

LOAN NO. 4 /SFR-OR-GUY



**LOAN AGREEMENT**  
**(Reconstruction of Sea Defences (Second Loan))**

**BETWEEN**

**CARIBBEAN DEVELOPMENT BANK**

**AND**

**THE CO-OPERATIVE REPUBLIC OF GUYANA**

Dated: March 30, 2004

*[Handwritten signature]*

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**LOAN AGREEMENT**

AGREEMENT dated the 30<sup>th</sup> day of March, 2004 between the Caribbean Development Bank (hereinafter called the Bank) of the one part and the Co-operative Republic of Guyana (hereinafter called the Borrower) of the other part.

**ARTICLE I**

**General Provisions, Interpretation, Definitions**

Section 1.01 **General Provisions.** The "General Provisions Applicable to Loan Agreements with Borrower Only" of the Bank dated June 30, 1995 set forth in Schedule 1 (hereinafter called "the General Provisions") shall apply to this Loan Agreement subject, however, to any modifications thereof set forth herein.

Section 1.02 **Interpretation.** Unless otherwise stated, references to Sections are to Sections of this Loan Agreement, and references to Schedules are to the Schedules appearing immediately following Section 8.01.

Section 1.03 **Definitions.** (a) Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the General Provisions shall have the respective meanings set forth therein, and for the purpose of sub-paragraphs (v), (xiv) and (xv) respectively of Section 2.01 of the General Provisions, the terms:

- (i) "Due Dates" shall mean January 1, April 1, July 1 and October 1 in each year, except in the case of interest payable under Section 3.09 of the General Provisions, and other charges, which are payable on demand;
- (ii) "Project" shall mean the reconstruction of approximately 2.0 km of sea defences in the Profit-Foulis area of the Project Country, more fully described in Schedule 2; and
- (iii) "Project Country" shall mean the Co-operative Republic of Guyana;

(b) Wherever used in this Loan Agreement, unless the context otherwise requires, the following additional terms shall have the following meanings:

- (i) "calendar quarter" means each three (3) month period ending March 31, June 30, September 30 and December 31 of each year;
- (ii) "CDB" means the Bank;
- (iii) "Engineering Consultants" means the Engineering Consultants referred to in paragraph (a) of Section 6.02;
- (iv) "EPA" means the Environmental Protection Agency of the Project Country;
- (v) "Financing Plan" means the Project Cost, Financing and Phasing Plan set out in Appendix 2 to Schedule 2;
- (vi) "Financial Year" or "FY" means the period commencing January 1 and ending December 31;
- (vii) "GOG" means the Borrower;
- (viii) "Loan Accounts" means the SFR Loan Account and the OCR Loan Account;
- (ix) "MPWC" means the Ministry of Public Works and Communications of the Borrower;
- (x) "OCR Loan Account" means the Loan Account to be opened pursuant to paragraph (c) of Section 2.02 and credited with the OCR Portion;
- (xi) "OCR Portion" means an amount of the Loan not exceeding the equivalent of three million seven hundred and ninety-two thousand United States dollars (USD 3,792,000) allocated from the Bank's Ordinary Capital Resources;

- (xii) "PEU" means the Project Execution Unit established within SRDD of the MPWC and charged with responsibility for the implementation of all internationally-funded sea defence projects in the Project Country;
- (xiii) "Project Director" or "PD" means the Project Director referred to in paragraph (b) of Section 6.01;
- (xiv) "SFR Loan Account" means the Loan Account to be opened pursuant to paragraph (c) of Section 2.02 and credited with the SFR Portion;
- (xv) "SFR Portion" means an amount of the Loan not exceeding the equivalent of three million five hundred and fifty-eight thousand United States dollars (USD 3,558,000) allocated from the Special Funds Resources of the Bank;
- (xvi) "SRDD" means the Sea and River Defence Division of the MPWC;
- (xvii) "United States dollars" or "USD" means dollars in the currency of the United States of America; and
- (xviii) "WCB" means the West Coast Berbice Area of the Project Country.

## ARTICLE II

### The Loan and its Purpose

Section 2.01 **Amount of Loan.** The Bank agrees to lend to the Borrower on the terms and conditions set forth in this Loan Agreement an amount not exceeding the equivalent of seven million three hundred and fifty thousand United States dollars (USD 7,350,000) consisting of the SFR Portion and the OCR Portion.

Section 2.02 **Loan Accounts.** (a) Section 3.01 of the General Provisions shall not apply to this Loan Agreement.

(b) Other references in the General Provisions to the Loan Account shall mean the OCR Loan Account or the SFR Loan Account or both of such accounts as the context requires.

(c) The Bank shall open two (2) Loan Accounts in its books in the name of the Borrower and shall credit to one (1) such account the amount of the SFR Portion and to the other such account the amount of the OCR Portion. The amounts credited to the Loan Accounts may be withdrawn from the Loan Accounts as provided, and subject to the rights of cancellation and suspension set out in this Loan Agreement and in the General Provisions.

Section 2.03. **Purpose.** The purpose for which the Loan is being made is to assist the Borrower in financing the Project.

### ARTICLE III

#### Repayment, Interest, Commission, Commitment Charge

#### SFR PORTION

Section 3.01 **Repayment.** Except as provided in paragraph (b) of Section 3.02 of the General Provisions, the Borrower shall repay the amount withdrawn from the SFR Loan Account in eighty (80) equal or approximately equal and consecutive quarterly instalments on each Due Date commencing on the first Due Date after the expiry of ten (10) years following the date of the first disbursement under this Loan Agreement, or on such later Due Date as the Bank may specify in writing.

Section 3.02 **Interest.** The Borrower shall pay interest at the rate of two percent (2%) per annum on the amount of the SFR Portion withdrawn and outstanding from time to time. Such interest shall be payable quarterly in accordance with paragraph (a) of Section 3.03 of the General Provisions.

Section 3.03 **Commission and Commitment Charge.** Sections 3.04 and 3.05 of the General Provisions shall not apply to the SFR Portion.

## OCR PORTION

Section 3.04 **Repayment.** Except as provided in paragraph (b) of Section 3.02 of the General Provisions, the Borrower shall repay the amount withdrawn from the OCR Loan Account in sixty-eight (68) equal or approximately equal and consecutive quarterly instalments on each Due Date, commencing on the first Due Date after the expiry of five (5) years following the date of first disbursement under this Loan Agreement, or such later Due Date as the Bank may specify in writing.

Section 3.05 **Interest.** Subject to the provisions of paragraph (b) of Section 3.03 of the General Provisions, the Borrower shall pay to the Bank interest at the rate of five decimal five percent (5.5%) per annum on the amount of the OCR Portion withdrawn and outstanding from time to time. Such interest shall be payable quarterly in accordance with paragraph (a) of Section 3.03 of the General Provisions.

Section 3.06 **Commission.** Section 3.04 of the General Provisions shall not apply to the OCR Portion.

Section 3.07 **Commitment Charge.** The Borrower shall pay a commitment charge at the rate of one percent (1%) per annum on the amount of the OCR Portion unwithdrawn from time to time. Such charge shall accrue from the sixtieth (60th) day after the date of this Loan Agreement and shall be payable quarterly in accordance with Section 3.05 of the General Provisions.

## ARTICLE IV

### Withdrawal of Loan

Section 4.01 **Withdrawal and Application of Loan.** (a) Except as the Bank may otherwise agree:

- (i) the amounts withdrawn from the Loan Accounts shall be applied by the Borrower to finance the components of the Project allocated for financing by the Bank as shown in the Financing Plan up to the respective limits shown therein; and
- (ii) withdrawals from the Loan Accounts shall not exceed in the aggregate eighty-one percent (81%) of the cost of the Project.



(b) The amounts withdrawn from the Loan Accounts shall not be used to meet any part of the cost of the Project which consists of identifiable taxes imposed under the laws of the Project Country.

Section 4.02 **Period of Disbursement.** The date to be specified pursuant to Section 4.03 of the General Provisions is September 30, 2006.

Section 4.03 **Procurement.** (a) Any goods and services to be financed from amounts withdrawn from the Loan Accounts shall be procured in accordance with the provisions of Section 4.04 of the General Provisions.

(b) The Borrower hereby acknowledges that it has been furnished with a copy of the Bank's:

- (i) "Guidelines for Procurement" published on October 15, 1992 and revised in November 2000;
- (ii) "Procedures for the Selection and Engagement of Consultants by Recipients of CDB Financing" published in February 1998; and
- (iii) "Handbook for use with Procedures for the Selection and Engagement of Consultants by Recipients of CDB Financing" published in March 1998,

all of which publications are in effect at the date of this Loan Agreement.

