

GUARANTEE NUMBER B-101 HU,
(LOAN NUMBERS 3020 HU,
3032 HU and
3056 HU)

(Third Industrial Restructuring Project)
(Second Transport Project)
(Energy Development (Oil and Gas) Project)

between

REPUBLIC OF HUNGARY

STATE DEVELOPMENT INSTITUTE

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated as of August 31, 1990

GUARANTEE NUMBER B-101 HU,
(LOAN NUMBERS 3020 HU,
3032 HU and
3056 HU)

GUARANTEE AND INDEMNITY AGREEMENT

Agreement, dated as of August 31, 1990 between REPUBLIC OF HUNGARY (hereinafter referred to as Hungary) and STATE DEVELOPMENT INSTITUTE (hereinafter referred to as SDI) of the one part and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter referred to as the Bank) of the other part.

WHEREAS (A) pursuant to a Subscription Agreement (hereinafter referred to as the Subscription Agreement), dated August 23, 1990, among SDI, as Issuer, Hungary, as guarantor as to the payment of interest and principal (hereinafter referred to as the Hungary Guarantee), and Daiwa Europe Limited and the other entities named therein as Managers (hereinafter referred to as the Managers), the Managers have agreed to subscribe and pay for the 10 1/2% Guaranteed Bonds due 2000 to be issued by SDI (hereinafter referred to as the Bonds) in an aggregate amount of US\$200,000,000 upon the terms and conditions contained in the Subscription Agreement;

(B) the proceeds of the Bonds are to be used to assist in financing the Projects referred to in Section 1.02 (a) of this Agreement;

(C) at the request and with the agreement of Hungary and

SDI, the Bank has agreed to guarantee the repayment at stated maturity of the principal amount of the Bonds (hereinafter referred to as the IBRD Guarantee Amount), on terms and conditions set forth in a guarantee substantially in the form set forth in Clause 8 of the Trust Deed referred to in the Subscription Agreement (hereinafter referred to as the IBRD Guarantee); and

(D) in consideration of the Bank's agreeing to provide the IBRD Guarantee, Hungary and SDI have agreed to undertake the obligations towards the Bank as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. Sections 8.01, 9.01, 9.02, 9.03, 10.01, 10.02, 10.03, 10.04, 11.01, 11.02, 11.03 and 11.04 of the General Conditions Applicable to the Loan and Guarantee Agreements of the Bank, dated January 1, 1985, are hereby incorporated and constitute an integral part of this Agreement, and the several terms defined in said General Conditions have the respective meanings assigned to them therein, provided, however, and except as the context may otherwise require, that references in said Sections to the "Borrower" and the "Guarantor" shall be deemed to be made to "SDI" and "Hungary", respectively, references to the "Loan Agreement" and "Guarantee Agreement" shall be deemed to be made to "this Agreement", and references in said Sections to the "Loan" and the "Project" shall be deemed to be made to the "IBRD Guarantee" and the "Projects", as the case may be.

Section 1.02. Wherever used in this Agreement, unless otherwise defined below or unless the context otherwise requires, the several terms defined in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "the Projects" means Parts A and C of the Third Industrial Restructuring Project (Loan No. 3020 HU), Part A of the Second Transport Project (Loan No. 3032 HU), and Part B of the Energy Development (Oil and Gas) Project (Loan No. 3056 HU) being carried out pursuant to, respectively, the Loan Agreement, dated February 24, 1989, between the Bank and the National Bank of Hungary, the Loan Agreement, dated July 10, 1989, between Hungary and the Bank and the Loan Agreement, dated May 30, 1989, between the Bank and the National Oil and Gas Trust;

(b) "General Conditions" means the General Conditions Applicable to Loan and Guarantee Agreements of the Bank, dated January 1, 1985;

(c) "Forints" means the currency of Hungary;

(d) "OKGT" means the National Oil and Gas Trust established under Resolution No. Ig 783/1986, dated May 12, 1986, of Hungary's Minister of Industry;

(e) "NBH" means National Bank of Hungary operating under Law Decree No. 36 of 1967, of Hungary's Presidential Council;

(f) "Participating Banks" means the banking institutions with which NBH shall have entered into subsidiary financing agreements for the purposes of carrying out Part A of the Third Industrial Restructuring Project;

