borrower, as being the rate then generally applicable to new Bank loans of the same maturity. Interest shall accrue from the respective dates on which amounts shall be so withdrawn.

Section 2.06. Except as the Bank and the Corporation shall otherwise agree, the charge payable by the Borrower for special commitments entered into by the Bank at the request of the Borrower pursuant to Section 4.02 of the Loan Regulations shall be

at the rate of one-half of one per cent ($\frac{1}{2}$ of 1%) per annum on the principal amount of any such special commitments outstanding from time to time.

Section 2.07. Interest and other charges shall be payable semi-annually on January 1 and July 1 in each year.

Section 2.08. (a) The Borrower shall repay the principal of each part of the Loan in accordance with an amortization schedule to be agreed upon between the Bank and the Borrower before the Loan Account is credited with such part of the Loan, as the same may be amended from time to time by agreement between the Bank and the Borrower. Such amortization schedule shall include, *inter alia*, provisions for premiums on prepayment of principal in advance of maturity and shall provide for semi-annual repayment of principal on the date specified in Section 2.07 of this Agreement. Such amortization schedule shall provide for full repayment not later than January 1, 1978.

(b) Notwithstanding paragraph (a) of this Section, if the Corporation shall repay in advance of maturity all or any portion of the principal amount of any part of the loan granted by the Borrower to the Corporation under the Subsidiary Loan Agreement, the Borrower shall to the same extent prepay the Bank under this Agreement. To any prepayment made by the Borrower as a result of a prepayment by the Corporation to the Borrower, all the provisions of the Loan Regulations relating to repayment in advance of maturity shall be applicable.

Section 2.09. If (a) the right of the Borrower to make withdrawals from the Loan Account shall have been suspended with respect to any portion of the Loan for a continuous period of thirty days, or (b) by the Closing Date any portion of the Loan shall not have been credited to the Loan Account or shall remain unwithdrawn from the Loan Account, the Bank may by notice to the Borrower and the Corporation terminate the right of the Corporation to request credits to the Loan Account and the right of the Borrower to make withdrawals from the Loan Account, as the case may be, with respect to such portion of the Loan. Upon the giving of such notice such portion of the Loan shall be cancelled.

Article III

DESCRIPTION OF THE PROJECT

Section 3.01. The Project for which the Loan is granted is a program to contribute to the economic development of the Philippines by providing credits for productive purposes by the Corporation to privately-controlled industrial and other productive enterprises in the Philippines for specific development projects, in accordance with the Articles of Incorporation of the Corporation, as amended from time to time, and in furtherance of the corporate purposes of the Corporation as therein set forth.

Article IV

BONDS

Section 4.01. The Borrower shall execute and deliver Bonds representing the principal amount of each part of the Loan as provided in the Loan Regulations.

Section 4.02. The President of the Borrower and such person or persons as he shall appoint in writing are designated as authorized representatives of the Borrower for the purposes of Section 6.12 (a) of the Loan Regulations.

Article V

PARTICULAR COVENANTS

Section 5.01. The Borrower shall maintain, or cause to be maintained, records adequate to reflect in accordance with consistently maintained sound accounting practices all transactions between the Borrower and the Corporation and the operations and financial condition of the Borrower; shall enable, or take such steps as may be necessary to enable, the Bank's representatives to inspect any relevant records and documents; and shall furnish, or cause to be furnished, to the Bank all such information as the Bank shall reasonably request concerning transactions between the Borrower and the Corporation, and the operations and financial condition of the Borrower.

Section 5.02. The Bank and the Borrower shall from time to time exchange views through their representatives with regard to matters relating to the maintenance of the service of the Loan. The Borrower shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the maintenance of the service of the Loan.

Section 5.03. The Borrower undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Borrower as security for any debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; (ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods; or (iii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

Section 5.04. The Borrower shall pay or cause to be paid all taxes imposed under the laws of the Guarantor or laws in effect in the territories of the Guarantor on or in connection with the execution, issue, delivery or registration of this Agreement, the Guarantee Agreement,¹ the Project Agreement or the Bonds, or the payment of principal, interest or other charges thereunder; provided, however, that the provisions of this

¹ See p. 162 of this volume.