## ARTICLE V

### Conditions Precedent

Section 5.01 **Additional Conditions Precedent to First Disbursement.** In addition to the requirements specified in paragraph (a) of Section 6.01 of the General Provisions, the Borrower shall, by the date referred to in Section 8.03 (i) thereof, furnish or cause to be furnished to the Bank evidence acceptable to the Bank that:

- (i) the aggregate of all loans raised under Section 3 (1) of the External Loans Act of the Project Country (including the Loan) does not exceed the limit thereby imposed;

- (ii) the EPA has issued the construction permit(s) required under the Environmental Protection Act of the Project Country;
- (iii) the Borrower has acquired the lands required for the Project, or alternatively has made arrangements, satisfactory to the Bank, for entry into possession of such lands for the purposes of the Project; and
- (iv) the Engineering Consultants have been engaged.

**ARTICLE VI**  
**Particular Conditions**

Section 6.01 **Execution of Project.** (a) In carrying out the Project, the Borrower shall:

- (i) except as the Bank may otherwise agree in writing, carry out the Project through the PEU;
  - (ii) carry out the Project at all times with due diligence and efficiency, with management personnel whose qualifications and experience are acceptable to the Bank, and in accordance with sound technical, environmental, financial and managerial standards and practices; and
  - (iii) institute and maintain administrative, accounting and auditing arrangements for the Project acceptable to the Bank.
- (b) The PEU shall be headed by the Project Director who shall be responsible for providing the following services under the Project:
- (i) representation of the Borrower in all its dealings with the Bank, the Engineering Consultants, and the contractors engaged pursuant to Section 6.03;
  - (ii) issuance of tenders, evaluation of bids and recommendation of awards for the construction contract;

- (iii) management and administration of the implementation of the construction contract;
- (iv) cost control;
- (v) submission to the Bank of claims for disbursement and/or reimbursement;
- (vi) liaison with the Bank on all technical and administrative aspects of the Project;
- (vii) preparation and submission to the Bank of quarterly reports on the investment cost of the Project in the form set out in Schedule 3 or in such form or forms as may be specified by the Bank, within six (6) weeks after the end of each calendar quarter commencing with the calendar quarter following the commencement of the services of the PD;
- (viii) keeping separate accounts for Project related expenditures and disbursement activities;
- (ix) submission to the Bank, within thirty (30) days after the end of each calendar month, the monthly report on the progress of the works referred to in paragraph (a) (viii) of Section 6.02;
- (x) submission to the Bank of the completion report of the Engineering Consultants referred to in paragraph (a) (xii) of Section 6.02, inclusive of as-built drawings, within three (3) months after the date of issue by the Engineering Consultants of a certificate of practical completion of the construction works; and
- (xi) preparation and submission to the Bank of a project completion report, within six (6) months after the date of final disbursement of the Loan.

Section 6.02 **Engagement of Engineering Consultants.** (a) The Borrower shall select and engage Engineering Consultants, whose qualifications and experience shall be acceptable to the Bank, to provide engineering supervision services under the Project, including the following services:

- (i) assistance to the Borrower in the completion of tender and construction contract documents;

- (ii) assistance to the Borrower in the pre-qualification of contractors, including the preparation of prequalification reports;
- (iii) assistance in the evaluation of tenders including the preparation of tender evaluation reports;
- (iv) assistance in contract negotiations for the construction works;
- (v) technical inspection of construction in order to ensure compliance with the contract documents;
- (vi) environmental monitoring of construction;
- (vii) revision of designs, as appropriate, to deal with unforeseen circumstances;
- (viii) preparation of monthly reports on the progress of the works, indicating any engineering difficulties affecting their efficient and timely execution, commencing one month after the start date as defined in the construction contract;
- (ix) certification of payment for work done;
- (x) consultation and advice to the Borrower during construction;
- (xi) issuance of a certificate of practical completion to the construction contractor upon completion of the construction contract; and
- (xii) preparation of a completion report on the Project, including as-built drawings.

(b) The cost of the services of the Engineering Consultants shall not be eligible for financing from the Loan.

Section 6.03 **Engagement of Contractors.** The Borrower shall, in accordance with the provisions of Section 4.04 of the General Provisions, select and engage competent and experienced contractors to carry out the construction works under the Project.

Section 6.04 **Maintenance.** The Borrower shall:

- (i) keep the national sea defences of the Project Country, including the sea defences, drains and other facilities financed from the Loan, maintained, or cause the same to be maintained, in good repair and condition;
- (ii) not later than November 30, 2004 or such later date as the Bank may agree, furnish to the Bank a programme, acceptable to the Bank, for national sea defence maintenance for the FY 2005;
- (iii) not later than six (6) months before the start of each FY of the Borrower (or such other period as the Bank may agree) after the end of the defects liability period for the sea defence works to be financed from the Loan, and until the Loan is fully repaid, carry out a condition survey of the civil works in the Project area; and
- (iv) carry out the aforementioned programmes with due diligence and efficiency.

Section 6.05 **Reports and Information.** Without prejudice to the provisions of paragraph (c) of Section 7.01 of the General Provisions, and except as the Bank may otherwise agree, the Borrower shall furnish or cause to be furnished to the Bank the reports listed in Schedule 4 in such form as the Bank may require, no later than the times stated therein for so doing.

Section 6.06 **Additional Funds.** For the purpose of Section 7.05 of the General Provisions, the estimated cost of the Project is nine million and forty thousand United States dollars (USD 9,040,000).

Section 6.07 **Borrower's Contribution to the Project.** (a) Without prejudice to the provisions of Section 7.05 of the General Provisions, the Borrower shall contribute to the Project an amount of not less than the equivalent of one million six hundred and ninety thousand United States dollars (USD 1,690,000) inclusive of the cost of land acquisition.

(b) Unless otherwise agreed in writing with the Bank, the contribution which the Borrower is required to make to the Project in accordance with paragraph (a) of this Section shall be expended by the Borrower in a timely manner on the components of the Project allocated for financing by the Borrower as shown in the Financing Plan up to the respective limits set out therein.

## ARTICLE VII

### Suspension and Cancellation

Section 7.01 **Cancellation by the Bank.** The date referred to in sub-paragraph (iii) of Section 8.03 of the General Provisions is September 30, 2004 or such later date as the Bank may specify in writing.

## ARTICLE VIII

### Miscellaneous

Section 8.01 **Addresses for Service.** The following addresses are specified for the purpose of Section 12.03 of the General Provisions:

**For the Bank:**

Caribbean Development Bank  
Wilkey  
St. Michael  
BARBADOS, W.I.

Cable Address: CARIBANK  
Telex: WB 2287  
Telefax: (246) 426-7269

**For the Borrower:**

Secretary to the Treasury  
Ministry of Finance  
Georgetown  
GUYANA, S.A.

Cable Address: MINFIN, GUYANA  
Telex No.: 9Y 3038  
Telefax: (592) 02-72965

**SCHEDULE I**

(Section 1.01)

**CARIBBEAN DEVELOPMENT BANK**

**GENERAL PROVISIONS APPLICABLE**  
**TO LOAN AGREEMENTS WITH**  
**BORROWER ONLY**

**DATED: June 30, 1995**

CARIBBEAN DEVELOPMENT BANK

GENERAL PROVISIONS APPLICABLE  
TO LOAN AGREEMENTS WITH  
BORROWER ONLY

DATED: June 30, 1995

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**CARIBBEAN DEVELOPMENT BANK**

**GENERAL PROVISIONS APPLICABLE**  
**TO LOAN AGREEMENTS WITH**  
**BORROWER ONLY**

**DATED: June 30, 1995**

**ARTICLE I**

**Application of General Provisions,**  
**Inconsistency with Loan Agreement**

Section 1.01 Application of General Provisions. These General Provisions set forth certain terms and conditions generally applicable to loans made by the Bank and shall apply to Loan Agreements without an Executing Agency to such extent, and subject to such modifications, as may be provided in such Loan Agreements, provided however that, where there is no Guarantor, references in these General Provisions to Guarantor and Guarantee Agreement shall be disregarded.

Section 1.02 Inconsistency with Loan Agreement. If any provision of a Loan Agreement is inconsistent with a provision of these General Provisions, the provision of the Loan Agreement shall prevail.

