

LOAN AGREEMENT

LOAN NUMBER: 6020109007

BY AND BETWEEN

THE EXPORT-IMPORT BANK OF THE REPUBLIC OF CHINA

AND

BANCO DE GUATEMALA

October 9, 1990

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LOAN AGREEMENT

THIS LOAN AGREEMENT dated as of October 9, 1990, by and between Banco de Guatemala (the "Borrower") and The Export-Import Bank of the Republic of China (the "Lender").

WHEREAS, the Borrower desires to obtain from the Lender, and the Lender is willing to make available to the Borrower, loan facilities in the aggregate principal amount not to exceed Five Million United States dollars (US\$5,000,000.00);

NOW, THEREFORE, parties hereto hereby agree as follows:

ARTICLE I. DEFINITIONS

1.01 Definitions

- (a) "Advance" shall mean a disbursement to the Borrower made under Section 2.02 hereof; provided that the aggregate amount of all Advances shall not exceed the amount of the Commitment.
- (b) "Banking Day" shall mean, for the purpose of making Advances hereunder, a day on which banks are open for business in Taipei and New York, and for the purpose of making payment of interest and other amounts hereunder and repayment of the Advances, a day on which banks are open for business in New York City, the State of New York, United States of America.
- (c) "Commitment" shall mean the obligation of the Lender hereunder to make available to the Borrower loan facilities in the aggregate principal amount up to Five Million Dollars (US\$5,000,000.00).
- (d) "Commitment Period", except as otherwise agreed upon by the Lender in writing or provided herein, shall mean the period of eighteen (18) months commencing the date of this Agreement; provided, however, that all Requests For Advances given pursuant to Section 2.02 hereof shall be received by the Lender not later than ten (10) days prior to the expiry of the Commitment Period.
- (e) "Default" shall mean any event specified in Section 6.01 hereof, whether or not any requirement of notice, lapse of time, or both, contained therein, shall have satisfied; and an "Event of Default" shall mean any event specified in Section 6.01 hereof.
- (f) "Dollar" or the sign "\$" shall mean lawful currency of the United States of America.
- (g) "Loan" shall mean the aggregate principal amount of Advances from time to time made to the Borrower pursuant to Section 2.02 of this Agreement, or, where the context may require, the amount thereof for the time being outstanding.
- (h) "Note" shall mean the promissory note of the Borrower in the form and substance set out in Appendix "A" annexed hereto, or any promissory note hereafter delivered by the Borrower in extension or renewal thereof or substitution therefor, evidencing all or a part of the Loan.
- (i) "Process Agent" shall, except as otherwise agreed upon by parties hereto, mean consulado General de Guatemala in New York with an official address on the date hereof at 57 Park Avenue, New York, N.Y. 10016, U.S.A.

ARTICLE II THE LOAN

2.01 Purpose of the Loan

The Loan shall be used to support the Balance of Payments in order that ~~is~~ ^{its} equivalent amount in Quetzales can be transferred by the Bank of Guatemala to its government for the exclusive use of the Urban Micro-business Project of the Republic of Guatemala, provided, however, the Lender shall in ~~no~~ ^{no} way be responsible for the actual usage of the proceeds by the Borrower.

2.02 Disbursement Procedure

- (a) Subject to the terms and conditions set out in this Agreement, and so long as no Default or Event of Default shall have occurred or be continuing, the Lender hereby agrees to make in one or more Advances to the Borrower in an aggregate amount not to exceed the Commitment during the Commitment Period.
- (b) Any request by the Borrower for an Advance hereunder shall be preceded by the Borrower's delivery to the Lender a prior Request For An Advance, in the form and substance set out in Appendix "B" hereto. The Lender shall, subject to the Borrower's fulfilment of all conditions precedent set out in Article V hereof, and within ten (10) Banking Days from the date such Request, certificates, opinion and all other documents to be given under this Loan Agreement, in the form and substances satisfactory to the Lender, shall have reached the Lender, credit the amount of requested Advance to the Borrower's account in New York with account number or to such other bank account as designated by the Borrower in the said Request and acceptable to the Lender.
- (c) The Advance(s) so made under the preceding paragraph shall constitute an absolute and unconditional obligation of the Borrower under this Agreement.