Section shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 5.05. The Borrower shall pay or cause to be paid all taxes imposed under the laws of the country or countries in whose currency the Loan and the Bonds are payable or laws in effect in the territories of such country or countries on or in connection with the execution, issue, delivery or registration of this Agreement, the Guarantee Agreement, the Project Agreement or the Bonds.

Section 5.06. The Borrower shall pay to the Corporation all amounts withdrawn from the Loan Account as provided in the Subsidiary Loan Agreement and, except as the Bank shall otherwise agree, shall not amend, assign, abrogate or waive any provision of the Subsidiary Loan Agreement.

Article VI

REMEDIES OF THE BANK

Section 6.01. (i) If any event specified in paragraph (a), paragraph (b), paragraph (e) or paragraph (f) of Section 5.02 of the Loan Regulations or in paragraph (a) of Section 6.02 of this Agreement shall occur and shall continue for a period of thirty days, or (ii) if any event specified in paragraph (b) of Section 6.02 of this Agreement shall occur, or (iii) if any event specified in paragraph (c) of Section 5.02 of the Loan Regulations shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Bank to the Borrower, then at any subsequent time during the continuance thereof, the Bank, at its option, may declare the principal of the Loan and of all the Bonds then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in this Agreement or in the Bonds to the contrary notwithstanding.

Section 6.02. The following are specified as events for the purposes of paragraph (j) of Section 5.02 of the Loan Regulations :

(a) A default shall have occurred in the performance of any covenant or agreement on the part of the Corporation under the Project Agreement.

(b) The loan provided for under the AID Agreement shall have become due and payable for any reason prior to the agreed maturity thereof except in the case of prepayment in accordance with Section 7.01 of the AID Agreement.

(c) The Corporation's right of withdrawal under any other loan or credit agreement has been suspended.

(d) The Corporation has been unable to pay its debts as they mature or any action or proceeding has been taken by the Corporation or by others whereby any of the property of the Corporation shall or may be distributed among its creditors.

(e) Any other loan or credit to the Corporation, having an original maturity of one year or more, shall have become due and payable prior to its agreed maturity pursuant to the terms thereof.

(f) The Guarantor or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of the Corporation or for the suspension of its operations.

Article VII

EFFECTIVE DATE ; TERMINATION

Section 7.01. The following events are specified as additional conditions to the effectiveness of the Loan Agreement within the meaning of Section 9.01 (c) of the Loan Regulations :

(a) That the Corporation shall have been duly incorporated under the laws of the Republic of the Philippines, and that the Articles of Incorporation, filed with the Securities and Exchange Commission in connection with the incorporation, are satisfactory to the Bank.

(b) That the Securities and Exchange Commission, upon application by the Corporation, shall have found and by order declared pursuant to Section 4 (b) (2) of Republic Act No. 2629 (Investment Company Act), that the Corporation is primarily engaged in a business or businesses other than that of investing, reinvesting or trading in securities, as defined in said (Republic Act No. 2629.

(c) That at least twenty-five million pesos (P25,000,000) of the shares of the Corporation shall have been subscribed and allotted in a manner satisfactory to the Bank and on the basis of a prospectus satisfactory to the Bank.

(d) That at least 40% of the subscribed share capital of the Corporation shall have been paid in cash at par.

(e) That the execution and delivery by the Corporation and AID of the AID Agreement, in form and substance satisfactory to the Bank, shall have been duly authorized or ratified by all necessary corporate or governmental action and that the conditions precedent to disbursement under said AID Agreement shall have been fulfilled.

(f) That the execution and delivery by the Borrower and the Corporation of the Subsidiary Loan Agreement, in form and substance satisfactory to the Bank, shall have been duly authorized or ratified by all necessary corporate action.

(g) That the execution and delivery of the Project Agreement on behalf of the Corporation shall have been duly authorized or ratified by all necessary corporate action.