ARTICLE II

Definitions, References, Headings

Section 2.01 Definitions. The following expressions have the following meanings wherever used in these General Provisions unless the context otherwise requires:

- (i) "Aid Donor(s)" means such of the Donors or Lenders to the Bank which may be providing financing through the Bank for the Project;
- (ii) "Bank" means the Caribbean Development Bank;
- (iii) "Borrower" means the party to the Loan Agreement to which the Bank has agreed to make the Loan;
- (iv) "Closing Date" means the date referred to in Section 4.03;
- (v) "Due Dates" means the dates specified in the Loan Agreement for payment of instalments of the Principal and the interest (excluding interest payable pursuant to Section 3.09), commission, commitment charge and other charges in respect of the Loan;
- (vi) "Guarantee Agreement" means the agreement between the Guarantor and the Bank whereby the Guarantor guarantees the payment of the instalments of the Principal and the interest, commission, commitment charge and other charges in respect of the Loan, as such agreement may be amended from time to time, and includes all agreements amending such agreement or supplemental thereto and all schedules to such agreement;
- (vii) "Guarantor" means the party to the Guarantee Agreement which is the member of the Bank guaranteeing the payment of the instalments of the Principal and the interest, commission, commitment charge and other charges in respect of the Loan;
- (viii) "interest" means interest payable pursuant to Sections 3.03 and 3.09;



- (ix) "Loan" means the loan provided for in the Loan Agreement and includes portions of the Loan which are separately provided for in the Loan Agreement;
- (x) "Loan Account" means the account referred to in Section 3.01;
- (xi) "Loan Agreement" means the agreement between the Bank and the Borrower providing for the Loan, to which some or all of these General Provisions shall have been made applicable, as such agreement may be amended from time to time, and includes such of these General Provisions as thus made applicable thereto, all agreements amending such agreement or supplemental thereto and all schedules to such agreement;
- (xii) "other charges" means expenditure incurred by the Bank for or in connection with the remittance by the Bank of amounts withdrawn from the Loan Account, the purchase by the Bank of any currency needed by the Bank for payment to itself of interest, commission, commitment charge and/or other charges in accordance with Section 4.11 and the establishment or modification of Letters of Credit pursuant to Section 4.02, and amounts agreed to be paid by the Borrower to the Bank for or in connection with other special commitments entered into by the Bank in accordance with Section 4.02;
- (xiii) "Principal" means the amount withdrawn from the Loan Account and outstanding from time to time;
- (xiv) "Project" means the project or programme for which the Loan is granted, as described in the Loan Agreement and as such description may be amended from time to time;
- (xv) "Project Country" means the country specified in the Loan Agreement being the country of a member of the Bank in which the Project is located or in which the Borrower is directing the operations of, and implementing, the Project; and
- (xvi) "Taxes" includes imposts, levies, fees and duties of any nature in effect at the date of the Loan Agreement or Guarantee Agreement and thereafter.

Section 2.02 References. References in these General Provisions to Articles or Sections are to Articles or Sections of these General Provisions and reference to the singular shall include the plural and vice versa unless the context otherwise requires.

Section 2.03 Table of Contents and Headings. The Table of Contents and the headings to the Articles and Sections are inserted for convenience of reference only and are not a part of these General Provisions.

### ARTICLE III

#### **Loan Account, Repayment, Interest, Commission, Commitment Charge, Other Charges and Payments**

Section 3.01 Loan Account. The Bank shall open a Loan Account in its books in the name of the Borrower. The amount of the Loan shall be credited to the Loan Account and may be withdrawn therefrom as provided, and subject to the rights of cancellation and suspension set out, in the Loan Agreement and in these General Provisions.

Section 3.02 Repayment. (a) The Borrower shall repay the amount withdrawn from the Loan Account in the manner specified in the Loan Agreement. The Bank shall provide the Borrower with particulars of the repayments before the Due Date for the first repayment.

(b) Without prejudice to the provisions of Article IX, if there shall have been a cancellation, pursuant to Section 8.01 or Section 8.03, of such amount of the Loan as in the Bank's opinion is substantial and the Project has not been completed, the Borrower shall repay the Principal or, where portions of the Loan are separately provided for in the Loan Agreement, the amount of each portion of the Loan withdrawn from the Loan Account credited with such portion and outstanding in such fewer instalments than those specified in the Loan Agreement as the Bank may specify in writing not exceeding such portion of the number of such instalments to the nearest whole number as the Principal bears to the Loan or the amount of each portion of the Loan withdrawn from the Loan Account credited with such portion and outstanding bears to such portion, as the case may be.

Section 3.03 Interest. (a) The Borrower shall pay interest on the Principal at the rate provided for in the Loan Agreement, except as otherwise provided in Section 3.09. Such interest shall accrue from the

respective dates on which amounts shall be withdrawn from the Loan Account and shall be payable on the Due Dates, the first payment being due and payable on the first Due Date after the date of the first disbursement of the Loan.

(b) The Bank may from time to time increase or decrease the rate of interest for the time being payable on any amount of the Loan which is being lent from the Ordinary Capital Resources of the Bank to take effect on the day after the first Due Date after June 30 and/or December 31 in any year, or on such other date or dates as the Bank may specify in writing from time to time.

Section 3.04 Commission. The Borrower shall pay to the Bank a commission on the Principal at the rate provided for in the Loan Agreement, except as otherwise provided in Section 3.09. Such commission shall accrue from the respective dates on which amounts shall be withdrawn from the Loan Account and shall be payable on the Due Dates, the first payment being due and payable on the first Due Date after the date of the first disbursement of the Loan.

Section 3.05 Commitment Charge. The Borrower shall pay to the Bank a commitment charge on the amount unwithdrawn from the Loan Account from time to time at the rate specified in the Loan Agreement. Except as the Bank may otherwise specify in writing, such commitment charge shall accrue from the date specified in the Loan Agreement to the respective dates on which amounts shall be withdrawn from the Loan Account or shall be cancelled and shall be payable on the Due Dates, the first payment being due and payable on the first Due Date after the date on which such charge shall accrue.

Section 3.06 Other Charges and Interest on Overdue Payments. Other charges due by the Borrower to the Bank and interest payable under Section 3.09 shall be payable on demand, except as otherwise provided in Section 3.10.

Section 3.07 Computation of Interest, Commission and Commitment Charge. Interest, commission and commitment charge shall be computed daily on the basis of a 360-day year of twelve (12) 30-day months.

Section 3.08 Advance Payments. The Borrower shall have the right, upon payment of all overdue Principal and all accrued interest, commission, commitment charge and other charges and upon not less than forty-five (45) days' notice to the Bank, to repay as of a date acceptable to the Bank in advance of maturity any portion of the Principal, provided however that, unless otherwise agreed, such early

repayment shall not interfere with the repayment in the regular course of the Principal, but shall have the effect only of accelerating repayment of the Principal and the particulars of the repayments to be provided pursuant to Section 3.02 shall be amended accordingly.

Section 3.09 Overdue Payments. (a) In case the Borrower fails to pay any portion of the Principal, interest (excluding interest payable under this Section), commission, commitment charge and/or other charges due and payable under the Loan Agreement, but without prejudice to the provisions of Articles VIII and IX, the Borrower shall pay to the Bank interest on such overdue Principal, interest, commission, commitment charge and/or other charges at such rate or rates of interest per annum as shall be applicable thereto as provided in paragraph (b) of this Section, for a period from the day immediately succeeding the Due Date for such overdue payment or payments to the day of actual payment thereof, both dates inclusive.

(b) The rate of interest per annum payable on the amount of an overdue payment, or, if there be more than one, of the aggregate of all overdue payments outstanding from time to time shall be such rate as the Bank may specify in writing from time to time being equivalent to one per cent (1%) above the aggregate rates of interest and commission payable on loans by the Bank from its Ordinary Capital Resources prevailing either:

- (i) on the day on which the Loan was approved by the Bank, or
- (ii) on the day immediately succeeding the Due Date or Due Dates for such overdue payment or payments and each Due Date thereafter until payment in full of such overdue payment or payments,

whichever is higher.

(c) The rate or rates of interest payable on an overdue payment of Principal under this Section shall be in lieu of the rate or rates of interest and commission, if any, payable on the Loan.

Section 3.10 Place and Application of Payments. (a) The Principal and the interest, commission, commitment charge and other charges in respect of the Loan shall be paid at such place or places as the Bank may reasonably request.

(b) All payments shall be applied firstly to any interest payable under Section 3.09, then to any commitment charge and other charges due and payable, then to any interest (excluding interest payable under Section 3.09) and commission due and payable, then to any Principal due and payable.

**ARTICLE IV**  
**Withdrawal of Loan**

Section 4.01 Withdrawal and Application of Loan. (a) Subject to the provisions of the Loan Agreement, the Borrower shall be entitled to withdraw from the Loan Account amounts required for the purpose of the Project, but, except with the agreement of the Bank, no withdrawals shall be made on account of expenditures incurred before the date of the Loan Agreement.

(b) The amount withdrawn from the Loan Account shall be applied for the purpose of the Project in accordance with the provisions of the Loan Agreement and of these General Provisions.

Section 4.02 Special Commitments. At the request of the Borrower and upon such terms and conditions as may be agreed upon between the Bank and the Borrower, the Bank may enter into special commitments in writing to pay amounts to the Borrower or others in respect of the cost of goods and services to be financed out of the amount withdrawn from the Loan Account notwithstanding any subsequent suspension or cancellation.

Section 4.03 Period of Disbursement. The Loan may be disbursed up to the date specified in the Loan Agreement or such later date as may be specified in writing by the Bank.

Section 4.04 Procurement. (a) Any goods and services required for carrying out the Project shall, if they are to be financed out of an amount of the Loan,

- (i) be procured in accordance with the procedures outlined in the Bank's "Procedures for Selection and Engagement of Consultants by Recipients of CDB Financing" and "Guidelines for Procurement" as are in effect on the date of the Loan Agreement and as the same may be amended from time to time by the Bank or in accordance with such other procedures as may be specified in writing by the Bank; and,

(ii) except as provided in the procedures referred to in sub-paragraph (i) of this paragraph, have their source and origin in and be procured from only the member countries of the Bank, all of which are specified in the Annex to these General Provisions, and such other countries as may be specified in, or pursuant to, the Loan Agreement.