(g) "Agency Arrangements" means the arrangements to be maintained, in a manner satisfactory to the Bank, between SDI and NBH pursuant to which NBH shall act the agent of SDI in making payments out of the accounts referred to in Sections 3.02 and 3.03 of this Agreement;

(h) "Closing Date" has the meaning set forth in the Subscription Agreement;

(i) "Trustee" has the meaning set forth in the Subscription Agreement;

(j) "Trust Deed" has the meaning set forth in the Subscription Agreement;

(k) "local expenditures" means expenditures in Forints; and

(l) "foreign expenditures" means expenditures in a currency other than Forints for goods or services supplied from the territory of any country other than Hungary eligible under the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1985.

ARTICLE II

Guarantee and Indemnity

Section 2.01. (a) Without limitation or restriction upon any of its respective obligations under this Agreement: (i) SDI hereby agrees to reimburse the Bank forthwith on demand or as the Bank may otherwise direct any amount paid by the Bank under the IBRD Guarantee; (ii) Hungary hereby unconditionally guarantees, as primary obligor and not as surety merely, to pay promptly to the Bank any amount paid by the Bank under the IBRD Guarantee; (iii) SDI and Hungary jointly and severally agree to indemnify the Bank on demand in respect of all actions, proceedings, liabilities, claims, losses, damages, costs and expenses suffered or incurred by the Bank in relation to or arising out of the IBRD Guarantee; (iv) SDI and Hungary irrevocably authorize the Bank to comply with any demands and make any payments which may be due from or claimed or made upon the Bank under the IBRD Guarantee (the Bank shall notify Hungary and SDI of any such demand but failure to give such notice shall in no way affect the Bank's obligation to make payment under the IBRD Guarantee or the obligation of Hungary and SDI to reimburse or indemnify the Bank pursuant to this Agreement) and agree that it shall not be incumbent on the Bank to enquire whether or not any such demands or payments are in fact due or whether or not any dispute exists between Hungary and/or SDI and the Trustee and/or the holders of the Bonds; and (v) SDI and Hungary agree that, in the absence of any manifest error, any such demand or payment shall, as between Hungary and/or SDI, and the Bank, be conclusive evidence that the demand is properly made and/or payment properly due.

(b) Any payment required to be made by Hungary and/or SDI pursuant to the terms of this Agreement shall be:

- (i) paid in the currency paid by the Bank under the IBRD Guarantee, or if such payment shall have been made in a currency which the Bank shall have purchased with another currency for the purpose of such payment, in such other currency;
- (ii) paid at such places as the Bank shall reasonably request;
- (iii) made in such manner, and in currencies acquired in such manner, as shall be permitted under the laws applicable to the making of such payment and effecting the deposit of such currencies to the account of the Bank with a depository designated by the Bank for this purpose;
- (iv) paid without any restrictions of any kind imposed by, or in the territory of Hungary; and
- (v) applied first, to pay all interest, fees and other charges due to the Bank and second, after such interest and other charges are paid, to pay

all principal then due.

(c) In consideration of the Bank providing the IBRD Guarantee, SDI shall pay to the Bank on the Closing Date, a guarantee fee of US\$4,640,000. Hungary hereby unconditionally guarantees, as primary obligor and not as surety merely, the punctual payment by SDI of the said guarantee fee.

Section 2.02. (a) The obligations of Hungary and SDI hereunder shall not be in any way discharged or impaired by reason of any time or other indulgence which may be granted to the Bank by the Trustee or the holders of the Bonds, by any variation of the Bonds, the Hungary Guarantee, or any related agreement nor by any circumstances which would or might (but for this provision) constitute a discharge or defense of Hungary and/or SDI.

(b) The Bank may at any time, without thereby discharging, impairing or otherwise affecting any rights, powers and remedies hereby created or conferred upon it by this Agreement, the Bonds, the Trust Deed or by law: (i) offer or agree to or enter into any agreement for the extension or variation of the IBRD Guarantee; or (ii) offer or give or agree to give any time or other indulgence to any person or entity from whom it may seek reimbursement in respect of sums paid out by the Bank under the IBRD Guarantee.