Section 7.02. The following are specified as additional matters within the meaning of Section 9.02 (c) of the Loan Regulations, to be included in the opinions to be furnished to the Bank :

(a) That the Corporation has been duly incorporated under the laws of the Republic of the Philippines.

(b) That the order of the Securities and Exchange Commission referred to in Section 7.01 (b) of this Agreement is valid and effective.

(c) That at least twenty-five million pesos (P25,000,000) of the shares of the Corporation have been subscribed and allotted.

(d) That at least 40% of the subscribed share capital of the Corporation has been paid in cash at par.

(e) That the AID Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Corporation, that all acts, validations, consents and approvals necessary on the part of the Corporation to render said Agreement valid and effective have been duly performed or given and that said AID Agreement constitutes a valid and binding obligation of the Corporation in accordance with its terms.

(f) That the Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the respective parties thereto, that all acts, validations, consents and approvals necessary to render said Agreement valid and effective have been duly performed or given, and that said Subsidiary Loan Agreement constitutes a valid and binding obligation of the parties thereto in accordance with its terms.

(g) That the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Corporation, that all acts, validations, consents and approvals necessary to render said Agreement valid and effective have been duly performed or given, and that said Project Agreement constitutes a valid and binding obligation of the Corporation in accordance with its terms.

Section 7.03. A date ninety days after the date of this Agreement is hereby specified for the purposes of Section 9.04 of the Loan Regulations.

Article VIII

MISCELLANEOUS

Section 8.01. The Closing Date shall be June 30, 1966 or such other date as may from time to time be agreed between the Bank and the Borrower.

Section 8.02. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Bank :

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington 25, D.C.
United States of America

Alternative address for telegrams, cables and radiograms :

Intbafrad
Washington, D.C.

For the Borrower :

Philippine National Bank
Escolta
Manila
Philippines

Alternative address for telegrams, cables and radiograms :

Philnabank
Manila

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

International Bank for Reconstruction and Development :

By George D. WOODS
President

Philippine National Bank :

By R. S. RECTO
Authorized Representative

SCHEDULE 1

MODIFICATIONS OF LOAN REGULATIONS No. 4

For the purposes of this Agreement, the provisions of Loan Regulations No. 4 of the Bank, dated February 15, 1961, shall be deemed to be modified as follows :

(a) By the deletion of Sections 2.01, 2.02, 2.03 and of paragraph (a) of Section 2.05.

(b) By the deletion of paragraph (b) of Section 2.05 and the substitution therefor of the following paragraph :

“(b) The Borrower shall have the right, upon payment of all accrued interest and payment of the premiums specified in the applicable amortization schedule, and upon not less than 45 days’ notice to the Bank, to repay in advance of maturity (i) all of the principal amount of any part of the Loan at the time outstanding or (ii) all of the principal amount of any one or more maturities of any part of the Loan, provided that on the date of such payment there shall not be outstanding any portion of such part of the Loan maturing after the portion to be prepaid. However, if Bonds shall have been delivered pursuant to Article VI in respect of any portion of any part of the Loan to be prepaid, the terms and conditions of prepayment of that portion of such part of the Loan shall be those set forth in Section 6.16 and in such Bonds.”

(c) By the addition to Section 2.05 of the following new paragraph as paragraph (d) :

“(d) The Bank and the Borrower may from time to time agree upon arrangements for prepayment and the application thereof in addition to, or in substitution for, those set forth in the provisions of paragraph (b) of Section 2.05 and Section 6.16 of these Regulations.”

(d) By the deletion of Section 3.02.

(e) By the deletion of paragraph (a) of Section 3.03 and the substitution therefor of the following paragraph :

“(a) The principal of each part of the Loan shall be repayable in the several currencies withdrawn from the Loan Account and the amount repayable in each currency shall be the amount withdrawn in that currency. The foregoing provision is subject to one exception, namely : if withdrawal shall be made in any currency which the Bank shall have purchased with another currency for the purpose of such withdrawal, the portion of the Loan so withdrawn shall be repayable in such other currency and the amount so repayable shall be the amount paid by the Bank on such purchase.”