2.03 Interest

- (a) Interest shall accrue on each Advance from the time when it is made until its maturity hereunder, at the rate of four percent (4%) per annum, payable to the Lender semi-annually, the first such payment shall be made on the last day six (6) months from the date of this Agreement and thereafter on the last day of each successive six-month period.
- (b) Interest shall accrue on each installment payment of the principal amount of the Loan which is overdue hereunder from and including its due date (as scheduled or by acceleration hereunder) to the date of its full payment, at the rate of ten percent (10%) per annum.
- (c) Interest shall accrue on the basis of the number of days actually elapsed and a year of 360 days.

2.04 Repayment of Loan

The Loan shall be repaid in Dollars in twelve (12) consecutive semi-annual installments, the first such payment shall be made on the last day fifty-four (54) months from the date of this Agreement, and thereafter on the last day of each successive six-month period, each installment to be in the amount of Four Hundred Sixteen Thousand Six Hundred and Sixty Seven Dollars (US\$416,667.00) except that the last installment shall be in the amount of Four Hundred Sixteen Thousand Six Hundred and Sixty Three Dollars (US\$416,663.00). To evidence the Borrower's obligation to repay all advances, the Borrower shall execute and deliver to the Lender

the note for the full amount of the Commitment before the Lender makes the initial Advance. In the event that the Borrower does not draw down the entire amount of the Commitment, the amount of each installment shall be adjusted so that it bears the same relationship to the amount of each installment set forth in the first sentence of this Section as the aggregate amount actually drawn down bears to the amount of the Commitment.

2.05 Payments in Dollars

This is an international loan transaction in which the specification of Dollars and payment in New York City are of the essence. All sums payable to the Lender hereunder or under the Note or any judgment, or otherwise, shall be payable in New York City, the State of New York, U.S.A., in same day funds not later than 11:00 a.m. New York City Time on the date due. All amounts payable to the Lender hereunder shall be paid in Dollars to the account of the Lender No. 3699/9645 at Citibank N.A., 399 Park Avenue, New York City, N.Y., U.S.A. In the event that any payment to the Lender whether pursuant to any judgment or otherwise upon conversion and transfer does not, on the date of Lender's receipt thereof, result in payment of such amount of Dollars in New York City, the Borrower shall pay such additional amount necessary to yield the amount due to the Lender on such date of receipt.

ARTICLE III TAXES AND EXPENSES

3.01 Taxes

All sums payable to the Lender hereunder shall be paid to the Lender, free and clear of all present and future taxes, levies, duties, charges, fees, deductions and withholdings imposed by any government other than the Government of the Republic of China (hereinafter collectively the "Taxes"). If the Taxes must be deducted from any payment to the Lender hereunder, the Borrower shall pay such additional amounts so that the actual amount received by the Lender shall equal the amount that would have been received if such deductions were not made, after allowance for any increase in the Taxes by virtue of Lender's receipt of such additional amount.

3.02 Expenses

The Borrower shall pay the Lender on demand all expenses and taxes incurred by the Lender in connection with its enforcement of this Agreement.

ARTICLE IV REPRESENTATIONS, WARRANTIES, AND COVENANTS

The Borrower represents, warrants, and covenants to the Lender that until all amounts payable to the Lender hereunder are paid in full:

4.01 Binding Obligations of the Borrower

The Borrower has full power, authority and legal right to make and perform this Agreement and the Note; and this Agreement does, and the Note when duly executed and delivered by the Borrower will, constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms.

4.02 Due Authorization; Absence of Conflicts

The making and performance by the Borrower of this Agreement and the Note have been duly authorized by all necessary actions, governmental, corporate and otherwise, under the laws of the Republic of Guatemala and the charter and by-laws of the Borrower, and do not and will not violate any provision of any applicable constitutional provision, treaty, law, decree or regulation of the Republic of Guatemala or the charter or by-laws of the Borrower or any agreement or instrument to which the Borrower is subject or by which the Borrower or its property is bound.

4.03 Government Authorizations

All authorizations, approvals, consents and licenses from all bodies of government, ministries, agencies, exchange control authorities and other authorities required by the laws of the Republic of Guatemala for all respects herein contemplated have been duly obtained and shall be maintained in full force and effect.

4.04 Ranking

Except to the extent as the Lender shall otherwise agree in writing, the Borrower's obligations under this Agreement and the Note will at all times rank at least *pari passu* with Borrower's any other indebtedness (direct or contingent) outstanding from time to time, which is denominated in a currency other than the lawful currency of the Republic of Guatemala and is payable to any party who is a resident, or is incorporated, outside the Republic of Guatemala.