(b) The Borrower undertakes that, in the procurement of goods and services for the Project, all necessary measures will be taken to ensure that the construction and service contracts and all purchases of goods financed out of an amount of the Loan will be made at a reasonable cost which will generally be the lowest market price taking into account time of delivery, quality, efficiency, reliability of the goods and availability of maintenance facilities and spare parts therefor and, in the case of services, of their quality and the competence of the parties rendering them.

Section 4.05 Goods and Services to be used exclusively in carrying out the Project. Except as the Bank may otherwise agree, the Borrower shall cause all goods and services financed out of an amount withdrawn from the Loan Account to be used exclusively in carrying out the Project.

Section 4.06 Request for Withdrawal or Special Commitment. When the Borrower desires to withdraw any amount from the Loan Account, or to request the Bank to enter into a special commitment pursuant to Section 4.02, the Borrower shall deliver to the Bank a written application in such form and containing such statements and agreements as the Bank shall reasonably request. Applications for withdrawal with the necessary documentation as hereinafter in this Article provided shall be made promptly in relation to expenditures for the Project.

Section 4.07 Authorisation of Requests for Withdrawals. The Borrower shall furnish to the Bank evidence of the authority of the person or persons authorised to sign applications for withdrawal and the authenticated specimen signature of such person or persons.

Section 4.08 Documentation of Requests for Withdrawals. The Borrower shall furnish to the Bank such documents and other evidence in support of the application as the Bank shall reasonably request, whether before or after the Bank shall have permitted any withdrawal requested in the application.

Section 4.09 Application and Documents to satisfy Bank. Each application and the accompanying documents and other evidence must be sufficient in form and substance to satisfy the Bank that the

Borrower is entitled to withdraw from the Loan Account the amount applied for and that the amount to be withdrawn from the Loan Account has been or will be used for the purposes specified in the Loan Agreement.

Section 4.10 Payments to the Borrower. Payment by the Bank to the Borrower of amounts which the Borrower is entitled to withdraw from the Loan Account shall be made to or on the order of the Borrower.

Section 4.11 Withdrawal and Deduction of Interest, Commission, Commitment Charge and Other Charges. The Bank shall be entitled, but not obligated, to withdraw from the Loan Account when allocated for financing by the Bank without the necessity of an application for withdrawal by the Borrower, or deduct from any disbursement to, or on behalf of, the Borrower under the Loan Agreement, and pay to itself interest, commission, commitment charge and/or other charges due and payable under the Loan Agreement, and the Bank shall promptly notify the Borrower in writing of such withdrawal or deduction. Each such withdrawal from the Loan Account shall be deemed to be a disbursement of a portion of the Loan to the extent of the amount, and as of the date, of such withdrawal.

## ARTICLE V Currency Provisions

Section 5.01 Currencies in which Withdrawals may be made. Except as the Bank and the Borrower may otherwise agree, withdrawals from the Loan Account shall be made in the respective currencies in which the expenditures to be financed out of the Loan have been paid or are payable or in such other currency or currencies available to the Bank, as the Bank may reasonably determine.

Section 5.02 Currency in which Principal is Repayable. (a) Any amount withdrawn from the Loan Account which is being lent from that portion of the Special Development Fund of the Bank subject to the Rules adopted by the Board of Directors of the Bank in May 1983, as the same may be amended from time to time by the Bank, shall be repayable in United States dollars.

(b) Except as provided in paragraph (a) of this Section or as the Bank may otherwise specify in writing, the amount withdrawn from the Loan Account 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, provided that, if a withdrawal shall be made in any currency which the Bank shall have purchased with another currency for the purpose of such withdrawal, the amount 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.

(c) The portion of the amount withdrawn from the Loan Account to be repaid in a particular currency shall be repayable in such instalments as the Bank shall from time to time specify provided that the amount to be repaid on each Due Date shall remain as set out in the particulars of the repayments to be provided under Section 3.02.

Section 5.03 Currencies in which Commitment Charge, Interest, Commission and Other Charges are Payable. The Commitment Charge shall be payable in United States dollars, interest and commission on any portion of the amount withdrawn from the Loan Account shall be payable in the currency or currencies in which such portion of the amount withdrawn from the Loan Account is repayable, interest payable under Section 3.09 shall be payable in the currency or currencies in which the overdue payment is payable and other charges shall be payable in the currency or currencies utilised by the Bank for such other charges.

Section 5.04 Exchange Control Permission. The obligation to obtain any requisite exchange control permission shall be that of the Borrower.

Section 5.05 Purchase of Currencies. The Bank will, at the request of the Borrower and on such terms and conditions as the Bank shall determine, use its best efforts to purchase any currency needed by the Borrower for payment of Principal, interest, commission, commitment charge and other charges required under the Loan Agreement upon payment by the Borrower of sufficient funds therefor in such currency or currencies to be specified by the Bank from time to time. In purchasing the currencies required, the Bank shall be acting as agent of the Borrower, and the Borrower shall be deemed to have made any payment required under the Loan Agreement only when and to the extent that the Bank has received such payment in the currency or currencies required.

Section 5.06 Valuation of Currencies. Whenever it shall be necessary to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Bank.



## ARTICLE VI

### Conditions Precedent to First Disbursement

Section 6.01 (a) The Borrower shall, by the date referred to in Section 8.03 (i), furnish or cause to be furnished to the Bank:

- (i) the Guarantee Agreement in form and substance acceptable to the Bank;
- (ii) evidence, acceptable to the Bank, that the Borrower, if it is not a member of the Bank, is legally established;
- (iii) one or more opinions, satisfactory to the Bank, of a legal practitioner, acceptable to the Bank, showing that:
  - (aa) the Borrower, if it is not a member of the Bank, has the legal capacity to contract the obligations assumed in the Loan Agreement and to fully execute the Project;
  - (bb) the Borrower has complied with all the necessary requirements under the Constitution of the Project Country and under the Laws and Regulations in force therein in order to enter into the Loan Agreement; and
  - (cc) the Loan Agreement has been duly authorised by and executed and delivered on behalf of the Borrower and constitutes a valid and legally binding obligation in accordance with all of its terms;
- (iv) proof, satisfactory to the Bank, that the person or persons who signed the Loan Agreement on behalf of the Borrower were legally empowered to do so;
- (v) evidence, acceptable to the Bank, that the Borrower has designated one or more representatives to represent it in all acts regarding the implementation of the Loan Agreement and the authenticated specimen signature of the said representative or representatives; and

(vi) evidence, acceptable to the Bank, that the Borrower has authorised one or more persons to sign applications for withdrawals in accordance with Section 4.07 and the authenticated specimen signature of the person or persons so authorised on a withdrawal card to be provided by the Bank to the Borrower.

(b) Except as the Bank may otherwise agree, the Bank shall not be obliged to make the first disbursement of the Loan until the requirements of paragraph (a) of this Section, as amplified by the Loan Agreement, have been complied with to the entire satisfaction of the Bank and the Aid Donor(s) shall have authorised withdrawals for the Project, if necessary.

## ARTICLE VII Particular Covenants

Section 7.01 Records, Accounts and Information. (a) The Borrower, if it is not a member of the Bank, shall maintain records and accounts adequate to reflect in accordance with consistently maintained sound accounting practice the operations and financial condition of the Borrower. Without prejudice to the generality of the foregoing provision, if applicable, the Borrower shall maintain records and accounts adequate to identify the goods and services financed out of the amount withdrawn from the Loan Account, to disclose the use thereof in the Project, to show the expenditures of the amount withdrawn from the Loan Account and to record the progress of the Project (including the cost thereof). The Borrower shall maintain such accounts and records relating to the Project to the satisfaction of the Bank and such records and accounts shall be kept separately and distinct from the records and accounts of the other operations of the Borrower.

(b) The Borrower, if it is not a member of the Bank, shall:

- (i) have its accounts and financial statements (balance sheets, statements of income and expenditure and related statements) for each fiscal year audited by independent auditors acceptable to the Bank in accordance with sound auditing principles consistently applied;
- (ii) furnish to the Bank, as soon as available, but in any case not later than six (6) months after the end of each such year, certified copies of its audited financial statements for such

year and an audit report by the said auditors of such scope and in such detail as the Bank may reasonably request; and

(iii) furnish to the Bank such other information concerning its accounts and financial statements and the audit thereof as the Bank may from time to time reasonably request.

(c) The Borrower shall furnish or cause to be furnished to the Bank all such information as the Bank shall reasonably request concerning the expenditures of the amount withdrawn from the Loan Account, the Project, the benefits to be derived therefrom, the administration and operations of the Project and the financial condition of the Borrower.

(d) The authorised representatives of the Bank and the Aid Donor(s) shall be entitled to inspect the goods financed out of the amount withdrawn from the Loan Account, the sites, works, plant and construction included in the Project, the operation thereof and any records, documents and accounts of the Project and for that purpose to enter any lands, buildings, erections or facilities owned or occupied by the Borrower. The Borrower will provide such representatives with all reasonable opportunities and facilities for this purpose.