(f) By the deletion of paragraph (c) of Section 3.03 and the substitution therefor of the following paragraph :

“(c) Except as the Bank and the Borrower shall otherwise agree, the portion of the Loan to be repaid, under the provisions of this Section, in any particular currency shall be repayable in such instalments, not inconsistent with the instalments set forth in the amortization schedule applicable to the part of the Loan in respect of which the repayment is made, as the Bank shall from time to time specify.”

(g) By the deletion of the second sentence of Section 4.01.

(h) By the substitution in the second sentence of Section 4.03 of the words “Investment Projects” for the word “Project”.

(i) By the substitution in Section 4.05 of the words “Project Agreement” for the words “Loan Agreement”.

(j) By the deletion of Section 5.03.

(k) By the deletion of Section 5.05 and the substitution therefor of the following Section :

“SECTION 5.05. *Application of Reduction of Loan Account and of Cancellation to Maturities.* Except as otherwise agreed between the Bank and the Borrower, any cancellation pursuant to this Article or pursuant to Section 2.09 or any reduction of the Loan Account pursuant to Section 2.02 (d) of the Loan Agreement in respect of any part of the Loan credited to the Loan Account shall be applied *pro rata* to the several maturities of the principal amount of such part of the Loan as set forth in the amortization schedule applicable thereto, except that the principal amount of any such maturity so cancelled shall not exceed the amount of such maturity remaining after deducting the principal amount of Bonds of such maturity theretofore delivered or requested pursuant to Article VI and the Bonds or portions of the Loan of such maturity theretofore sold or agreed to be sold by the Bank.”

(l) By the insertion of the words “of each part” after the word “amount” in Section 6.01.

(m) By the substitution of the words "the part of the Loan represented by such Bonds" for the words "the Loan", whenever they occur in Section 6.02.

(n) By the deletion of Section 6.04 and the substitution therefor of the following Section :

"SECTION 6.04. *Interest on Bonds ; Service Charge.* Bonds shall bear interest at such rate or rates as the Bank shall request, not in excess, however, of the rate of interest on the part of the Loan represented by such Bonds. If the rate of interest on any Bond shall be less than the rate of interest on the part of the Loan represented by such Bond, the Borrower shall, in addition to the interest payable on such Bond, pay to the Bank a service charge on the principal amount of such part of the Loan at a rate equal to the difference between the interest rate on such part of the Loan and the interest rate on such Bond. Such service charge shall be payable on the dates on which and in the currency in which such interest is payable."

(o) By the deletion of Section 6.05 and the substitution therefor of the following Section :

"SECTION 6.05. *Currency in which Bonds are Payable.* Bonds shall be payable as to principal and interest in the several currencies in which the part of the Loan represented by such Bonds is repayable. Each Bond delivered pursuant to any request under Section 6.03 or under Section 6.11 shall be payable in such currency as the Bank shall specify in such request except that the aggregate principal amount of Bonds representing a part of the Loan and payable in any currency shall at no time exceed the outstanding amount of such part of the Loan repayable in such currency."

(p) By the deletion of Section 6.06 and the substitution therefor of the following Section :

"SECTION 6.06. *Maturities of Bonds.* The maturities of the Bonds shall correspond to the maturities of the principal amounts of the several parts of the Loan represented thereby as set forth in the amortization schedules applicable thereto. The Bonds delivered pursuant to any request under Section 6.03 or under Section 6.11 shall have such maturities as the Bank shall specify in such request except that the aggregate principal amount of Bonds of any maturity shall at no time exceed the corresponding instalment of the principal amount of the part of the Loan represented by such Bonds."

(q) By the insertion of the words "of the part" after the word "amount" in the last sentence of Section 6.09.

(r) By the deletion of the first sentence of paragraph (a) of Section 6.11 and the substitution therefor of the following sentence :

"(a) Bonds representing a part of the Loan and bearing interest at one rate may be exchanged for Bonds bearing interest at any other rate not in excess of the rate of interest on such part of the Loan."

