

The undersigned, His Royal Highness, Prince Tu'ipelehake, Prime Minister of the Kingdom of Tonga, and C. Edward Dillery, Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Tonga, by this instrument hereby formally acknowledge the coming into force of the attached Investment Incentive Agreement between the Government of the United States of America and the Government of Tonga on the twenty-sixth day of November nineteen eighty-four.

In testimony whereof, they have signed this Instrument.

Done in two originals in the English language both being authentic, at Nuku'alofa, Tonga, this seventeenth day of January, nineteen hundred and eighty-five

For the
United States of America
C. Edward Dillery
Ambassador of the
United States of America

For the
Kingdom of Tonga
H.R.H. Prince
Tu'ipelehake
Prime Minister

INVESTMENT INCENTIVE AGREEMENT BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND THE GOVERNMENT OF TONGA

Excellency:

I have the honor to refer to conversations which have recently taken place between representatives of our two Governments relating to economic activities in Tonga which promote the development of the economic resources and productive capacities of Tonga to investment insurance (including reinsurance) and guaranties which are backed in whole or in part by the credit or public monies of the United States of America and are administered either directly by the Overseas Private Investment Corporation ("OPIC"), an independent government corporation organized under the laws of the United States of America, or pursuant to arrangements between OPIC and commercial insurance, reinsurance and other companies. I also have the honor to confirm the following understandings reached as a result of those conversations:

ARTICLE 1

As used herein, the term "Coverage" shall refer to any investment insurance, reinsurance or guarantee which is issued in accordance with this Agreement by OPIC, by any successor agency of the United States of America or by any other entity or group of entities, pursuant to arrangements with OPIC or any successor agency, all of whom are hereinafter deemed included in

the term "Issuer" to the extent of their interest as insurer, reinsurer, or guarantor in any Coverage, whether as a party or successor to a contract providing Coverage or as an agent for the administration of Coverage.

ARTICLE 2

The procedures set forth in this Agreement shall apply only with respect to Coverage relating to projects or activities registered with or otherwise approved by the Government of Tonga or to Coverage relating to projects with respect to which the Government of Tonga, or any agency or political subdivision thereof, has entered into a contract involving the provision of goods or services.

ARTICLE 3

(a) If the Issuer makes payment to any party under Coverage, the Government of Tonga shall, subject to the provisions of Article 4 hereof, recognize the transfer to the Issuer of any currency, credits, assets, or investment on account of which payment under such Coverage is made as well as the succession of the Issuer to any right, title, claim, privilege, or cause of action existing, or which may arise, in connection therewith.

(b) The Issuer shall assert no greater rights than those of the transferring party under Coverage with respect to any interests transferred or succeeded to under this Article. Nothing in this Agreement shall

limit the right of the Government of the United States of America to assert a claim under international law in its sovereign capacity, as distinct from any rights it may have as Issuer.

(c) The issuance of Coverage outside of Tonga with respect to a project or activity in Tonga shall not subject the Issuer to regulation under the laws of Tonga applicable to insurance or financial organizations.

(d) Funds introduced or acquired in Tonga or withdrawn from Tonga by the Issuer shall be exempt from all taxes upon income, real property or sales, from customs duties, and from any other similar taxes or levies in Tonga.

ARTICLE 4

To the extent that the laws of Tonga partially or wholly invalidate or prohibit the acquisition from a party under Coverage of any interest in any property within the territory of Tonga by the Issuer, the Government of Tonga shall permit such party and the Issuer to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of Tonga.

ARTICLE 5

Amounts in the lawful currency of Tonga,

including credits thereof, acquired by the issuer by virtue of such Coverage shall be accorded treatment by the Government of Tonga no less favorable as to use and conversion than the treatment to which such funds would be entitled in the hands of the party under Coverage.

Such amounts and credits may be transferred by the Issuer to any person or entity and upon such transfer shall be freely available for use by such person or entity in the territory of Tonga.

ARTICLE 6

(a) Any dispute between the Government of the United States of America and the Government of Tonga regarding the interpretation of this Agreement or which, in the opinion of one of the Governments, involves a question of public international law arising out of any project or activity for which Coverage has been issued shall be resolved, insofar as possible, through negotiations between the two Governments. If at the end of three months following the request for negotiations the two Governments have not resolved the dispute by agreement, the dispute, including the question of whether such dispute presents a question of public international law, shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution in accordance with Article 6(b).

(b) The arbitral tribunal for resolution of

disputes pursuant to Article 67(a) shall be established
and function as follows:

(i) Each Government shall appoint one arbitrator;
these two arbitrators shall designate a president by
common agreement who shall be a citizen of a third
state and be appointed by the two Governments. The
arbitrators shall be appointed within two months and
the president within three months of the date of
receipt of either Government's request for
arbitration. If the appointments are not made within
the foregoing time limits, either Government may, in
the absence of any other agreement, request the
President of the International Court of Justice to
make the necessary appointment or appointments, and
both Governments agree to accept such appointment or
appointments.

(ii) The arbitral tribunal shall base its decision on
the applicable principles and rules of public
international law. The arbitral tribunal shall decide
by majority vote. Its decision shall be final and
binding.

(iii) Each of the Governments shall pay the expense of
its arbitrator and of its representation in the
proceedings before the arbitral tribunal; the expenses
of the president and the other costs shall be paid in
equal parts by the two Governments. The arbitral
tribunal may adopt regulations concerning the costs,
consistent with the foregoing.

(iv) In all other matters, the arbitral tribunal shall
regulate its own procedures.

ARTICLE 7

This Agreement shall continue in force until six months from the date of receipt of a note by which one Government informs the other of an intent no longer to be a party to the Agreement. In such event, the provisions of the Agreement with respect to Coverage issued while the Agreement was in force shall remain in force for the duration of such Coverage, but in no case longer than twenty years after the denunciation of the Agreement.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of Tonga, the Government of the United States of America will consider that this note and your reply thereto constitute an Agreement between our two Governments on this subject, to enter into force on the date of the note by which the Government of Tonga communicates to the Government of the United States of America that this exchange of notes has been approved pursuant to its constitutional procedures.

Accept, Excellency, the renewed assurances of my highest consideration.

/_Russell J. Surber_/

August 22, 1983