Section 7.02 Cooperation between the Bank and the Borrower. (a) The Bank and the Borrower shall cooperate fully to ensure that the purpose of the Loan will be accomplished. To that end, the Bank and the Borrower shall, from time to time, at the request of either party, exchange views through their representatives with regard to the progress of the Project, the performance by the Borrower of its obligations under the Loan Agreement and any other matters relating to the Project.

(b) The Borrower shall promptly inform the Bank of any condition which interferes, or threatens to interfere, with the accomplishment of the purpose of the Loan, the maintenance of the service thereof or the performance by the Borrower of its obligations under the Loan Agreement.

Section 7.03 Taxes. The Borrower shall pay, or cause to be paid, all taxes, if any, imposed under the laws in force in the Project Country in connection with the execution, issue, delivery or registration of the Loan Agreement, any instrument given as a requirement of the Loan Agreement (including securities and promissory notes), any transfer or assignment by the Bank pursuant to Section 7.07 and any agreement amending or supplemental to the Loan Agreement, any such instrument and any such transfer or

assignment, and all payments of Principal, interest, commission, commitment charge and other charges shall be made without deduction for, and free from, any taxes imposed under any such laws.

Section 7.04 Priority of Loan. (a) It is the mutual intention of the Borrower, if it is a member of the Bank, and the Bank that no other external debt shall enjoy any priority over the Loan by way of lien on governmental assets.

(b) To that end, the Borrower, if it is a member of the Bank, undertakes that, except as the Bank otherwise agree, if any lien shall be created by the Borrower on any governmental assets as security for any external debt, such lien will, *ipso facto* and at no cost to the Bank, equally and ratably secure the payment of the Principal, interest, commission, commitment charge and other charges and that in the creation of any such lien express provision will be made to that effect. The Borrower, if it is a member of the Bank, shall promptly inform the Bank of the creation of any such lien.

(c) 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; or
- (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one (1) year after its date.

(d) As used in this Section the term:

- (i) "external debt" means any debt payable by the Borrower in any medium other than the currency which at the time in question is legal tender in the Project Country whether such debt is payable absolutely or at the option of the creditor in such other medium; and
- (ii) "governmental assets" means assets of the Project Country, if the Borrower is a member of the Bank, of any of its political sub-divisions, or of any agency of the Project Country, if the Borrower is a member of the Bank, or of any such political sub-division including an institution performing the functions of a central bank.

(e) The Borrower, if it is not a member of the Bank or a political sub-division or agency of a member of the Bank or an enterprise in which equity participation by one or more members of the Bank or one or more agencies of such member or members of the Bank is a controlling one, undertakes that, except as the Bank may otherwise agree or as contemplated for the Project, no security which will rank prior to, or *pari passu* with, any security given as a requirement of the Loan Agreement shall, after the date of the Loan Agreement, be created or maintained on any of its property as security for any debts.

Section 7.05 Additional Funds. The Borrower shall provide promptly as necessary all funds in addition to the amount withdrawn from the Loan Account and all other resources required for the punctual and effective carrying out of the Project and, in particular, shall be responsible for meeting any amount by which the cost of the Project exceeds the estimated cost thereof as specified in the Loan Agreement.

Section 7.06 Maintenance of Insurance. (a) Except as otherwise specified in the Loan Agreement, the Borrower shall take out and maintain with responsible insurers, or make adequate arrangements acceptable to the Bank for, insurance against such risks and in such amounts as shall be consistent with sound business practice and, without limitation upon the foregoing, such insurance shall cover marine, transit and other hazards incident to the acquisition, transportation and delivery of goods financed out of an amount withdrawn from the Loan Account to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Borrower to replace or repair such goods.

(b) The Borrower shall require any such insurers with which insurances in respect of any insurable property financed out of an amount withdrawn from the Loan Account and other insurable property are taken out and are to be maintained to give notice periodically to the Borrower and the Bank when such insurances are to be renewed and, in addition, advise the Bank immediately on each renewal date whether such insurances are renewed.

Section 7.07 Transfer or Assignment of Loan Agreement or Loan. The Bank shall be entitled to transfer or assign at any time to the Aid Donor(s) all or any of its right, title and interest in and under the Loan Agreement and any instrument (including securities and promissory notes) given as a requirement of the Loan Agreement and in and to the whole or any part of all monies whatsoever due or to become due to the Bank thereunder. The Bank shall promptly inform the Borrower of any such transfer or assignment.

Section 7.08 Maintenance of Corporate Existence, Licences and Franchises and other special requirements if the Borrower is a limited liability company. (a) Except as the Bank may otherwise agree or as specified in the Loan Agreement, the Borrower shall:

- (i) take all necessary steps as lie within its power and use its best endeavours at all times to maintain its corporate existence and the right to carry on operations and shall acquire, maintain and renew all rights, powers, privileges, licences and franchises owned or held by it and necessary and useful in the implementation of the Project and the conduct of the business contemplated by the Project;
- (ii) not amend its Memorandum or Articles of Association; and
- (iii) observe all the Laws of the Project Country affecting the Borrower and, in particular, all the provisions of the Companies legislation in force in the Project Country as amended or modified from time to time especially in filing with the Registrar of Companies any information and documents required to be filed under such legislation.

(b) Except as the Bank may otherwise agree, at least fifty-one percent (51%) of the issued and paid up share capital of the Borrower shall be held at all times by one or more of the Governments, nationals and belongers of Commonwealth Caribbean member countries of the Bank and corporate bodies controlled by such Governments, nationals and belongers and the Borrower shall at all times be controlled by one or more of such Governments, nationals, belongers and corporate bodies.

## ARTICLE VIII

### Cancellation and Suspension

Section 8.01 Cancellation by Borrower. The Borrower may by notice to the Bank cancel any amount of the Loan which the Borrower shall not have withdrawn prior to the giving of such notice, except that the Borrower may not so cancel any amount of the Loan in respect of which the Bank shall have entered into a special commitment pursuant to Section 4.02.

Section 8.02 Suspension by Bank. (a) If any of the following events shall have occurred and be continuing, the Bank may by notice to the Borrower and the Guarantor suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account:

- (i) The Borrower shall have failed to make payment (notwithstanding the fact that such payment may have been made by the Guarantor or a third party) of Principal, interest, commission, commitment charge or other charges under the Loan Agreement or any principal, interest, commission, commitment charge or other payment required under any other agreement between the Bank and the Borrower.
- (ii) The Guarantor shall have failed to make payment of Principal, interest, commission, commitment charge or other charges under the Guarantee Agreement or any principal, interest, commission, commitment charge or other payment required under any other agreement between the Bank and the Guarantor;
- (iii) The Borrower or the Guarantor shall have failed to perform or observe any of its other obligations under the Loan Agreement or the Guarantee Agreement;
- (iv) A situation shall have arisen which shall make it improbable in the Bank's opinion that the Project can be carried out or that the Borrower or the Guarantor will be able to perform or observe any of its obligations under the Loan Agreement or the Guarantee Agreement;
- (v) Prior to the Closing Date, any material adverse change in the condition of the Borrower, as represented by the Borrower, shall have occurred;
- (vi) A representation made by the Borrower or the Guarantor in or pursuant to the Loan Agreement or the Guarantee Agreement or any statement furnished in connection therewith and intended to be relied upon by the Bank in making the Loan shall have been incorrect in any material respect;
- (vii) The Borrower, if it is a member of the Bank, or the Guarantor shall have withdrawn or been suspended from membership in, or ceased to be a member of, the Bank;

- (viii) The right of the Borrower or the Guarantor to make withdrawals under any other agreement with the Bank shall have been suspended in whole or in part by the Bank;
- (ix) The right of the Bank to receive funds for the Project from the Aid Donor(s) shall have been suspended in whole or in part or shall have terminated;
- (x) A situation shall have arisen whereby, in the Bank's opinion, any withdrawal or further withdrawal from the Loan Account will cause the Bank to exceed any of the lending limits of the Bank, established by the Board of Directors of the Bank from time to time;
- (xi) Any event specified in sub-paragraph (vii) of Section 8.03 and sub-paragraphs (iv), (vi), (vii), (viii), (ix), (x), (xi) and (xii) of Section 9.01 shall have occurred; or
- (xii) Any other event specified in the Loan Agreement for the purpose of this Section shall have occurred.

(b) The right of the Borrower to make withdrawals from the Loan Account shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist or until the Bank shall have notified the Borrower and the Guarantor that the right to make withdrawals shall be restored, whichever is earlier, but, in case of any such notice of restoration, the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall affect or impair any right, power or remedy of the Bank in respect of any other or subsequent event described in this Section.