(c) Any rights conferred on the Bank by this Agreement shall be in addition to and not in substitution for or derogation of any other right which the Bank may at any time have to seek from Hungary or SDI or any other person or entity reimbursement of or indemnification against payments made or liabilities incurred under the IBRD Guarantee.

(d) The Bank shall not be obliged before taking steps to enforce any rights conferred on it by this Agreement or exercising any of the rights, powers and remedies conferred upon the Bank by this Agreement, the Bonds, the Trust Deed or by law: (i) to take action or obtain judgment in any court against any other person or entity (including persons or entities from whom it may seek reimbursement in respect of sums paid out under the IBRD Guarantee); or (ii) to enforce or seek to enforce any other rights it may have against Hungary or SDI or its rights against any other person or entity.

Section 2.03. Without limitation or restriction upon any of its other obligations under this Agreement, Hungary and SDI hereby undertake to punctually perform all of their respective obligations under the Bonds, the Hungary Guarantee and the Trust Deed, and Hungary further agrees that any amount due to the Bank by Hungary and SDI jointly and severally hereunder shall be deemed, for purposes of Sections 6.02 (b) and 7.01 (d) (ii) of the General Conditions an amount due in consequence of a guarantee extended by the Bank to a third party with the agreement of Hungary.

ARTICLE III

Other Covenants

Section 3.01. The proceeds of the Bonds shall be used as follows:

(a) on the Closing Date, SDI shall use US\$5,740,000 from the proceeds of the Bonds to pay the amounts payable to the Managers as specified in the Subscription Agreement and the guarantee fee specified in Section 2.01 (c) of this Agreement; and

(b) the balance of the proceeds of the Bonds shall be used for the purposes of the Projects as set forth in this Article III.

Section 3.02. SDI shall open in its name on the books of NBH on terms and conditions satisfactory to the Bank a separate freely convertible United States dollar account (hereinafter referred to as the Dollar Special Account) in which it shall, on the Closing Date,

deposit US\$27,000,000 from the proceeds of the Bonds. SDI agrees that such amount shall be paid out of the Dollar Special Account by NBH, pursuant to the Agency Arrangements, to OKGT, on terms and conditions acceptable to the Bank, only to meet foreign expenditures under Part B of the Energy Development (Oil and Gas) Project as they are actually incurred and which have not been financed out of the funds provided by the Bank under the Loan Agreement dated May 30, 1989, between the Bank and OKGT pertaining to said Project.

Section 3.03. (a) SDI shall open in its name on the books of NBH on terms and conditions satisfactory to the Bank a separate Forint account (hereinafter referred to as the Forint Special Account) in which it shall, on the Closing Date, deposit the Forint equivalent of US\$167,260,000 from the proceeds of the Bonds. Of such amount, SDI agrees that:

- (i) the Forint equivalent of US\$64,560,000 shall be paid out of the Forint Special Account by NBH, pursuant to the Agency Arrangements, to the Participating Banks, on terms and conditions acceptable to the Bank, only to meet local expenditures under Part A of the Third Industrial Restructuring Project as they are actually incurred;
- (ii) the Forint equivalent of US\$16,500,000 shall be paid out of the Forint Special Account by NBH, pursuant to the Agency Arrangements, to Hungary, on terms and conditions acceptable to the Bank, only to meet local expenditures under Part C of the Third Industrial Restructuring Project as they are actually incurred; and
- (iii) the Forint equivalent of US\$86,200,000 shall be paid out of the Forint Special Account by NBH, pursuant to the Agency Arrangements, to Hungary, on terms and conditions acceptable to the Bank, only to meet local expenditures under Part A of the Second Transport Project as they are actually incurred.

(b) The goods and services required for the Projects and to be financed out of the proceeds of the Bonds shall be procured with due regard to considerations of economy and efficiency in accordance with procedures satisfactory to the Bank.

Section 3.04. SDI, pursuant to the Agency Arrangements, shall ensure that NBH shall:

(a) (i) maintain records and procedures adequate to identify the expenditures financed out of the proceeds of the Bonds, and (ii) furnish to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Bonds and the goods and services financed out of such proceeds including, without limitation, all such documents and other evidence as shall be adequate to show that amounts disbursed from the Dollar Special Account and the Forint Special Account were disbursed for eligible expenditures as contemplated in Sections 3.02 and 3.03 of this Agreement, respectively; and

(b) (i) have the records and accounts referred to in paragraph (a) of this Section and those for the Dollar Special Account and the Forint Special Account for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank, (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year: (A) certified copies of said accounts for such year as so audited and (B) the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested, and (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof as

the Bank shall from time to time reasonably request.