(s) By the deletion of paragraphs (a) and (b) of Section 6.16 and the substitution therefor of the following paragraphs :

“(a) Bonds shall be subject to redemption prior to their maturity by the Borrower in accordance with their terms, at a redemption price equal to the principal amount thereof plus the interest accrued and unpaid thereon to the date fixed for the redemption thereof plus as a premium the percentages of said principal amount specified in the amortization schedule applicable to the part of the Loan represented by such Bonds.”

“(b) If any Bond so to be redeemed shall bear interest at a rate less than the rate of interest on the part of the Loan represented by such Bond, the Borrower shall pay to the Bank on the date fixed for redemption the service charge provided for in Section 6.04 accrued and unpaid at such date on the principal amount of such part of the Loan represented by such Bond.”

(t) By the deletion of paragraph 4 of Section 10.01 and the substitution therefor of the following paragraph :

“4. The term ‘Loan’ means the loan provided for in the Loan Agreement, and the term ‘part of the Loan’ means the portion of the Loan credited to the Loan Account in respect of an Investment Project.”

(u) By the deletion of paragraph 10 of Section 10.01 and the substitution therefor of the following paragraph :

“10. The term ‘Loan Account’ means the account on the books of the Bank to which the amount of each part of the Loan is to be credited as provided in the Loan Agreement.”

(v) By the deletion of the first sentence of paragraph 12 of Section 10.01 and the substitution therefor of the following sentence :

“12. The term ‘goods’ means equipment, supplies and services required for the Investment Projects financed out of the proceeds of the Loan.”

PROJECT AGREEMENT

(DEVELOPMENT CORPORATION PROJECT)

AGREEMENT, dated February 15, 1963, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and PRIVATE DEVELOPMENT CORPORATION OF THE PHILIPPINES (hereinafter called the Corporation).

WHEREAS by an agreement, dated February 15, 1963, between the Bank and Philippine National Bank (hereinafter called PNB), which agreement and the schedules and Loan Regulations therein referred to are hereinafter called the Loan Agreement,¹ the Bank has agreed to make to PNB a loan in various currencies equivalent to fifteen million dollars (\$15,000,000), on the terms and conditions set forth in the Loan Agreement, to

¹ See p. 170 of this volume.

be re-lent to the Corporation, but only on condition that the Corporation agrees to undertake certain obligations to the Bank as hereinafter provided ; and

WHEREAS the Corporation, in consideration of the Bank's entering into the Loan Agreement with PNB, has agreed to undertake obligations as hereinafter provided ;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

DEFINITIONS

Section 1.01. Wherever used in this Agreement, unless the context shall otherwise require, the several terms defined in the Loan Agreement shall have the respective meanings therein set forth.

Article II

PARTICULAR COVENANTS OF THE CORPORATION

Section 2.01. The Corporation shall carry out the Project and conduct its operations and affairs in accordance with sound financial and investment standards and practices, with qualified and experienced management and in accordance with its Articles of Incorporation, as amended from time to time.

Section 2.02. (a) The Corporation shall cause the proceeds of the Loan to be applied exclusively to foreign currency expenditures on such Investment Projects in respect of which such amounts were withdrawn from the Loan Account.

(b) Except as the Bank and the Corporation shall otherwise agree, the proceeds of the Loan shall not be applied to expenditures in the currency of the Guarantor or for goods produced in (including services supplied from) the territories of the Guarantor or expenditures in the territories of any country which is not a member of the Bank (other than Switzerland) or for goods produced in (including services supplied from) such territories.

(c) Except as the Bank and the Corporation shall otherwise agree, the proceeds of the Loan shall not be applied to expenditures made for any Investment Project more than 90 days prior to the submission of the Investment Project to the Bank for approval, or, in the case of credits to the Loan Account pursuant to Section 2.02 (b) (ii) of the Loan Agreement, more than 90 days prior to the request for credit to the Loan Account.