Section 8.03 Cancellation by the Bank. If any of the following events shall occur, then at any time thereafter the Bank may by notice to the Borrower and the Guarantor terminate the right of the Borrower to make withdrawals from the Loan Account or with respect to any amount of the Loan, as the case may be, and, upon the giving of such notice, the amount of the Loan specified therein shall be cancelled:

- (i) The Borrower shall have failed to comply with the conditions set out in Section 6.01 (a), as amplified by the Loan Agreement, by the sixtieth (60th) day after the date of the Loan Agreement or such later date as may be specified in writing by the Bank;



- (ii) In the opinion of the Bank, it is improbable that any requirement specified in or pursuant to Section 6.01 (b) or any condition to be fulfilled in meeting any such requirement will be satisfied;
- (iii) By the date therefor referred to in the Loan Agreement, the Bank has not received any application for withdrawal from the Loan Account or for Special Commitment in accordance with Article IV or all applications received by the date shall not have been acceptable to the Bank;
- (iv) The right of the Borrower to make withdrawals from the Loan Account shall have been suspended with respect to any amount of the Loan for a continuous period of thirty (30) days;
- (v) At any time the Bank determines, after consultation with the Borrower, that an amount of the Loan will not be required to finance the Project's cost to be financed out of the Loan;
- (vi) After the Closing Date an amount of the Loan remains unwithdrawn from the Loan Account; or
- (vii) The Bank shall have received notice from the Guarantor pursuant to Section 3.05 of the General Provisions applicable to Guarantee Agreements with respect to any amount of the Loan.

Section 8.04 Amounts subject to Special Commitment not affected by Cancellation or Suspension by the Bank. No cancellation or suspension by the Bank shall apply to amounts subject to any special commitment entered into by the Bank pursuant to Section 4.02.

Section 8.05 Effectiveness of Provisions after Cancellation or Suspension. Notwithstanding any cancellation or suspension, all the provisions of the Loan Agreement and of these General Provisions which shall have been made applicable thereto shall continue in full force and effect except as in this Article specifically provided.

**ARTICLE IX**  
**Events of Default**

Section 9.01 If any of the following events shall occur and shall continue for the period specified, if any, then, at any subsequent time during the continuance thereof, the Bank, at its option, may by notice to the Borrower and the Guarantor declare the Principal due and payable immediately together with interest, commission, commitment charge and other charges under the Loan Agreement and upon such declaration the Principal together with interest, commission, commitment charge and other charges under the Loan Agreement shall become due and payable immediately:

- (i) A default shall occur in the payment of Principal, interest, commission, commitment charge or other charges under the Loan Agreement and such default shall continue for a period of thirty (30) days;
- (ii) A default shall occur in the payment of Principal, interest, commission, commitment charge or other charges under the Guarantee Agreement and such default shall continue for a period of thirty (30) days;
- (iii) A default shall occur in the payment of Principal, interest, commission, commitment charge or other charge under any other loan or guarantee agreement between the Bank and the Borrower and such default shall continue for a period of thirty (30) days;
- (iv) A default shall occur in the payment of Principal, interest, commission, commitment charge, or other charges under any loan or guarantee agreement between the Guarantor and the Bank under circumstances which would make it unlikely that the Guarantor would meet its obligations under the Loan Agreement or the Guarantee Agreement and such default shall continue for a period of thirty (30) days;
- (v) A default shall occur in the performance or observance of any other obligation on the part of the Borrower or the Guarantor under the Loan Agreement or the Guarantee Agreement and such default shall continue for a period of sixty (60) days after notice thereof shall have been given by the Bank to the Borrower and the Guarantor;

- (vi) The Borrower, if it is not a member of the Bank, shall have become unable to pay its debts as they mature or any action or proceeding shall have been taken by the Borrower, if it is not a member of the Bank, or by others whereby any of the property of the Borrower, if it is not a member of the Bank, shall or may be distributed among its creditors;
- (vii) The Borrower, if it is not a member of the Bank, shall have taken or suffered any action for its reorganisation, liquidation or dissolution or the suspension of its operations or a receiver or liquidator shall have been appointed of all or any part of its property;
- (viii) Any modification shall have been made in the purpose, nature or objectives, capital or assets of the Borrower, if it is not a member of the Bank, and particularly any substantial revision of the legislation establishing the Borrower, if it is not a member of the Bank and is established by legislation, which may have a deleterious effect on the Project or on the purpose for which the Loan Agreement was entered into;
- (ix) The Borrower or the Guarantor shall have failed to fulfil any of its obligations to the Bank whether arising under the agreement establishing the Bank or otherwise;
- (x) There shall have been cancellation, pursuant to Section 8.01 or Section 8.03, of such an amount of the Loan as will make it improbable in the Bank's opinion that the Project can be carried out or that the Borrower will be able to perform or observe any of its obligations under the Loan Agreement;
- (xi) The Project shall have been discontinued or suspended without the prior approval of the Bank or the Borrower shall have suspended, or ceases or threatens to cease to carry on, the business contemplated in carrying out the Project; or
- (xii) Any other event specified in the Loan Agreement for the purpose of this Section shall have occurred and shall continue for the period, if any, specified in the Loan Agreement.

ARTICLE X

### **Termination**

Section 10.01 Termination of Loan Agreement. Upon payment in full of the Principal and all interest, commission, commitment charge and other charges under the Loan Agreement, the Loan Agreement and all obligations of the parties thereunder shall forthwith terminate.

### **ARTICLE XI**

#### **Enforceability**

Section 11.01 (a) Except as provided in paragraph (b) of this Section, the rights and obligations of the Bank and the Borrower under the Loan Agreement shall be valid and enforceable in accordance with its terms.

(b) If the Borrower is not a member of the Bank, the rights and obligations of the Bank and the Borrower under the Loan Agreement shall be construed and determined in accordance with the laws of the Project Country at the date of the Loan Agreement.

(c) Neither the Bank nor the Borrower shall be entitled in any proceeding under or pursuant to Article XIII to assert any claim that any provision of the Loan Agreement is invalid or unenforceable because of any provision of the agreement establishing the Bank or for any other reason.

### **ARTICLE XII**

#### **Miscellaneous**

Section 12.01 All statements, reports, certificates, evidence, opinions, notices, communications and other documents or information furnished or given under the Loan Agreement shall be supplied or submitted in the English Language without cost to the Bank.

Section 12.02 No failure or delay on the part of the Bank to exercise any right, power or privilege under the Loan Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under the Loan Agreement preclude any other or further exercise thereof or the exercise of any right, power or privilege.

Section 12.03 All notices and other communications required or permitted to be given or made under the Loan Agreement and any other Agreement between any of the parties contemplated by the Loan Agreement shall be in writing. Any such notice or other communication shall be deemed to have been duly given or made when delivered by hand or mail or by telegram, cable, telex, telefax or radiogram to the party to which it is required or permitted to be given or made at such party's address specified in the Loan Agreement or at such other address as such party may have designated by notice to the party giving such notice or making such communication.

Section 12.04 Subject to Article 42 of the agreement establishing the Bank, if the Borrower, being a member of the Bank, or the Guarantor ceases to be a member of the Bank, any amount due to it for its shares repurchased by the Bank shall be withheld so long as the Borrower or the Guarantor remains liable to the Bank in respect of the Loan. Such amount may, at the option of the Bank, be applied on any such liability as it matures.

Section 12.05 Subject to Article 46 of the agreement establishing the Bank, in the event of a distribution of the assets of the Bank, the Borrower, being a member of the Bank, or the Guarantor shall not be entitled to receive its share in such distribution until it has settled its obligations to the Bank under the Loan Agreement or the Guarantee Agreement.

### **ARTICLE XIII**

#### **Arbitration**

Section 13.01 (a) Any controversy between the parties to the Loan Agreement and any claim by any such party against any other such party arising under the Loan Agreement which shall not be determined by agreement between the parties shall be submitted to arbitration before an Arbitration Committee as hereinafter provided.

(b) The parties to such arbitration shall be the Bank on one side and the Borrower on the other side.

(c) The Arbitration Committee shall consist of three arbitrators appointed as follows:

One arbitrator shall be appointed by the Bank, another by the Borrower and a third (hereinafter called the umpire) shall be appointed by agreement between the parties, either directly or through their respective arbitrators. If the parties fail to agree on who shall be the umpire, he shall be appointed at the request of either party by the Secretary-General of the Caribbean Community. If either side fails to appoint an arbitrator, he shall be appointed by the Secretary-General of the Caribbean Community at the request of the other party. If either of the appointed arbitrators or the umpire is unwilling or unable to act or to continue to act in such capacity, his successor shall be appointed in the same manner as for the original appointment. The successor shall perform the same functions and shall have the same powers as his predecessor.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the remedy sought and the name of the arbitrator appointed by the party instituting such proceeding. Within thirty (30) days after the giving of such notice, the other party shall notify the party instituting the proceeding of the name of the arbitrator appointed by such other party.

(e) If within sixty (60) days after giving notice instituting the arbitration proceeding the parties shall not have agreed upon an umpire, either party may request the appointment of an umpire as provided in paragraph (c) of this Section. If within forty-five (45) days after becoming entitled to do so, neither party requests the appointment of an umpire as provided in paragraph (c) of this Section, the arbitration proceeding shall be deemed to have been abandoned.