Section 3.05. If at any time the Bank determines that any sum paid out of the Dollar Special Account or the Forint Special Account was paid out in respect of any expenditure which was not eligible as contemplated by Sections 3.02 and 3.03 of this Agreement, as the case may be, or was not justified by the evidence furnished pursuant to Section 3.04 of this Agreement, SDI shall, promptly following notice from the Bank, deposit in the Dollar Special Account or the Forint Special Account, as the case may be, an amount equal to such sum.

Section 3.06. SDI shall take such steps satisfactory to the Bank as shall be necessary to protect itself against the risk of loss resulting from changes in the rates of exchange between the currencies used in the financing of the Projects out of the proceeds of the Bonds.

Section 3.07. In the event that any amount is paid by the Bank under the provisions of the IBRD Guarantee, Hungary and SDI jointly and severally undertake to pay interest to the Bank on such amount, in the currency determined in accordance with Section 2.01 (b) (i) of this Agreement, at the rate per annum specified by the Bank in respect of such currency, which rate will be based on the Bank's prevailing borrowing cost in such currency plus the applicable margin over such cost, until such amount is paid.

Section 3.08. SDI and Hungary shall obtain the written consent of the Bank prior to agreeing to any change in the terms and conditions of the Bonds, the Hungary Guarantee or the Trust Deed.

Section 3.09. Each of the agreements between Hungary and the Bank referred to in the Schedule to this Agreement is amended as set forth in said Schedule.

ARTICLE IV

Effective Date

Section 4.01. This Agreement shall come into force and effect upon signature.

ARTICLE V

Miscellaneous Provisions

Section 5.01. (a) The First Deputy President or General Manager of the National Bank of Hungary is hereby designated as representative of Hungary for the purposes of Section 11.03 of the General Conditions.

(b) The General Manager of SDI is hereby designated as representative of SDI for the purposes of Section 11.03 of the General Conditions.

Section 5.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For Hungary:

National Bank of Hungary
Department for International
Development Institutions
H-1850 Budapest
Szabadsag ter 8-9
Republic of Hungary

Cable Address:

Telex:

BANKO
Budapest

227267 SMAFU-HU,
225755 BANKO-H or
227028 BANKO-H

For SDI:

Deak Ferenc utca 5,
1052 Budapest, V,
Republic of Hungary

Telex:

225672-H

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable Address:

Telex:

INTBAFRAD
Washington, D.C.

197688 (TRT),
248423 (RCA),
64145 (WUI) or
82987 (FTCC)

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

REPUBLIC OF HUNGARY

By

Authorized Representative

STATE DEVELOPMENT INSTITUTE

By

Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By

Authorized Representative

SCHEDULE

1. The following is added as Section 4.03 in each of the Guarantee Agreement (Third Industrial Restructuring Project), dated February 24, 1988, and the Guarantee Agreement (Energy Development (Oil and Gas) Project), dated May 30, 1989, both between Hungary and the Bank:

"Section 4.03. The Guarantor shall ensure that the proceeds of the bonds referred to in Whereas (A) of the Preamble to the Guarantee and Indemnity Agreement between the Guarantor and the State Development Institute of the one part

and the Bank of the other part, dated as of August 31, 1990, shall be used for the purposes, and in accordance with the requirements, set forth in Sections 3.01, 3.02 and 3.03 of said Guarantee and Indemnity Agreement."

2. The following is added as Section 4.02 in the Loan Agreement (Second Transport Project) dated July 10, 1989, between Hungary and the Bank:

"Section 4.02. The Borrower shall ensure that the proceeds of the bonds referred to in Whereas (A) of the Preamble to the Guarantee and Indemnity Agreement between the Borrower and the State Development Institute of the one part and the Bank of the other part, dated as of August 31, 1990, shall be used for the purposes, and in accordance with the requirements, set forth in Sections 3.01, 3.02 and 3.03 of said Guarantee and Indemnity Agreement."