4.05 Commercial Obligations

(a) The Borrower is subject to civil and commercial law with respect to its obligations under this Agreement and the Note; (b) its borrowing under this Agreement constitutes a private and commercial act and is wholly independent of and different from any governmental or public act of the Republic of Guatemala (whether or not this Agreement or any part thereof or the purpose of any Advance may in any way be related to any such governmental or public act of the Government of the Republic of Guatemala); (c) in respect of its obligations under this Agreement and the Note, neither it nor any property owned by it and/or held for its own account enjoys and right of immunity, on ground of sovereignty or otherwise, from suit or any other legal process, jurisdiction of any court, attachment (prior to or in aid of execution of a judgement), or set-offs; and (d) to the extent that the Borrower now has or may hereafter acquire such right of immunity, the Borrower hereby irrevocably waives it for itself and any property owned by it and/or held for its own account.


ARTICLE V CONDITIONS PRECEDENT

Unless the Lender otherwise agrees in writing, its obligation to make available any Advance hereunder, is subject to (a) its receipt of the Note, approvals, certificates, opinion and other documents described in Sections 5.01 through 5.06, below, satisfactory to it, prior to or on the date of the initial Advance, if that Advance is such initial Advance, or, if it is not such initial Advance, the continued accuracy and validity (without any subsequent change, modification or qualification whatsoever) of the Note and such opinion, approvals, certificates and other documents on the date of such subsequent Advance, (b) the fulfilment to its satisfaction of the conditions described in Section 5.07, below, on the date of that Advance, and (c) the condition that no Default or Event of Default has occurred and is continuing on the date of that Advance or will occur by reason of the making of that Advance:

5.01 Authorized Signature

The Lender shall have received from the Borrower its current book of Authorized Signatures, or a Certificate of Specimen Signatures in the form and substance set out in Appendix "C" hereto, certifying the names and specimen signatures of the persons duly authorized by the Borrower as described in said Appendix "C", which specimen signatures shall have been duly authenticated by the authentication officer of the Republic of China Embassy in the Republic of Guatemala.

5.02 Note

The Lender shall have received the Note duly executed by the Borrower, with blanks appropriately ~~filled~~ filled in. filled 

5.03 Appointment of Process Agent

The Lender shall have received a certified copy of the written appointment substantially in the form and substance of Appendix "D", whereby the Borrower has irrevocably appointed the Process Agent as its agent to receive and accept on behalf of itself and any property owned by it and/or held for its own account service of legal processes of any kind which may be served on the Borrower in any judicial or other proceeding arising hereunder or under the Note, and a certified copy of the Process Agent's acceptance of such appointment in the form and substance of Appendix "E".

5.04 Legal Opinion

The Lender shall have received a favourable opinion, appropriately dated, substantially in form and substance of Appendix "F", from the Ministry of Justice or the Attorney General of the Republic of Guatemala or the legal counsel of the Borrower addressed to the Lender as to the matters set out in Article IV, which opinion shall have been duly authenticated by the authentication officer of the Republic of China Embassy in the Republic of Guatemala.

5.05 Corporate Authorization

The Board of Directors of the Borrower shall have duly authorized the transactions contemplated in this Agreement, which corporate authorization shall be properly opined in the Legal Opinion referred to in Section 5.04 hereof.

5.06 Government Approvals

All governmental approvals, consents and licenses with regard to the Borrower's execution, delivery and performance of this Agreement and the Note, including foreign exchange control approvals, shall have been obtained by the Borrower, which governmental approvals, consents and licenses shall be properly opined in the Legal Opinion referred to in Section 5.04 hereof.

5.07 Compliance of Agreement


All representations, warranties and covenants made by the Borrower herein, and all certificates, statements, opinions and other documents given under or in connection with this Agreement and the Note, shall remain true and correct.

ARTICLE VI EVENTS OF DEFAULT

6.01 Events of Default

This following are Events of Default under this Agreement:

(a) Representation, Payment and Performance Default

Any representation, warranty, statement or opinion made or deemed made under or in connection with this Agreement or the Note by the Borrower or any other party shall prove to have been untrue when made, or shall subsequently become untrue; or the Borrower shall fail to perform any obligation hereunder, including its obligation to pay any amount hereunder or under the Note; or the Borrower shall default in the payment of any amount due under any other agreement for the borrowing of money or extension of credit, whether or not the Lender is a party thereto, and such default shall continue beyond any period of grace specified for such payment; or if any instrument, certificate, opinion, corporate authorization, government consent, licence or approval or other document or condition described in Article Five hereof shall cease to be ~~full~~ valid and effective for any reason whatsoever. fully 

(b) Moratorium Default

The Borrower or any competent authority of the Government of the Borrower's country shall declare a moratorium on the payment of any indebtedness denominated in a currency other than the lawful currency of the Republic of Guatemala.