(f) The Arbitration Committee shall convene in Barbados at such time and place as shall be fixed by the umpire. Thereafter the Arbitration Committee shall meet in Barbados or in the Project Country at such time and place as the Arbitration Committee shall determine.

(g) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitration Committee shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitration Committee shall be by a majority vote.

(h) The Arbitration Committee shall afford to both sides a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitration Committee shall constitute the award of the Arbitration Committee. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the Loan Agreement. Each party shall abide by and comply with any such award rendered by the Arbitration Committee in accordance with the provisions of this Section.

(i) The parties shall fix the amount of the remuneration of the Arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. The Bank and the Borrower shall each defray its own expenses in the arbitration proceedings. The costs of the Arbitration Committee shall be divided between and borne equally by the Bank on the one side and the Borrower on the other. Any question concerning the division of the costs of the Arbitration Committee or the procedure for payment of such costs shall be determined by the Arbitration Committee.

(j) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the determination of any controversy between the parties to the Loan Agreement or any claim by any such party against the other such party arising thereunder.

(k) If within thirty (30) days after the counterparts of the award shall be delivered to the parties the award shall not be complied with, any party may enter judgement upon or institute a proceeding to enforce the award in any court of competent jurisdiction against any other party, may enforce such judgement by execution or may pursue any other appropriate remedies against such other party for the enforcement of the award and the provisions of the Loan Agreement. Notwithstanding the foregoing, this Section shall not authorise any entry of judgement or enforcement of award against any party that is a member of the Bank except as such procedure may be available otherwise than by reason of the provisions of this Section.

(l) Service of any notice or process in connection with any proceeding under this Section or in connection with any proceeding to enforce any award pursuant to this Section may be made in the manner provided in Section 12.03. The parties to the Loan Agreement waive any and all other requirements for the service of any such notice or process.

(m) Notwithstanding the provisions of paragraph (j) of this Section, if the Borrower is not a member of the Bank, nothing in this Section shall be deemed to preclude either of the parties from exercising or instituting any legal or equitable action to enforce any right or claim arising out of or pursuant to any instrument given as a requirement of the Loan Agreement with respect to the repayment of the Principal and payment of interest, commission, commitment charge and other charges and submission to arbitration under this Section shall not be deemed to be a condition precedent or in any way prejudice such exercise or other enforcement of any such right or claim.



**ANNEX**

[Section 4.04 (a) (ii)]

**MEMBERS OF THE BANK**

**Regional Members**

1. Anguilla
2. Antigua and Barbuda
3. Bahamas - Commonwealth of The
4. Barbados
5. Belize
6. British Virgin Islands
7. Cayman Islands
8. Colombia
9. Dominica - Commonwealth of
10. Grenada
11. Guyana - Co-operative Republic of
12. Jamaica
13. Mexico
14. Montserrat
15. Saint Kitts and Nevis
16. Saint Lucia
17. Saint Vincent and the Grenadines
18. Trinidad and Tobago - Republic of
19. Turks and Caicos Islands
20. Venezuela

**Non-Regional Members**

1. Canada
2. China - The People's Republic of
3. Germany
4. Italy
5. United Kingdom

## SCHEDULE 2

[Section 1.03 (a) (iii)]

### THE PROJECT

#### 1. OBJECTIVES

1.01 The objective of the project is to reconstruct 2.0 km of sea defences in the Profit-Foulis area of the Project Country, to protect the coastal zone from flooding and prevent further salinization of agricultural lands and damage to property, livestock and crops.

#### 2. SCOPE OF THE PROJECT

2.01 The project consists of the following components:

- (a) **Pre-Investment Study:** engineering designs, social assessment, environmental impact assessment and cost estimates;
- (b) **Land Acquisition:** acquisition of approximately 40 hectares (ha);
- (c) **Sea Defences:** construction of approximately 2.0 km of sea defences consisting of an earthen dam protected on the seaward slope by two sizes of rock armour 1.2 m thick, laid on a composite geo-textile membrane and protected/supported on the landward side by an embankment comprising compacted clay fill and reconstruction and realignment of 2.0 km of façade drain;
- (d) **Engineering Supervision Services:** engineering supervision services for the civil works contract; and
- (e) **Project Management.**

Further Details of the Project are presented in Appendix 1 to this Schedule.

#### 3. PROJECT COST

3.01 The project is estimated to cost USD 9.040 mn. Final designs and detailed estimates for the construction of sea defences were prepared by consultants, financed through a previous CDB sea defence loan made by the Bank to the Borrower. The estimated Project costs and financing are summarized in the Table below. Appendix 2 to this Schedule contains details of the Project Cost, Financing and Phasing.

**SUMMARY OF PROJECT COST AND FINANCING PLAN**  
(USD'000)

Item	Project Cost	CDB		GOG
		OCR	SFR	
1. Pre-Investment Study	515	-	-	515
2. Land Acquisition	100	-	-	100
3. Civil Works	5,900	2,900	2,900	100
4. Engineering Services	480	-	-	480
5. Project Management	350	-	-	350
<b>Base Cost</b>	<b>7,345</b>	<b>2,900</b>	<b>2,900</b>	<b>1,545</b>
6. Physical Contingencies <sup>1/</sup>	637	290	290	57
7. Price Contingencies <sup>2/</sup>	608	260	260	88
<b>Total Project Cost</b>	<b>8,590</b>	<b>3,450</b>	<b>3,450</b>	<b>1,690</b>
8. Interest During Construction	415	307	108	-
9. Commitment Charges	35	35	-	-
<b>Total Financing</b>	<b>9,040</b>	<b>3,792</b>	<b>3,558</b>	<b>1,690</b>
<b>Percentage Financing</b>	<b>100</b>	<b>42</b>	<b>39</b>	<b>19</b>

<sup>1/</sup> Physical Contingencies: 10% on item 3 and 5% on items 2, 4 and 5.

<sup>2/</sup> Price Contingencies at 5% per annum on local and foreign costs

**4. IMPLEMENTATION**

4.01 Construction activities are expected to extend over a period of approximately 12 months, with completion projected for the third quarter of 2005. A detailed Project Implementation Schedule is shown at Appendix 3 to this Schedule.

DETAILS OF THE PROJECT  
(USD)

1. PRE-INVESTMENT STUDY

**Designs**

Engineering design services have been completed by GOG, including the preparation of tender documents, condition surveys, cost estimates, social assessments and environmental impact assessments.

Estimated cost = \$515,000

2. LAND ACQUISITION

Approximately 40 ha of land involving some 29 parcels and seven owners will be purchased in the project area of Profit-Belladrum. There are no structures which must be purchased and the lands are not occupied and have very little cultivation, except a few coconut trees. The Manager, Guyana Lands and Surveys Division (GLSD), is responsible for the technical surveys required. GOG has already Gazetted two notices under the "Acquisition of Land for Public Purposes Act (Cap. 62:05)" and has completed most of the procedures required under the Act to acquire the lands on a compulsory basis. Estimates of parcel sizes were determined by the Manager, GLSD, in consultation with the consultants, using the design drawings and survey plans for the area. The Ministry of Finance has provided the funds required for compensation of the owners in the 2004 Estimates of Expenditure.

Estimated cost of private lands to be acquired = \$100,000

3. CIVIL WORKS

This component consists of the construction of approximately 2.0 km of sea defences consisting of an earthen dam protected on the seaward slope by two grades of rock armour 1.2 m thick, laid on a composite geotextile membrane. The typical cross section of the earthen rip rap sea dyke is approximately 27 m with a maximum elevation of 18.9 m above Georgetown Datum (GD); and reconstruction and realignment of the 37 m wide earthen façade drain and berm with an overall width (berm and drain) of 71.3 m and an invert level of approximately 14 m GD.

Estimated base cost = \$5,900,000

4. ENGINEERING CONSULTANCY SERVICES

**Supervision**

Engineering supervision services are required to provide engineering supervision for the construction stage of the project. This is to be financed by GOG.