Section 2.03. (a) Investment Projects may be submitted to the Bank either for approval or for credit to the Loan Account.

(b) When submitting an Investment Project to the Bank for approval, the Corporation shall furnish to the Bank an application for approval of such Investment Project,

in form satisfactory to the Bank, containing a description of such Investment Project and such other information as the Bank shall reasonably request.

(c) When submitting a request to the Bank to credit the Loan Account in respect of an Investment Project, the Corporation shall furnish to the Bank a brief description, in form satisfactory to the Bank, of such Investment Project and of the terms and conditions of the Corporation's credit for such Investment Project.

(d) Except as the Bank and the Corporation shall otherwise agree, the Corporation shall submit Investment Projects for approval pursuant to Section 2.03 (b) of this Agreement and requests for credits to the Loan Account pursuant to Section 2.03 (c) of this Agreement on or before December 31, 1964.

(e) Except as the Bank and the Corporation shall otherwise agree, the Corporation shall not make a credit for an Investment Project in respect of which the amount to be credited to the Loan Account is less than fifty thousand dollars (\$50,000).

Section 2.04. The Corporation shall use reasonable efforts to assure that the cost of goods financed out of the proceeds of the Loan is payable in the respective currencies of the countries from which such goods are acquired. Except as the Bank and the Corporation shall otherwise agree, withdrawals shall be made either in the respective currencies in which the cost of goods has been paid or is payable or in the currency in which the Loan is denominated, as the Bank may from time to time elect.

Section 2.05. Any credit granted by the Corporation to an Investment Enterprise for an Investment Project to be financed wholly or partly out of the proceeds of the Loan shall be granted or made on terms whereby the Corporation shall obtain, by the written agreement of such Investment Enterprise or other appropriate legal means, rights adequate to protect the interests of the Bank, PNB and the Corporation, including the right to require such Investment Enterprise to carry out and operate the Investment Project with due diligence and efficiency and in conformity with sound engineering and financial standards, including the maintenance of adequate records; the right to require that the proceeds of the credit shall be applied exclusively to the expenditures on such Investment Project; the right of representatives of the Bank and the Corporation to inspect the sites, works and construction included in such Investment Project, the operation thereof and any relevant records and documents; the right to require that such Investment Enterprise take out and maintain such insurance, against such risks and in such amounts, as shall be consistent with sound business practice; and the right to obtain all such information as the Bank and the Corporation shall reasonably request relating to the foregoing and to the operations and financial condition of such Investment Enterprise; such rights shall include appropriate provision whereby further access by such Investment Enterprise to use of the proceeds of the credit may be suspended or terminated by the Corporation upon failure by such Investment Enterprise to carry out the terms of such credit.

Section 2.06. The Corporation shall exercise its rights in relation to each Investment Project in such manner as to protect the interests of the Bank, PNB and the Corporation.

Section 2.07. The Corporation shall maintain records adequate to record the progress of the Project and of each Investment Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the financial condition and operations of the Corporation. The Corporation shall enable the Bank's representatives to examine such records.

Section 2.08. (a) The Bank and the Corporation shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request.

(b) The Bank and the Corporation shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and all matters covered by this Agreement. The Corporation shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the performance by the Corporation of its obligations under this Agreement.

Section 2.09. (a) Except as the Bank and the Corporation shall otherwise agree, the Corporation shall not incur, assume or guarantee any debt, if at the time or as a result thereof the total amount of debt incurred, assumed and guaranteed by the Corporation and then outstanding (including that portion only of the loan from AID pursuant to the AID Agreement which shall at that time have become due for payment) would exceed an amount equal to three times the aggregate of (i) the paid-in unimpaired capital, surplus and reserves of the Corporation, determined in accordance with sound accounting practices, and (ii) that amount of the loan from AID pursuant to the AID Agreement which at the time is outstanding but not yet due for payment.

(b) The equivalent in currency of the Guarantor of amounts of debt payable in any other currency shall be determined on the basis of a rate of exchange equal to the average selling price (as published by the Philippine National Bank) of the last ten days prior to the date of calculation for the equivalent in U.S. dollars of the currency required by the Corporation for debt service.

Section 2.10. Except as the Bank and the Corporation shall otherwise agree, or as shall be required pursuant to Sections 17½, 18, 28½ and 44 of Act No. 1459 (Corporation Law), as amended, of the Republic of the Philippines, the Corporation shall not redeem or purchase shares of its capital stock.

Section 2.11. The Corporation shall at all times take all steps possible and necessary to maintain its corporate existence and right to carry on operations and shall, except as the Bank and the Corporation shall otherwise agree, take all steps possible and necessary to maintain and renew all rights, powers, privileges and franchises which are necessary or useful in the conduct of its business.

Section 2.12. Except as the Bank and the Corporation shall otherwise agree, the Corporation shall not (i) amend its Articles of Incorporation, (ii) substantially change

the nature of its business or establish any subsidiary, or (iii) sell, transfer, lease or otherwise dispose of all or substantially all of its assets, or undertake any merger or consolidation.

Section 2.13. The Corporation shall duly perform all its obligations under the Subsidiary Loan Agreement and the AID Agreement. Except as the Bank and the Corporation shall otherwise agree, the Corporation shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving any provision of the Subsidiary Loan Agreement or the AID Agreement.

Section 2.14. Without the approval of the Bank no repayment in advance of maturity other than in accordance with Section 7.01 of the AID Agreement shall be made in respect of the loan from AID pursuant to the AID Agreement.

Section 2.15. The Corporation shall establish and maintain adequate reserves. For this purpose the Corporation shall, before declaring or paying any dividends, set aside as a reserve such sums as shall be appropriate in the light of the operations and financial condition of the Corporation. The Bank and the Corporation shall from time to time agree on a formula for the establishment of such reserves.

Article III

MISCELLANEOUS PROVISIONS

Section 3.01. No holder of any Bond other than the Bank shall by virtue of being the holder thereof be entitled to exercise any of the rights conferred, or be subject to any of the conditions or obligations imposed, upon the Bank under this Agreement.

Section 3.02. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable or radiogram to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are :

(a) For the Bank :

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington 25, D.C.
United States of America

Alternative address for telegrams, cables and radiograms :

Intbafrad
Washington, D.C.

(b) For the Corporation :

Private Development Corporation of the Philippines
Commercial Bank & Trust Co. Bldg.
Ayala Ave., Makati, Rizal
Philippines

Alternative address for telegrams, cables and radiograms :

PRIDECOP
Makati, Rizal
Philippines

Section 3.04. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement on behalf of the Corporation may be taken or executed by the President of the Corporation or such person or persons as he shall designate in writing.

Section 3.05. The Corporation shall furnish to the Bank sufficient evidence of the authority of the person or persons who will, on behalf of the Corporation, take any action or execute any documents required or permitted to be taken or executed by the Corporation pursuant to any of the provisions of this Agreement and the authenticated specimen signature of each such person.

Article IV

EFFECTIVE DATE

Section 4.01. This Agreement shall come into force and effect on the Effective Date. If, pursuant to Section 9.04 of the Loan Regulations, the Bank shall terminate the Loan Agreement, the Bank shall promptly notify the Corporation thereof and upon the giving of such notice, this Agreement and all obligations of the parties hereunder shall forthwith terminate.

Section 4.02. If and when the entire principal amount of the Loan and the Bonds and the premium, if any, on the repayment of the Loan and on the redemption of all Bonds called for redemption (as the case may be) and all interest and other charges which shall have accrued on the Loan and the Bonds shall have been paid, this Agreement and all obligations of the parties thereunder shall forthwith terminate.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed in their respective names by their representatives thereunto duly authorized and delivered in the District of Columbia, United States of America, as of the day and year first above written.

International Bank for Reconstruction and Development :
By George D. WOODS
President

Private Development Corporation of the Philippines :
By FRANCISCO ORTIGAS, JR.
Authorized Representative