

CONFORMED COPY

CREDIT NUMBER 2854 MOG

Development Credit Agreement

(Coal Project)

between

MONGOLIA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated May 24, 1996

CREDIT NUMBER 2854 MOG

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated May 24, 1996, between MONGOLIA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) the Borrower intends to contract from the Overseas Economic Cooperation Fund of Japan (OECF) a loan in an amount equivalent to \$15,500,000 (the OECF Loan) to assist in financing the Project on the terms and conditions set forth in an agreement (the OECF Loan Agreement) to be entered into between the Borrower and OECF;

(C) the Project will be carried out in part by the Baganuur Joint Stock Company (BJSC) with the Borrower's assistance and, as part of such assistance, the Borrower will make available to BJSC a portion of the proceeds of the Credit as provided in this Agreement; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the Project Agreement of even date herewith between the Association and BJSC;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

- (a) The last sentence of Section 3.02 is deleted.
- (b) The second sentence of Section 5.01 is modified to read:

"Except as the Association and the Borrower shall otherwise agree, no withdrawals shall be made: (a) on account of expenditures in the territories of any country which is not a member of the Bank or for goods produced in, or services supplied from, such territories; or (b) for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Association, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations."

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

- (a) "BJSC" means the Baganuur Joint Stock Company, a company incorporated under the laws of the Borrower;
- (b) "BJSC Charter" means the Charter of BJSC dated March 25, 1995, as the same may be amended from time to time;
- (c) "BJSC Parts of the Project" means Parts A, B and C of the Project as described in Schedule 2 to this Agreement;
- (d) "Depreciation Legislation" means jointly the Borrower's Accounting Law of February 8, 1993; Entities Income Tax Law of December 14, 1992; Decree No. 17, of January 30, 1996; Decree No. 8 of January 12, 1994; and the Minister of Finance's Order No. 40 of March 17, 1995, that: (i) enable BJSC to revalue its assets regularly in line with international accounting standards; and (ii) allow the full deduction for tax purposes of the depreciation provisions resulting from the application of said accounting standards;
- (e) "Environmental Management Program" means the environmental management program included in the Environmental Analysis Report of the Project dated November, 1995, and said Program includes environmental mitigation measures to be implemented during the carrying out of the Project;
- (f) "MEGM" means the Borrower's Ministry of Energy, Geology and Mines and any successor thereto;
- (g) "Project Agreement" means the agreement between the Association and BJSC of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement;
- (h) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement; and
- (i) "Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and BJSC pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Loan Agreement, and the term "Subsidiary Loan" means the loan provided under the Subsidiary Loan Agreement.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to twenty three million eight hundred thousand Special Drawing Rights (SDR 23,800,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower may, for the purposes of the Project, open and maintain a special deposit account in a commercial bank and on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 3 to this Agreement.

Section 2.03. The Closing Date shall be December 31, 2001 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue:

- (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and
- (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid:

- (i) at such places as the Association shall reasonably request;
- (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and
- (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on April 1 and October 1 in each year.

Section 2.07. (a) Subject to paragraphs (b) and (c) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each April 1 and October 1 commencing October 1,

2006 and ending April 1, 2036. Each installment to and including the installment payable on April 1, 2016 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever:

- (i) the Borrower's gross national product per capita, as determined by the Association, shall have exceeded \$790 in constant 1985 dollars for five consecutive years, and
- (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the terms of repayment of installments under paragraph (a) above by requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid. If so requested by the Borrower, the Association may revise such modification to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(c) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end:

- (i) shall carry out Part D of the Project, through MEGM, with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, mining and environmental practices and shall provide, promptly as needed, the funds, facilities, services and other resources required for such Part of the Project; and
- (ii) without limitation or restriction upon any of its other obligations under the Development Credit Agreement, the Borrower shall cause BJSC to perform all its obligations set forth in the Project Agreement, shall take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable BJSC to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall relend to BJSC the portion of the proceeds of the Credit allocated from time to time to Category (1) set forth in the table on paragraph 1 of Schedule 1 to this Agreement, under a subsidiary loan agreement to be entered into between the Borrower and BJSC, under terms and conditions which shall have been approved by the Association which shall include:

- (i) the principal amount of the Subsidiary Loan:
 - (A) shall be the equivalent in terms of Special Drawing Rights (on the date, or respective dates, of withdrawal from the Credit Account) of the value of the currency or currencies so withdrawn on account of the BJSC Parts of the Project; and
 - (B) shall be repaid in the currency of the Borrower in amounts equivalent (as of the date, or respective dates, of repayment) to the amount in Special Drawing Rights so made available;
- (ii) BJSC shall repay such principal amount over a period of twenty five (25) years, inclusive of a grace period of eight (8) years;
- (iii) the Borrower shall charge an interest rate on such principal amount, withdrawn and outstanding from time to time at a rate equal to four and two tenths of a percent (4.2%) per annum; and
- (iv) the Borrower shall charge a commitment charge on such principal amount, not withdrawn from time to time at a rate equal to the commitment charge applicable from time to time to the Credit pursuant to Section 2.04 of this Agreement.

(c) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to the Project Agreement.

Section 3.03. The Borrower and the Association hereby agree that the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the BJSC Parts of the Project shall be carried out by BJSC pursuant to Section 2.03 of the Project Agreement.

Section 3.04. The Borrower shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about April 1, 1998, a report integrating the results of the monitoring and evaluation activities performed pursuant to sub-paragraph (a) above, and consolidating the report furnished to the Borrower by BJSC pursuant to Section A.1(d) of Schedule 2 to the Project Agreement on the progress achieved in the carrying out of the Project during the period preceding December 31, 1997 and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Association, by June 1, 1998, or such later date as the Association shall request, the report referred to in sub-paragraph (b) above, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations

of the said report and the Association's views on the matter.

ARTICLE IV

Financial and Other Covenants

Section 4.01. (a) The Borrower shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of Part D of the Project of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section including those for the Special Account for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;
- (ii) furnish to the Association, as soon as available, but in any case not later than six months after the end of each such year, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said records, accounts and the audit thereof as the Association shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall:

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account or payment out of the Special Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Association's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

Section 4.02. Without limitation on the provisions of Section 3.01 (a) (ii) of this Agreement, and to assist BJSC in carrying out its obligations under the Project Agreement, the Borrower shall:

(a) carry out a periodic review of BJSC's coal prices and take such measures (including, without limitation, regular adjustment pursuant to a plan acceptable to the Association of the structure or level of coal prices charged by BJSC) as shall be necessary to enable BJSC to comply at all times with its obligations set out in Section 4.03 of the Project Agreement;

(b) take all necessary measures to reduce progressively the average collection period for payment for coal supplied by BJSC to Borrower's combined heat/power plants, in accordance with a plan and timetable acceptable to the Association; and

(c) pursuant to the Depreciation Legislation, and in accordance with a timetable acceptable to the Association, allow BJSC the full deduction for tax purposes of the depreciation provisions resulting from the application of international accounting standards.

Section 4.03. The Borrower shall, no later than December 31, 1996, adopt a plan, satisfactory to the Association, for the transfer of the authority to exercise all rights and the requirement to fulfill all obligations of the Borrower in its capacity as shareholder of BJSC from MEGM to an entity fully independent from MEGM and any other organization, agency or individual with responsibilities for any aspect of energy or mining sector policy or regulation.

Section 4.04. The Borrower shall, through MEGM:

(a) carry out Part D of the Project in accordance with terms of reference and an implementation schedule acceptable to the Association; and

(b) prepare under terms of reference satisfactory to the Association, and furnish to the Association, within one month following December 31 of each calendar year, a report on the progress achieved in carrying out Part D of the Project during such year.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional events are specified:

(a) BJSC shall have failed to perform any of its obligations under the Project Agreement.

(b) As a result of events which have occurred after the date of the Development Credit Agreement, an extraordinary situation shall have arisen which shall make it improbable that BJSC will be able to perform its obligations under the Project Agreement.

(c) The BJSC Charter shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of BJSC to perform any of its obligations under the Project Agreement.

(d) The Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of BJSC or for the suspension of its operations.

(e) The OECF Loan Agreement shall have failed to become effective by July 1, 1997, or such later date as the Association may agree; provided, however, that the provisions of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

(f) (i) Subject to subparagraph (ii) of this paragraph:

(A) The right of the Borrower to withdraw the proceeds of the OECF Loan shall have been suspended, canceled or terminated in whole or in part, pursuant to the terms of the OECF Loan Agreement; or

(B) the OECF Loan shall have become due and payable prior to the agreed maturity thereof.

(ii) Subparagraph (i) of this paragraph shall not apply if

the Borrower establishes to the satisfaction of the Association that:

- (A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Borrower to perform any of its obligations under such agreement; and
- (B) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 5.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional events are specified:

(a) the event specified in paragraph (a) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower;

(b) the events specified in paragraphs (c) and (d) of Section 5.01 of this Agreement shall occur;

(c) the event specified in paragraph (e) of Section 5.01 of this Agreement shall occur, subject to the proviso therein; and

(d) the event specified in paragraph (f) of Section 5.01 of this Agreement shall occur, subject to the proviso therein.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) the Subsidiary Loan Agreement has been executed on behalf of the Borrower and BJSC; and

(b) the Borrower has increased the price of BJSC's coal to the equivalent of \$6.80 per ton (at a calorific value of 3360 kilocalories per ton) free on rail at BJSC.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

(a) that the Project Agreement has been duly authorized or ratified by BJSC and is legally binding upon BJSC in accordance with its terms; and

(b) that the Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and BJSC and is legally binding upon the Borrower and BJSC in accordance with its terms.

Section 6.03. The date 120 days (120) after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. The minister of the Borrower at the time responsible for finance is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
Khudaldaany gudamj - 4
Ulaanbaatar 11
Mongolia

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

INDEVAS
Washington, D.C.

248423 (MCI), or
64145 (MCI)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, 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.

MONGOLIA

By /s/ J. Choinkhor

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Nicholas C. Hope

Acting Regional Vice President
East Asia and Pacific

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

| Category | Amount of the Credit Allocated (Expressed in SDR Equivalent) | % of Expenditures to be Financed |
|-------------------------------|---|---|
| (1) BJSC Parts of the Project | | |
| (a) Goods | 19,450,000 | 100% of foreign expenditures; 75% of local expenditures |
| (b) Consultants' services | 1,360,000 | 100% |

and training

| | | |
|---|-------------------|--------------|
| (c) Unallocated | 2,240,000 | |
| (2) Consultants' services for Part D of the Project | 750,000 | 100% |
| TOTAL | <u>23,800,000</u> | <u>=====</u> |

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower; and

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures:

(a) for goods under contracts not exceeding \$150,000 equivalent each;

(b) for consultants' services under contracts awarded to consulting firms or individuals costing less than \$100,000 equivalent and \$50,000 equivalent each, respectively; and

(c) for training, regardless of the cost thereof, all under such terms and conditions as the Association shall specify by notice to the Borrower.

SCHEDULE 2

Description of the Project

The objectives of the Project are to: (a) increase production levels at the Baga Nuur coal mine to four million tons per year; (b) develop financial self-sufficiency and operational independence for BJSC; (c) increase BJSC's equipment productivity and reduce its cost; and (d) enable BJSC to operate in an environmentally sustainable acceptable manner over the long term.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A: Mine Rehabilitation

Rehabilitation of BJSC's operations at the Baga Nuur coal mine, through the procurement and commissioning of mining equipment, the construction and improvement of access roads and other minor civil works.

Part B: Coal Handling Plant

Construction and commissioning of a coal handling plant.

Part C: BJSC Institutional Strengthening

Strengthening of BJSC's organization through training and provision of consultants' services for:

(1) improvement of mine operations and supervision;

(2) development of mine equipment maintenance and materials

management systems;

(3) upgrading of financial and cost accounting and management information systems; and

(4) improvement of environmental management capabilities.

Part D: Coal Sector Strategy

The development of a medium-term strategy for development of other major coal mines and the strengthening of the sector's regulatory framework, through the carrying out of studies and the provision of technical assistance.

* * * * *

The Project is expected to be completed by June 30, 2001.

SCHEDULE 3

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1) and (2) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means an amount equivalent to \$1,000,000 to be withdrawn from the Credit Account and deposited in the Special Account pursuant to paragraph 3(a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$500,000 until the aggregate amount of withdrawals from the Credit Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of SDR7,000,000.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provision of this Schedule.

3. After the Association has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit in the Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount as the Borrower shall have

requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures.

All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01(b)(ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, less the amount of any outstanding special commitment entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Account:

(i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or

(ii) was not justified by the evidence furnished to the Association; the Borrower shall, promptly upon notice from the Association:

(A) provide such additional evidence as the Association may request; or

(B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any

amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