Estimated cost = \$480,000

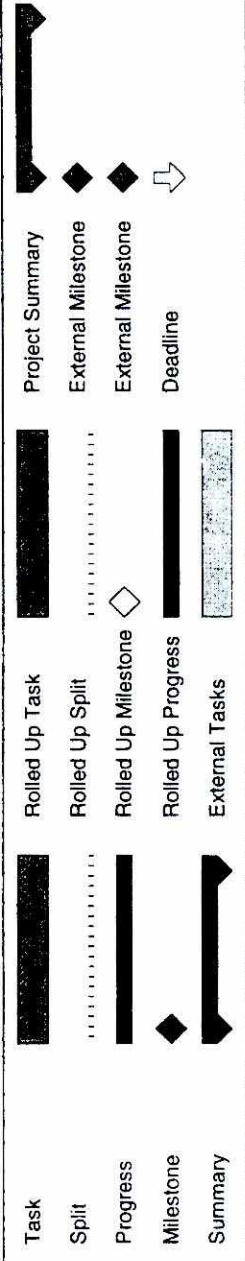
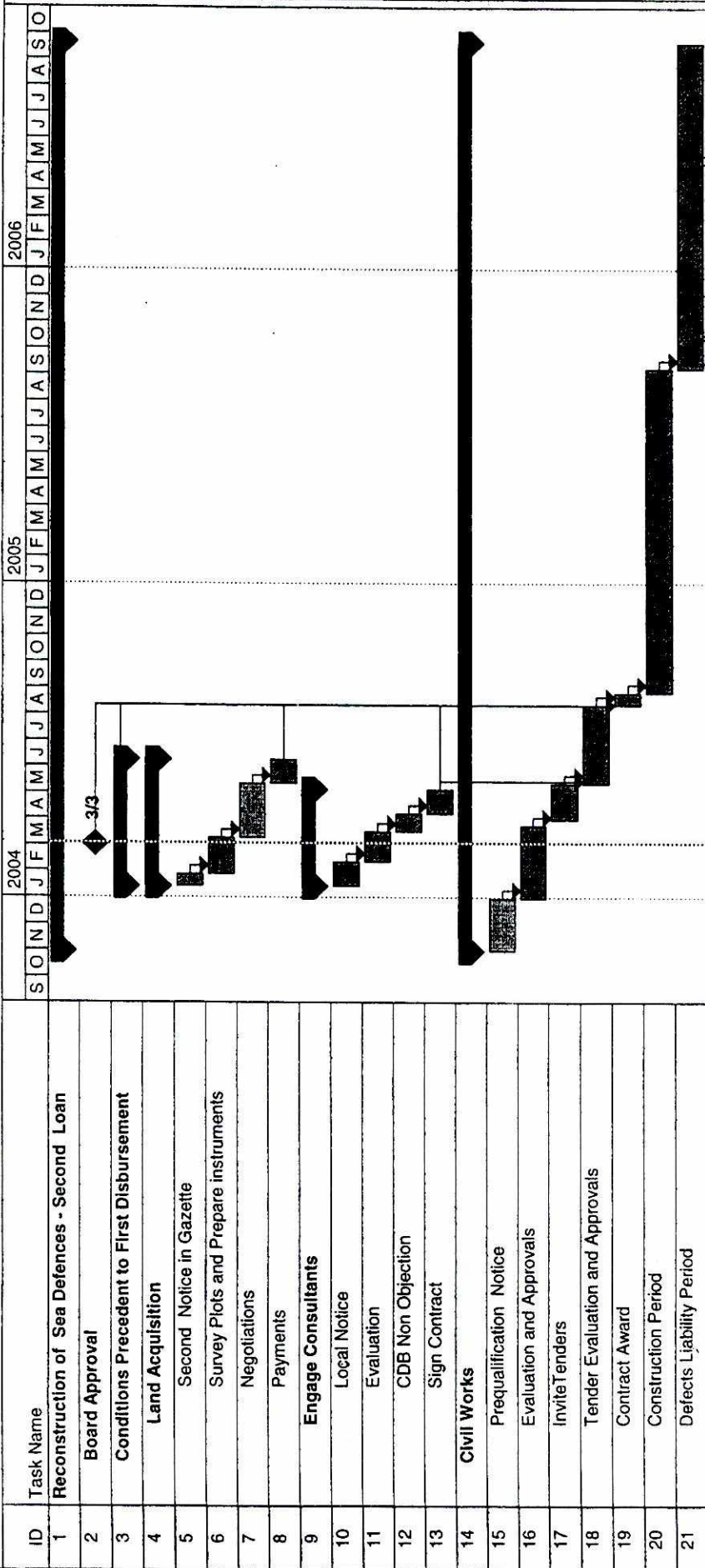
5. PROJECT MANAGEMENT

An assessment was made of the time and expenses of PEU staff, which will be devoted to the implementation of this project. The estimate includes time and resource inputs for a Project Director/Engineer, Project Engineer, Project Accountant, secretarial, clerical and site support staff over a period of 18–36 months. The site support staff includes a senior engineer, surveyor, works inspectors (2), driver, janitorial staff, secretary, security guards (2) and an office assistant.

Estimated cost = \$350,000



IMPLEMENTATION SCHEDULE



**REPORT ON INVESTMENT COST OF PROJECT**  
(USD '000)

**SCHEDULE 3**  
[Section 6.01 (vii)]

Elements of Project	Expenditure for this Quarter	Projected Expenditure for the Quarter			Estimated Expenditure to Complete Project	Latest Estimate of Expenditure	Project Estimate as per Appraisal Report	Variance Favourable/ (Adverse)	Comments/ Reasons for Adverse Variance and Financing Proposal to Meet Cost Overrun	
		Cumulative Expenditure to date	Ending	Ending						Ending
(1)	(2)	(3)	(4) <sub>1</sub>	(4) <sub>2</sub>	(4) <sub>3</sub>	(5)	(6)	(7)	(8)	(9)
1. Pre-Investment Study <sup>1/</sup>								515		
2. Land Acquisition								100		
3. Civil Works								5,900		
4. Engineering Consultancy Services								480		
5. Project Management								350		
<b>Base Cost</b>								<b>7,345</b>		
6. Physical Contingencies								637		
7. Price Contingencies								608		
8. IDC and Commitment Charge								450		
<b>Total Cost</b>								<b>9,040</b>		
<b>Financing</b>										
CDB (OCR)								3,792		
CDB (SFR)								3,558		
CDB Total								7,350		
GOG								1,690		

<sup>1/</sup> Study financed through undischursed balance of Loan No. 8/SFR-GU



**GUIDELINES FOR COMPLETION OF  
REPORT ON INVESTMENT COST OF PROJECT**

1. Elements of Project - The elements of the project as outlined in the Appraisal Report must be recorded in this column. If it becomes necessary to further sub-divide the main elements of the project, then the sub-elements should be grouped to facilitate the determination of the expenditure related to the main elements identified in the Appraisal Report.
2. Expenditure for this Quarter - The expenditure incurred in the quarter to which the report relates in respect of each element of the project must be recorded in this column.
3. Cumulative Expenditure to Date - The expenditure incurred in respect of each element of the project from the commencement of the project to the end of the quarter to which the report relates must be recorded in this column.
4. Projected Expenditure for Quarter - An estimate of the expenditure to be incurred in each of the next three quarters must be recorded in the columns 4<sub>1</sub>, 4<sub>2</sub>, and 4<sub>3</sub>.
5. Estimate of Expenditure to complete Project - This column should be completed only in respect of those elements of the project, construction/installation of which stretches beyond three quarters from the end of the quarter to which the report relates. Where a project extends over more than one year - four quarters - an estimate of the expenditure to be incurred in the period subsequent to the year must be recorded in this column.
6. Latest Estimate of Expenditure - The amounts to be recorded in this column should be derived by adding columns 3, 4<sub>123</sub>, and 5. The amounts recorded in this column should be the best estimate of expenditure to be incurred in respect of each element of the project. These amounts may be less or greater than the appraised expenditure.
7. Project Estimates as per Appraisal Report - The estimate of expenditure to be incurred in respect of each element of the project, as outlined in the Appraisal Report, must be recorded in this column.
8. Variance - The difference between columns 6 and 7 must be recorded in this column. Where the amount in column 6 is less than that in column 7, a favorable variance results. An adverse variance results where the amount in column 6 is greater than that in column 7.
9. Comments - An explanation should be given for each variance which is more than 10% of the project estimates as per Appraisal Report.

**SCHEDULE 4**

(Section 6.05)

**SCHEDULE OF REPORTING REQUIREMENTS**

Reports	Time of Submission
<b><u>IMPLEMENTATION</u></b>	
1. Monthly Progress Reports on Project Implementation prepared by the Engineering Consultants	Within 30 days after the end of each calendar month until construction is completed, commencing one month after the start date as defined in the construction contract.
2. Quarterly Reports on Investment Costs of the project prepared by the PD.	Six weeks after the end of each quarter until construction is completed, commencing with the quarter following the assignment.
3. Completion Report prepared by the Engineering Consultants.	Within three months after the date of issue by the engineering consultants of the certificates of practical completion of construction, including as-built drawings.
4. PCR prepared by PD.	Within six months after the final disbursement of the loan.
<b><u>OPERATIONS</u></b>	
5. Annual report prepared by PD on the condition of the works constructed under the project to include the extent of the project area to be maintained, details of the project area maintained in the preceding year and the actual expenditures.	At least six months before start of GOG's fiscal year (or such other period as CDB may agree) commencing in the Financial Year (FY) after practical completion of the project.
5. A copy of the approved budget as it relates to recurrent and capital expenditures for MPWC.	By March 31 of each FY.


IN WITNESS WHEREOF this Loan Agreement has been executed in two (2) equally valid copies at Wilkey, St. Michael, Barbados and Georgetown, Co-operative Republic of Guyana, on behalf of the Bank and the Borrower by their respective duly authorised representatives and shall be deemed to be in force as of the day and year first hereinabove written.

**CARIBBEAN DEVELOPMENT BANK**

**GOVERNMENT OF THE CO-OPERATIVE  
REPUBLIC OF GUYANA**



**Neville L. Grainger**  
Vice-President (Finance)



Minister responsible for Finance