(c) Illegality Default

It becomes unlawful, or in the Lender's opinion is contrary to any applicable official statement, guideline or policy of any authority (not having the force of law but is recommended for voluntary observance) of the Republic of Guatemala or the Republic of China, for any Advance to be made or the loan to be maintained or for the Borrower to perform any obligation hereunder, or there occurs such a change of circumstances which the Lender determines as having materially changed the basis of this Agreement or will materially adversely affect the Lender's continuing administration of the Loan or this Agreement or any part thereof.

6.02 Consequences of Default

If an Event of Default shall occur and is continuing, the Lender may by written notice to the Borrower cancel the Commitment and/or declare the entire Loan and other sums payable hereunder and under the Note to be immediately due and payable without presentment, demand, protest or notice of any kind (other than the notice specifically required under this Article), all of which are hereby expressly waived by the Borrower.

ARTICLE VII MISCELLANEOUS

7.01 Entire Agreement

This Agreement and the Note constitute the entire understanding and agreement of the parties hereto, and represent the full and exhaustive implementation of their respective rights and obligations in respect of all matters provided herein. This Agreement may be amended only in writing signed by the parties hereto.

7.02 Waiver

No failure or delay by the Lender to exercise any right, power or privilege under this Agreement and no course of dealings between parties hereto shall operate as a waiver of any such right, power or privilege.

7.03 Assignment

The Borrower shall not assign or transfer its right, interest or obligations under, in or to this Agreement without the Lender's prior written consent.

7.04 Governing Law; Submission to Jurisdiction

This Agreement and the Note shall be governed by the laws of the State of New York, United States of America (without however giving effect to the conflict of law rules thereof). The Borrower agrees, until all of its obligations hereunder and under the Note are paid in full, to always maintain in New York City, the State of New York, U.S.A. the Process Agent or his substitute (as approved by the Lender) to accept service of process in connection with any suit, action or proceeding against the Borrower or any property owned by it and/or held for its account, and to advise the Lender of any change of the Process Agent (or his substitute) or change of his address (or the address of his substitute). The Borrower further agrees to accept the service of any process in any suit, action or proceeding in said courts by the mailing of copies thereof by the Lender by registered or certified mail, postage prepaid, to the Borrower at its address given in Section 7.06 such services shall be deemed to have been received ten(10) days following posting.

Each party hereto irrevocably agrees:

- (a) To submit to the non-exclusive jurisdiction of any State or Federal court in New York City, the State of New York, U.S.A. in any suit, action or proceeding arising out of this Agreement or the Note;
- (b) To waive (i) any objection which it may have to the laying of venue of any suit, action or proceeding in any of the courts mentioned herein, and (ii) and claim that any suit, action or proceeding brought in any such court has been brought in an inconvenient forum; and
- (c) That nothing herein shall affect the other party's right to serve legal process in any other manner permitted by law or preclude the other party from instituting proceedings in any other competent court.

7.05 English Language

Each document to be delivered hereunder, unless submitted in English, shall be accompanied by an English translation certified as true and correct, which translation shall in all cases prevail. The Note shall be in the English language alone.

7.06 Notices

Except as otherwise notified by any party hereto of its change of address, any notice required hereunder shall be in writing and shall be sent to the following address:

To the borrower: Banco de Guatemala
Address: 7a. Avenida 22-01 Zona 1, Ciudad de Guatemala
Telex no.: 5461/5231
Answerback: GUABAN GU
Fax: (502-2)534035
Attention:

To the Lender: The Export-Import Bank of the Republic of China
Address: 8th Floor, 3, Nan Hai Road, Taipei, Taiwan, Republic of China
Telex No.: 26044
Answerback: "EXIMBANK" Taipei
Attention: Senior Vice President and Director
Loan and Guarantee Department

7.07 Severability

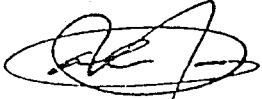
The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not impair the validity or enforceability of such provision in any other jurisdiction nor any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

The Export-Import Bank of the
Republic of China

Banco de Guatemala

By: Koh Fei-Lo
Name: Koh Fei-Lo
Title: President

By: 
Name:
Title: