

Loan Agreement¹⁾

THIS LOAN AGREEMENT made and entered into as of the 5th day of September, 1996, by and between²⁾

XYZ Corp. (the "Borrower"), a corporation duly organized and existing under the laws of X Country with its registered head office at _____, and

ABC Bank (the "Lender"), a bank duly organized and existing under the laws of Y Country with its registered head office at _____.

WITNESSETH³⁾:

WHEREAS,⁴⁾ the Borrower has requested the Lender to make available to it loan facilities totalling not more than Ten Million U.S. Dollars (US\$10,000,000) to finance its operating funds and the Lender has agreed thereto on the terms hereinafter set forth.

NOW, THEREFORE, in consideration⁵⁾ of mutual premises and covenants contained herein, the parties hereto agree as follows:

1. Definitions

The following terms⁶⁾ shall have the meanings set forth below:

- (A) "Advance" shall mean, subject as hereinafter provided, an advance or advances made or to be made by the Lender hereunder.
- (B) "Banking Day" shall mean a day on which banks are open for business⁷⁾ in New York

1) 대출계약의 법적 성격은 금전소비대차 계약이다. 영어로는 "Credit Agreement"라고 하거나 다른 금융 상품이 결합된 경우 "Facility Agreement"라고 한다. 여기서는 국제금융 거래의 典型을 이루는 1개 은행에 의한 중장기 대출(Term Loan Agreement)을 상정하고자 한다.

2) 계약당사자 및 주소, 계약체결일자 표시는 계약의 동일성, 당사자의 법적 지위를 판단하는 근거가 되며 특히 계약체결 일자는 계약 내용에 따른 時效의 기산점이 된다. 계약 당사자가 3인 이상인 경우에는 'by and between'이 아니라 'by and among'으로 표기한다.

3) "witness"(입증하다)의 3인칭 단수 현재형으로 THIS LOAN AGREEMENT가 주어이다.

4) Whereas 이하에서는 계약을 체결하게 된 목적과 동기, 경위 등을 설명(recital)하는데, 상대방이 이를 신뢰한 경우에는 '표시에 의한 禁反言'으로서 그에 반하는 주장을 할 수 없으며 당사자의 意思를 해석할 때 중요한 자료가 된다.

5) 영미법상 계약은 約因(consideration)이 있어야 그 이행을 강제할 수 있으므로(enforceable) 당사자간에 교섭을 통하여 법적 가치가 있는 것(예: 계약금)을 교환(bargained-for exchange)하여야 한다. 국제금융 거래에서는 차입자가 각종 진술 및 보장, 서약을 하는 것을 일정한 행동의 약속 내지 그 억제(forbearance)에 해당하는 것으로 보아 約因의 요건을 갖춘 것으로 본다.

6) 영문 계약서에서 자주 사용되는 중요한 용어는 그 의미 내용에 관하여 따로 定義를 내리고 이를 大文字로 표기한다.

7) 국제거래가 은행을 통한 자금결제를 수반하는 경우에는 거래가 이루어지는 장소에서 은행이 영업을

and Seoul.

- (C) "Commitment" shall mean the aggregate amount set forth in Section 2 or, where the context so requires, the obligation of the Lender to advance up to such amount pursuant to the terms of this Agreement.⁸⁾
- (D) "Drawdown" shall mean each borrowing by the Borrower of part or all of the Commitment.
- (E) "Event of Default" shall have the meaning set forth in Section 13.
- (F) "Indebtedness" shall include any obligation for the payment or repayment of money, whether present or future, actual or contingent.⁹⁾
- (G) "Interest Period" shall mean the period commencing on the date of the initial Drawdown of the Loan and having a duration of six (6)¹⁰⁾ months and each succeeding six-month period commencing on the last day of the then current Interest Period; *provided*, that the first Interest Period with respect to each Drawdown of the Loan other than the initial Drawdown thereof shall commence on the date of such subsequent Drawdown and terminate on the last day of the then current Interest Period as established above.
- (H) "LIBOR"¹¹⁾ shall mean, with respect to each Interest Period, the interest rate quoted by a leading prime bank in London determined by the Lender to be applicable with respect to such Interest Period on the date two (2) Banking Days prior to the first day of such Interest Period for the offering to leading banks in the London Interbank Market of Dollars for deposit for such Interest Period in an amount comparable to the aggregated principal amount of the Loan to be outstanding for such Interest Period.
- (I) "Loan" shall mean the aggregate principal amount of the Advances not to exceed US\$10 million made by the Lender to the Borrower hereunder or, where the context so requires, the amount hereof from time to time outstanding.

하는 날을 영업일로 정하여야 한다. 지역에 따라서는 公休日이 아님에도 은행이 휴무하는 날이 있기 때문이다.

8) 貸出約定이란 대주가 당사자간에 약정한 총액에 달할 때까지 본 계약조건에 따라 자금을 공여하기로 약속하는 것이다.

9) 債務란 현재 또는 장래, 현실적, 우발적을 막론하고 금전을 지급하거나 상환해야 하는 의무를 말한다.

10) 유로 크레딧의 이자기간은 통상 6개월 또는 3개월마다 roll-over되는 바, 이는 貸主은행이 런던 은행간 시장에서 6개월 또는 3개월 단위로 자금을 조달하여 대출을 하기 때문이다. 英文계약서에서 숫자는 영어로 표기하고 아라비아 숫자를 병기하는 것이 원칙이다.

11) London Interbank Offered Rate의 약어. 런던 은행간 시장에서 다른 큰 은행에 자금(deposit)을 빌려 줄 때 받는 금리로 런던 은행간 시장에서 자금을 조달하는 은행은 여기에 일정한 마진을 붙여서 유로 크레딧으로 제공하게 된다. 일반적으로 3개의 기준은행(reference banks)이 오전 11시에 고시하는 해당 기간의 금리 평균치를 구하여 소수점 아래가 1/16%의 배수가 되도록 조정한다. 오늘날에는 미 달러화의 경우 텔러레이트 스크린 p.3750에 나오는 英國은행협회(BBA)의 달러자금 결제이율을 기준으로 한다. 만일 LIBOR를 입수할 수 없는 경우에는 대주가 자금의 조달 코스트를 고려하여 금리를 정하되 대주에게 명백한 오류가 없는 한 이것을 결정적(conclusive)인 것으로 하거나, 차주가 이에 동의하지 않는 경우에는 대출금을 기한전에 상환할 수 있도록 하는 것이 보통이다.

(J) "Promissory Note" shall have the meaning set forth in Exhibit B hereto.

(K) "U.S. Dollars" or "US\$" shall mean the legal tender of the United States of America.

2. Loan

Subject to the terms and conditions set forth herein, the Lender hereby agrees to advance to the Borrower and the Borrower hereby agrees to borrow from the Lender an aggregate amount not exceeding US\$10 million.¹²⁾

3. Purpose of the Loan

The Loan shall be used to finance the operating fund requirement of the Borrower and not for any other purposes.¹³⁾

4. Drawdowns

The Borrower may draw the Loan in one or more Drawdowns during the period of twelve (12) months from the date of receipt of all necessary government approvals, by giving the Lender at least three (3) Banking Days' prior written notice in the form attached hereto as Exhibit A specifying the Drawdown date and disbursement instructions for the funds to be drawn; *provided*, that on the date three (3) Banking Days prior to the proposed Drawdown date, all applicable conditions precedent specified in Section 5 shall have been met.¹⁴⁾ The Lender shall give the Borrower prompt confirmation of its acceptance of the Borrower's notice of Drawdown. Such notice, once accepted by the Lender, shall be irrevocable and binding on the Borrower, and the Borrower shall reimburse the Lender for any costs or losses incurred by the Lender in the event the Borrower does not continue to satisfy such conditions precedent as of the date of Drawdown.

5. Conditions Precedent to Drawdown

The obligation of the Lender to make available any part of the Loan is subject to the fulfillment, as determined solely by the Lender and its counsel, of the following conditions precedent¹⁵⁾ three (3) Banking Days prior to the date of initial Drawdown (except as otherwise indicated below) and the continued fulfillment of such conditions on the date of each subsequent Drawdown:¹⁶⁾

12) 대출계약의 법적 성격은 일정한 조건에 따라 대주는 자금을 빌려주고 차주는 이를 빌려쓴 후 상환하기로 하는 의무를 서로 부담하는 雙務계약이다.

13) 대출 계약의 목적은 통상 前文에서 언급하는데 따로 目的 조항을 두어 자금의 용도를 운영자금에 한한다는 식으로 특정하는 경우도 있다. 이러한 제한 규정을 위반하여 자금을 전용하는 것은 채무불이행 사유(event of default)가 된다.

14) 차주가 자금인출 통지를 하는 시점에서는 자금인출 선행조건을 모두 충족하고 있어야 한다. 일단 대주가 인출통지서를 수령한 후에는 차주는 이를 철회할 수 없으며 차주가 先行條件을 갖추지 못하여 자금을 인출할 수 없는 경우에는 대주의 자금준비 등에 따른 비용이나 손실을 보상할 책임이 있다.

15) 국제대출 계약에 있어서는 貸主의 地位를 안전하고 확실하게 하는 일정한 조건을 정해 놓고 대주 및 그의 법률고문이 판단하기에 차주가 이들 조건을 모두 이행한 경우에야 비로소 자금을 인출할 수 있게 한다. 법적으로는 停止條件에 해당한다.

16) 차주의 信用이 취약한 경우에는 은행이 발급하는 지급보증서 또는 보증신용장을 징구하여야 할 것이

- (A) The Lender shall have received, in form and substance satisfactory to it and its counsel, the following:
- (i) a Promissory Note in the form of Exhibit B¹⁷⁾ hereto in the amount of the Commitment;
 - (ii) a Drawdown Certificate in the form of Exhibit C hereto in the amount of the particular Drawdown;
 - (iii) the Articles of Incorporation and Regulations¹⁸⁾ (or equivalent documents), as amended to date, of the Borrower;
 - (iv) the Borrower's Commercial Registry extracts¹⁹⁾ as amended to date;
 - (v) a duly authenticated copy of the Minutes of the Board of Directors meeting of the Borrower²⁰⁾ authorizing the execution and performance of this Agreement, and the Promissory Note, including the incurring of the debt obligations hereunder, upon the terms of this Agreement, and authorizing the person(s) who signed, or will sign, the Agreement, the Promissory Note and all other documents to be executed pursuant hereto on the Borrower's behalf to do so;
 - (vi) Specimen signatures²¹⁾ of the person(s) authorized to sign this Agreement, the Promissory Note and all other documents hereunder;
 - (vii) the favorable written legal opinion of the counsel to the Borrower, in form and substance satisfactory to the Lender and its counsel; and
 - (viii) such other documents as shall be requested by, and in form and substance satisfactory to the Lender and its counsel.
- (B) The Lender shall have received on or prior to the initial Drawdown, the Promissory Note,²²⁾ duly executed and delivered by the Borrower, evidencing the Borrower's obligation to repay the Loan to the Lender.

다. "The Borrower shall furnish the Lender with the Letter of Guarantee [Standby Letter of Credit] duly issued and executed by a bank specified by, or acceptable to, the Lender."

17) 계약의 이행에 관한 중요 문서는 書式을 미리 附表로써 확정, 다툼의 여지를 배제할 필요가 있으며, 그렇지 않은 경우에도 그 양식이나 내용이 대주와 그의 법률고문에게 만족스러운 것이라야 한다.

18) 차주의 定款 및 內規(또는 그에 해당하는 문서)를 의미하며 차주의 법적 지위, 권리능력, 행위능력 등을 판단하는 데 필요하다.

19) 차주가 법적으로 實在하는지 확인하려면 상업등기부 초본을 청구하는 것이 좋다.

20) 차주의 理事會 의사록을 요구하는 까닭은 본건 차입 및 계약 체결과 관련하여 정당한 授權이 있었는지 확인하기 위한 것이다.

21) 서명감은 계약서, 약속어음 등 중요 문서에 하게 되어 있는 署名이 眞正한 것인지 판단하기 위해 차주 회사로부터 미리 받아 놓는다.

22) 대주가 차주로부터 約束어음을 청구하는 이유는 어음 채권이 양도·강제집행·보증 등에 있어서 간편할 뿐만 아니라 그 효력이 확실하기 때문이다. 즉 어음 채권은 어음의 배서·교부만으로 양도할 수 있으며, 善意取得이 인정되므로 채권 양수인의 지위가 강화된다. 채권을 회수할 때에도 어음금 청구 소송은 재판의 진행이 신속하고 假押留명령을 쉽게 받을 수 있으며 어음 채권에 대하여는 어음에 서명한 것만으로 保證책임이 성립한다.

- (C) The Lender shall have received copies, certified by a Director of the Borrower to be true copies and then to be currently in full force and effect, of the texts and true and correct English-language translations of any governmental consents or approvals necessary in connection the execution or performance of the terms of this Agreement and the Promissory Note, including without limitation the approval of the Minister of Finance of X Country and a remittance license regarding Dollar payments hereunder.
- (D) The Lender shall have received a letter from the agent for service of process appointed by the Borrower irrevocably accepting such appointment.
- (E) The Lender shall have timely received the written notice of the Borrower in the form attached hereto as Exhibit A.
- (F) The Lender shall have received on or prior to the date of each Drawdown, a Drawdown Certificate signed by the Borrower and dated as of the date of Drawdown in the form attached hereto as Exhibit A.
- (G) Such other documents as the Lender may reasonably request.
- (H) The obligation of the Lender to advance the Loan is also subject to the condition that no Event of Default and no event which with the passage of time or the giving of notice, or both, would become an Event of Default shall have occurred and be continuing, and the representations and warranties made herein shall have remained and then be true and correct as if also made on the date of the relevant Drawdown and all legal matters in connection with the Agreement shall be satisfactory to the Lender and its counsel.²³⁾

6. Interest

The Borrower agrees to pay to the Lender interest on the Loan outstanding from time to time on the last day of each Interest Period at the Interest Rate for such Interest Period. in the event of more than one Interest Period being concurrently applicable to different portions of the Loan, interest shall be payable at the relevant interest rates on the different portions of the Loan to which the different rates apply. Interest shall accrue on the basis of the actual number of days elapsed during an Interest Period and a year of 360 days.²⁴⁾ Interest shall accrue from and including the first day of an Interest Period. Promptly after determination of the Interest Rate applicable with respect to each Interest Period, the Lender shall notify the Borrower of the applicable Interest Rate and the amount of interest due on the last day of the relevant Interest Period.

23) 대주는 차주가 자금을 인출하기 전에 필요한 서류를 징구함은 물론 채무불이행 사유가 없고 앞으로도 일어나지 않을 것이며, 차주의 진술 및 보장이 진실·정확하고 모든 법률관계가 만족스러울 것을 조건으로 할 수 있다.

24) 이자 계산에 있어서는 1년을 365일로 보고 실제 경과일수에 따라 이자를 계산하는 방법, 1월을 30일 1년을 360일로 보고 이자를 계산하는 방법, 1년을 360일로 보되 실제 경과일수에 따라 이자를 계산하는 방법이 있다.

7. Default Interest

If the Borrower fails to make payment when due of any sum hereunder (whether at its stated maturity, by acceleration or otherwise), the Borrower shall pay interest on the unpaid amount, to the extent permitted by law, from and including such due date until the payment of said sum in full (after as well as before judgment) at the rate of one percent (1%)²⁵⁾ *per annum*²⁶⁾ above the Interest Rate, payable on demand.

8. Repayment

- (A) The Loan shall be repaid in ten (10) equal semiannual installments, the first such installment to be paid twelve (12) months after the date of the initial Drawdown;²⁷⁾
- (B) The Borrower may on the last day of any Interest Period by giving to the Lender not less than thirty days' notice of such election, elect to prepay the Loan without penalty.²⁸⁾ Partial prepayments shall be applied, subject to Section 9(B) hereof, against repayment installments of the Loan in the inverse order of their maturity. Sums prepaid may not be reborrowed.

9. Payments

- (A) All payments to be made by the Borrower hereunder shall be made in Dollars and in same-day funds (or such other Dollar funds as may be determined by the Lender to be customary for the settlement of international banking transactions) without set-off, counter-claims or deduction and free and clear of any and all present and future income, stamp and other taxes now or hereafter imposed,²⁹⁾ to the Lender's account, a/c no. X12345 with ABC Bank, New York, or to such other account as the Lender may from time to time designate.
- (B) Any payments made by the Borrower to the Lender³⁰⁾ shall be applied first against costs, expenses and indemnities due hereunder; then against default interest, if any, then against interest due on the Loan, against the Loan due and payable and thereafter against prepayment as per Section 8, above.

25) 국제금융시장에서는 約定이자율에 1%만 가산하여 延滯이자율로 하는 것이 보통이다.

26) *per annum*은 年利라는 의미로 이자, 수수료를 매년 지급하는 경우, flat은 수수료를 1회 지급하는 것으로 끝내는 경우에 쓰인다. flat은 'LIBOR flat'의 예와 같이 가산금리가 붙지 않는 것을 표시하기도 한다.

27) 본건 대출 계약은 10회 균등분할 상환조건으로 초회 자금인출일로부터 12개월후 첫 원금상환을 하게 되므로 期間은 거치 1년에 상환 4.5년, 도합 5.5년이다.

28) 차주가 대출금을 기한전에 상환할 경우에는 대주의 자금 운용에 차질을 빚는다 하여 따로 罰金 성격의 수수료를 부과하기도 한다. 본건에서는 30일전에 통지하고 분할상환금의 만기 쪽부터 상환하는 조건(즉 滿期의 단축)으로 수수료 없이 早期상환 할 수 있게 하고 있다.

29) 차주는 대주에 대하여 相計, 反訴 기타 공제, 각종 세금의 부담없이 원금과 이자를 지급해야 한다. 만일 稅法의 변경으로 원천세가 공제되는 경우에는 稅後 순이자가 당초 이자 금액과 같도록 대출 금리를 인상조정(gross up)하여 지급하게 된다.

30) 辦濟의 우선순위를 비용, 수수료, 손해배상금, 연체이자, 약정이자, 원금, 기한전 상환금의 순으로 約定하고 있다.

10. Taxes

- (A) All sums payable by the Borrower hereunder, whether of principal, interest, fees, expenses or otherwise, shall be paid in full, free of any deductions or withholdings. In the event that the Borrower is prohibited by law from making payments hereunder free of deductions or withholdings, then the Borrower shall pay such additional amount to the Lender as may be necessary in order that the actual amount received after deduction or withholding (and after payment of any additional taxes or other charges due as a consequence of the payment of such additional amount) shall equal the amount that would have been received if such deduction or withholding were not required.
- (B) The Borrower shall pay directly to the appropriate taxing authority any and all present and future taxes, levies, imposts, deductions, stamp and other duties, filing and other fees or charges (including without limitation any interest equalization tax, capital transaction tax or foreign exchange tax or charge) and all liabilities with respect thereto imposed by law or by any taxing authority on or with regard to any aspect of the transactions contemplated in this Agreement or the execution and delivery of this Agreement or other documentation hereunder, except taxes (other than taxes imposed on any payment made pursuant to Section 10(A) or this Section 10(B)) imposed on the overall net income of the Lender by the jurisdiction of its incorporation or in which its principal office is located. The Borrower shall hold the Lender harmless from any liability with respect to the delay or failure by the Borrower to pay any such taxes or charges, and shall reimburse the Lender upon demand for any such taxes paid by the Lender in connection herewith whether or not such taxes shall be correctly or legally asserted or otherwise contested or contestable, together with any interest, penalties and expenses in connection therewith.
- (C) If the Borrower shall pay any tax or charge as provided herein or shall make any deductions or withholdings from amounts paid hereunder, the Borrower shall forthwith forward to the Lender official receipts or other evidence acceptable to the Lender establishing payment of such amounts.

11. Representations and Warranties

- (A) The Borrower hereby represents and warrants:³¹⁾
- (i) that it has full legal power to enter into and perform this Agreement and the Promissory Note and to borrow the funds available hereunder;
 - (ii) that it has obtained or will obtain before the date of initial Drawdown all necessary

31) 대주는 차주로 하여금 그의 채권관리에 필요한 사항을 진술 및 보장하게 한다. 전자는 例文의 i)~iv)와 같이 사실에 관한 진술 내지 표명이며, 후자는 v)~vi)에서처럼 이를 확실히 약속하는 것이다. 英美法상 허위의 진술이나 중대한 사실의 누락은 虛偽表示(misrepresentation)라 하여 계약의 해제 또는 손해배상의 결과를 가져온다. 일반적으로 대출계약서에서는 진술과 보장을 나란히 규정하고 이를 위반하는 것은 채무불이행 사유로 하고 있다.

government approvals, consents and authorizations for execution of this Agreement and performance and observance of the terms of this Agreement including without limitation payment hereunder in Dollars, and such terms will not conflict with any existing law, with any other agreement to which the Borrower is a party, nor with the Articles of Incorporation, regulations or equivalent documents of the Borrower;

- (iii) the execution, delivery and performance by the Borrower of this Agreement and all other documents and instruments to be executed and delivered hereunder have been duly authorized or will be authorized prior to the date of initial Drawdown by all appropriate actions of the borrower (including without limitation its Board of Directors);
- (iv) that the Borrower is not in default under any agreement to which it is a party or by which it may be bound, a default in respect of which might have a material adverse effect on the Borrower, or its operations, properties or financial condition, and no litigation, administrative proceeding or arbitration is presently pending or, to the best knowledge of the Borrower, threatened against it or its properties, which might have a material adverse effect on its operations, properties or financial condition;
- (v) that the Loan when made will rank at least *pari passu*³²⁾ with all other present or future indebtedness of the Borrower; and
- (vi) that this Agreement constitutes a valid and legally binding obligation of the Borrower enforceable in accordance with its terms.

(B) The above representations and warranties shall be deemed to be repeated on and as of the first day of each Interest Period.

12. Covenants

The Borrower hereby covenants to the Lender that during the life of this Agreement and while any amount is owing by the Borrower to the Lender hereunder, it shall:³³⁾

- (i) provide to the Lender on demand an unconditional and irrevocable guaranty or guaranties of a person(s), a corporation(s) and a financial institution(s) in form and substance satisfactory to the Lender securing the Loan then outstanding, interest thereon and all other sums due or to become due to the Lender hereunder;
- (ii) forward promptly to the Lender at any time such financial information regarding its affairs as the Lender may reasonably request;

32) 대출채권이 차주의 현재 또는 장래의 다른 채무와 同順位로 한다는 의미이다.

33) 대주는 대출에 따른 수익을 확보하기 위해 차주로 하여금 여러가지 財務관련 사항을 서약하게 한다. 이러한 서약은 자유로운 기업활동을 스스로 억제(forbearance)하는 것이 되어 영미법상의 約因에 해당하고 차주가 서약을 위반하는 것은 채무불이행 사유가 된다.

- (iii) pay to the Lender on demand all amounts whatsoever, including fees and expenses of counsel, which the Lender may expend or become liable for in the negotiation, preparation, implementation and enforcement of the Loan Agreement including demanding, suing for, recovering and receiving payment of any sum due to the Lender hereunder and under any documents executed pursuant hereto;
- (iv) pay all taxes, assessments and governmental charges upon it or upon its properties promptly when due and, in any event, prior to the date on which penalties may become attached thereto;
- (v) as soon as possible but in any event within seven (7) days after occurrence, give written notice to the Lender of any Event of Default as described in Section 13 hereof or any event which, with the giving of notice or passage of time, or both, matter which has resulted or might result in a material adverse change in the Borrower's financial condition or operations;
- (vi) maintain its corporate existence in good standing in compliance with all applicable laws, regulations and other governmental requirements and continue to conduct its business substantially as such business is now conducted;
- (vii) obtain and continue in full force and effect all governmental approvals, consents, licenses, authorizations, declarations, filings and registrations as may be necessary or advisable for the performance of all the terms and conditions of the Loan Agreement and every document, the execution and delivery of which is contemplated herein, and to take all such additional action as may be proper or advisable in connection therewith;
- (viii) not, without prior written consent of the Lender, permit any indebtedness, obligation or liability, actual or contingent, of the Borrower to be secured by or to benefit from any lien, pledge, mortgage, charge, encumbrance, security interest or segregation or other preferential arrangement³⁴⁾ (whether or not constituting a security interest) in favor of any creditor or class of creditors in respect of any present or future properties, assets or revenues of the Borrower or of the right of the Borrower to receive income except as otherwise provided herein and except for encumbrances or any segregation or other preferential arrangement (i) for taxes, assessments or other governmental charges or levies on properties or assets of the Borrower if the same shall not at the time be delinquent or thereafter can be paid without penalty or the validity of which is being contested in good faith by appropriate proceedings upon stay of execution of the enforcement thereof, (ii) imposed by law, such as carriers', warehousemen's and mechanics' liens and other

34) 이 규정은 통상 Negative Pledge라고 일컫는데, 차주가 다른 채권자를 위하여 자기의 재산이나 수입에 유치권·질권·저당권·우선평권 기타 담보권을 설정하지 않겠다고 약속하는 것이다. 그러나 이를 엄격히 적용하면 차주의 기업활동을 제약하게 되므로 ▷대주로부터 事前에 서면동의를 받은 경우 ▷조세공과금에 대한 담보권 ▷法定留置權 기타 통상의 영업과정에서 발생하고 금액이 과중하지 않은 담보권 ▷사회보장 법령에 의한 담보권 또는 예치금 ▷차주가 자산 구입시 부담한 채무를 담보하기 위해 당해 자산을 담보로 제공(purchase money security)하는 경우에는 예외가 인정된다.

similar liens arising in the ordinary course of business and not material in amount, (iii) arising out of pledges or deposits under workmen's compensation laws, unemployment insurance, old age pensions, or social security or retirement benefits or similar legislation, or (iv) on properties or assets of the Borrower created at the time of acquisition of such properties or assets solely to secure the purchase price of such property or assets.

- (ix) not, without the prior written consent of the Lender, (i) merge or consolidate with any other corporation, partnership or sole proprietorship, (ii) acquire all or a substantial part of the assets of any other corporation, partnership or sole proprietorship, (iii) liquidate or dissolve, or (iv) sell, transfer or otherwise dispose of its business, or any significant portion of its property or assets.³⁵⁾
- (x) make any loan or advance to, or issue any guarantee for the borrowing of any other person or entity except prepayments for goods, services, taxes or other charges in the ordinary course of business, without the prior written consent of the Lender.

13. Events of Default

In the event that:³⁶⁾

- (i) the Borrower fails to pay in full any sum due hereunder on the due date thereof; or
- (ii) the Borrower fails to perform or observe any term, covenant or agreement contained herein or any term, covenant or agreement contained in any document executed pursuant hereto; or
- (iii) any representation, warranty or statement made by the Borrower herein or under any document executed or delivered pursuant hereto proves to have been incorrect as of the date it was made or deemed made, or is breached in any material respect; or
- (iv) any governmental consent, filing or approval granted or required in connection with this Agreement, the Promissory Note or any document executed or delivered pursuant hereto is cancelled, revoked, withdrawn or modified in any way, or any new law or decree is issued which in the Lender's opinion would prevent the Borrower from fulfilling their obligations hereunder or under the documents related hereto, or be otherwise detrimental to the Lender's interest; or

35) 차주는 원칙적으로 대주의 채권회수에 영향을 줄 수 있는 조치, 예컨대 다른 기업과의 합병·통합, 다른 기업자산의 취득, 해산·청산, 영업양도 또는 중요 재산의 처분을 할 수 없다.

36) 차주가 원리금 등을 제때 지급하지 못하거나, 진술·보장 및 서약한 사항을 위반한 경우, 지급불능 상태에 빠지거나 파산·회사정리·청산·강제화의·폐업 등의 절차에 들어간 경우, 다른 채무의 불이행(cross default)이 있는 경우 기타 사정변경으로 인하여 차주의 의무이행이 불가능해지는 상황이 발생한 경우는 채무불이행 사유가 된다. 이러한 사유가 너무 광범위하기 때문에 차주측의 부주의나 착오 또는 위반이 경미한 경우에는 유예기간을 허용하는 등 이를 완화해 주기도 한다.

- (v) the Borrower fails to pay when due any indebtedness or fails to observe or perform any term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing any indebtedness, if the effect of such failure is to accelerate or to permit (assuming the giving of notice or passage of time or both, if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof or of any such obligations whether or not such acceleration occurs or such default is waived; or
- (vi) the Borrower becomes insolvent or unable to pay its debts when due, or commits or permits any act which would lead to bankruptcy, reorganization, liquidation, compulsory composition, dissolution or creditor management of the Borrower; or
- (vii) the whole or a substantial part of the business or assets of the Borrower is confiscated for any reason or sold, transferred or otherwise disposed of without the prior written consent of the Lender or an action is taken for the winding-up of the Borrower or the Borrower stops or threatens to stop payment of its debts or makes or seeks to make any arrangement or composition with its creditors; or
- (viii) it becomes unlawful for the Borrower to perform any obligation hereunder; or
- (ix) any circumstances occur which in the opinion of the Lender give reasonable grounds for belief that the Borrower may not (or may not be able to) perform its obligation hereunder or under any of the Promissory Note.

Then at the option of the Lender,³⁷⁾ the obligation of the Lender to advance the Loan hereunder shall immediately cease and the Lender may declare, by notice to the Borrower, the Loan principal, accrued interest thereon and all other amounts then owed by the Borrower to the Lender immediately due and payable, and interest shall begin to accrue on all such sums at the default interest rate specified in Section 6 hereof and the Lender may take all such other actions as are permitted by law.

14. Changes in Applicable Law

If any change in any present or future applicable law or regulation or directive or in the interpretation thereof by any governmental authority charged with the administration thereof or any new law or regulation or directive shall make it impossible or unlawful for the Lender to give effect to its obligations hereunder or to maintain the Loan, the Lender shall give notice

37) 채무불이행 사유가 발생하면 대주는 이를 선언(declare)함으로써 차주의 期限의 利益을 상실시키고 기존 대출금을 즉시 상환(acceleration)케 하는 동시에 未인출 금액에 대해서는 대출약속을 취소할 수 있다. 그밖에 대주는 법이 허용하는 다른 모든 조치 -- 예컨대 계약의 취소, 특정이행 청구, 손해 배상 청구 등을 할 수 있는데 이러한 계약상 및 민법상의 구제수단은 累積的으로(remedies cumulative) 행사할 수 있다.

of such an occurrence to the Borrower, whereupon the Lender's obligations hereunder shall immediately terminate and the Borrower shall, within thirty (30) days after receipt of such notice, repay to the Lender the Loan together with accrued interest thereon and all other amounts owing or becoming due to the Lender hereunder.³⁸⁾

15. Terms

The term of this Agreement shall commence on the date first set forth above and shall end³⁹⁾ on the later of (i) the date of termination of all the Lender's obligations to make the Loan hereunder or, (ii) upon payment in full of all principal, interest and other sums payable by the Borrower hereunder or under the Promissory Note. The indemnities of the Borrower hereunder shall survive repayment of the Loan.⁴⁰⁾

16. Miscellaneous

- (A) The representations and warranties of the Borrower set forth herein shall survive the making of the Loan, and the obligations of the Borrower hereunder to pay interest, costs or other amounts to the Lender shall survive the repayment of the Loan.⁴¹⁾
- (B) Whenever any payment is to be made on a day which is not a Banking Day, such payment may be made on the next preceding Banking Day.
- (C) All taxes, stamp duties, public imposts and other charges and expenses payable in, on account of or in connection with the execution and performance of this Agreement and the Promissory Note shall be borne solely by the Borrower.⁴²⁾
- (D) This Agreement may be amended or supplemented only in writing by mutual agreement and subject to government approval, if required.
- (E) This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns,⁴³⁾ except that the Borrower may not assign any of its rights or obligations hereunder without obtaining the prior written consent of the Lender.
- (F) All notices, demands, requests, statements or other communications to be made or given

38) 적용법규 및 정부의 방침이 변경됨으로써 본 계약을 이행할 수 없거나 그 이행이 위법이 되는 경우에는 대주가 차주에게 이러한 사실을 통지하고 계약관계를 즉시 종료시키게 된다. 이 경우 차주는 통지를 받은 날로부터 30일 이내에 대출금 및 이자 기타 지급금을 상환하여야 한다.

39) 이 계약의 滿期는 대주가 자금을 공여할 의무가 종료하는 날과 차주가 본 계약서 또는 약속어음상 지급해야 할 원리금을 완제하는 날중 늦은 것으로 한다.

40) 차주가 免責되는 것은 대출금을 모두 상환한 다음이다.

41) "A survives B"란 A가 B보다 오래 남는다는 뜻이므로 본 계약서상 차주의 진술과 보증은 대출 실행후에도 계속하여 유효하며 차주의 원리금 지급의무는 대출 상환후까지 존속한다는 의미이다.

42) 본 계약서, 약속어음과 관련된 조세공과 기타 비용은 모두 차주가 부담한다는 취지이다.

43) 본 계약은 차주, 대주 및 그 승계인과 양수인에게 적용되며 이들에 대하여 구속력이 있다. 다만, 차주가 자신의 권리·의무를 양도하기 위해서는 대주로부터 사전에 書面동의를 얻어야 한다.

by the Borrower hereunder shall be in the English language. Any documents required to be delivered pursuant to this Agreement which are not in the English language must be accompanied by a certified English language translation thereof and in the event of any conflict between the original of the document and the English language translation thereof, the English language translation shall prevail between the Lender and the Borrower.⁴⁴⁾

- (G) No delay or omission by the Lender in exercising any of its rights under this Agreement shall operate or be construed as a waiver thereof nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.⁴⁵⁾ In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.⁴⁶⁾

17. Governing Law

This Agreement and all documents executed pursuant hereto shall be governed by and construed⁴⁷⁾ in accordance with the laws of the State of New York, U.S.A.

18. Waiver

The Borrower represents and warrants that this Agreement, the Loan and the Promissory Note are commercial rather than public or governmental acts and that the Borrower is not entitled to claim immunity from legal proceedings⁴⁸⁾ with respect to itself or claim immunity from legal proceedings with respect to itself or any of its assets on the grounds of sovereignty or otherwise under any law or in any jurisdiction where an action may be brought for the enforcement of any of the obligations arising under or relating to this Agreement or the Promissory Note. To the extent that the Borrower or any of its assets has or hereafter may acquire any right to immunity from set-off, legal proceedings, attachment prior to judgment, other attachment or execution of judgment on the grounds of sovereignty or otherwise, the Borrower hereby irrevocably waives such rights to immunity in respect of its obligations arising under or relating to this Agreement, the Promissory Note or any other documents, agreements or instruments contemplated herein.

19. Entire Agreement

This Agreement and the documents referred to herein constitute the entire agreement of the

44) 본 계약상의 통지, 청구 등 모든 의사표시는 英語로 하며, 만일 어느 문서(예컨대 차주 회사의 理事會 의사록)가 영어로 되어 있지 않은 경우에는 영역본을 첨부하되 원본과 영역본에 차이가 있으면 대주와 차주간에는 영역본을 우선한다는 의미이다.

45) 대주가 본 계약상의 권리행사를 게을리 하거나 빠뜨리더라도 이것이 그 권리를 포기한 것으로 간주 되지 않으며, 그 권리를 부분적으로 행사하더라도 추가적인 권리행사를 배제하지 않는다는 의미이다.

46) 본 계약서의 일부 조항이 위법·무효·집행불능인 경우에도 다른 조항의 효력에 영향을 미치지 않는다는 취지를 정하고 있다.

47) 이 계약서 및 관련서류에 대하여 어느 나라 법을 적용하고 그에 따라 해석할 것인가 하는 準據法을 정하고 있다.

48) 차주가 정부 또는 정부기관인 경우에도 그의 차입 및 어음행위가 상업적 성격을 가지며 차주는 자신의 주권면제 특권을 취소할 수 없는 형태로 포기한다는 내용이다.

parties hereto with respect to the subject matter and shall merge and supersede any prior expressions of intent, discussions or understandings of any and every nature between them with respect to this transaction.⁴⁹⁾

20. Jurisdiction

- (A) The Borrower hereby irrevocably consents that any legal action or proceeding against it or any of its properties or assets with respect to any of the obligations arising under or relating to this Agreement, or the Promissory Note may be brought in the State court in New York, as the Lender may elect,⁵⁰⁾ and by execution and delivery of this Agreement, the Borrower hereby submits to and accepts with regard to any such action or proceeding, for itself and in respect of its properties and assets, generally and unconditionally, the jurisdiction of the aforesaid court. The Borrower hereby irrevocably designates, appoints and empowers XYZ USA located at _____ New York, N.Y., U.S.A., as its agent to receive for and on its behalf service of process⁵¹⁾ in New York in any legal action or proceeding with respect to this Agreement or the Promissory Note. A copy of any such process served on such agent shall be promptly forwarded by the person commencing such proceeding to the Borrower at its address set forth in Section 21 but the failure of the Borrower to receive such copy shall not affect on any way the service of such process as aforesaid. The foregoing, however, shall not limit the right of the Lender to serve process in any other manner permitted by law or to bring any legal action or proceeding or to obtain execution of judgment in any other jurisdiction, including without limitation X Country. The Borrower further agrees that, to the extent permitted by law, final judgment against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or outside Y Country by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its indebtedness.⁵²⁾
- (B) The Borrower hereby waives any right it may have under the laws of any jurisdiction to commence by publication any legal action or proceeding with respect to this Agreement or the Promissory Note.⁵³⁾
- (C) The Borrower hereby irrevocably waives any objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement, or any of the Promissory Note in New York, and hereby

49) 협상과정에서 당사자간에 구두 또는 서면으로 의견을 교환하고 양해·약속한 것들이 본 계약의 체결과 동시에 이에 흡수되고 소멸된다는 서면 계약의 완전성을 의미하는 것으로 영미법상 口頭證據의 법칙(parol evidence rule)을 조문화한 것이다.

50) 본건 계약서 및 약속어음과 관련하여 발생하는 다툼의 해결은 대주가 선택하는 법원의 非專屬관할(non-exclusive jurisdiction)에 속한다고 규정하고 있다.

51) 차주는 관할법원의 구역에 거주하는 대리인을 送達受領人으로 지정하여 소송의 원활한 진행을 도모하여야 한다.

52) 借主는 분쟁의 해결에 있어서 그에 대한 최종판결이 確定的이고, 어느 나라에서든지 당해 판결에 대한 재판을 청구하여 이를 執行할 수 있다는 데 동의하고 있다.

53) 차주가 公示송달·최고에 대한 청구권을 포기한다는 내용이다.

further irrevocably waives any claim that New York is not a convenient forum for any such suit, action or proceeding.

21. Notices

Any notice required or permitted to be given hereunder shall be in writing and shall be (i) personally delivered; (ii) transmitted by postage prepaid mail or airmail, if international, or (iii) transmitted by telex or telefax to the parties as follows, as elected by the party giving such notice:

To the Borrower:

To the Lender:

The date of any notice or other communication hereunder shall be deemed to be (i) the date of receipt if delivered personally, (ii) the date ten (10) days after posting if transmitted by mail or (iii) the date of transmission with confirmed answerback if transmitted by telex or telefax,⁵⁴⁾ whichever shall first occur, *provided*, that any notice to be given to the Lender shall be effective only when received by the Lender. Any party may change its address for the purposes hereof by written notice to the other.

IN WITNESS WHEREOF,⁵⁵⁾ the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first written above.

Borrower:

By _____

Name:

Title:

Lender:

By _____

Name:

Title:

54) 通知의 효력발생 시기에 관하여는 到達주의를 원칙으로 하되, 郵便인 경우에는 우송후 10일, 텔렉스나 팩스는 착신(텔렉스의 경우 Answerback, 팩스의 경우 受信확인 메시지)을 확인한 후로 하였다. 특히 대주에 대한 통지는 대주가 이를 수령한 때 유효하다고 약정하고 있다.

55) 末尾문언(testimonium clause)은 본 계약서의 유효한 체결을 증명하기 위하여 양 당사자(그의 대리인)가 이에 서명 또는 기명날인(捺印證書의 경우)하였다는 내용으로 되어 있다.

Exhibit⁵⁶⁾ A : **Notice of Drawdown** [생략]

Exhibit B

Promissory Note⁵⁷⁾

Date⁵⁸⁾: (*Date of initial Drawdown*)

Amount: (*Amount of Commitment*)

For value received,⁵⁹⁾ XYZ Corp. (the "Borrower"), unconditionally promises⁶⁰⁾ to pay to the order of⁶¹⁾ ABC Bank (the "Lender"), for its account no. X12345, at ABC Bank, New York, the principal sum of United States Dollars⁶²⁾ Ten Million (US\$10,000,000) or such lesser amount⁶³⁾ as may be advanced by the Lender and endorsed below, pursuant to the terms of a loan agreement⁶⁴⁾ dated as of September 5, 1996 between the Borrower and the Lender (the "Loan Agreement"), to which reference is hereby made and which is incorporated herein by reference, in ten (10) equal (or as nearly equal as possible) semi-annual installments on the Repayment Dates (as defined in the Loan Agreement). Terms not defined herein have the meanings set forth in the Loan Agreement.⁶⁵⁾

The Borrower further promises to pay interest to the Lender on the unpaid balance hereof until paid in full at the rates and in the manner in accordance with the provisions of the Loan Agreement.

The principal of and interest on this Note shall be payable in lawful money of the United States of America (New York Clearing House funds or such other Dollar funds as may be determined by the Lender to be customary for the settlement of international banking

56) 계약서의 부속서류에는 Schedule(계약서 본문의 내용을 보완하는 별표·명세표), Exhibit(본문에서 언급된 일정한 양식의 별지 문서), Annex(본문과 관련된 부속서류), Appendix(부록으로 첨부된 별개의 문서) 등이 있는데 달리 정함이 없는 한 본 계약서의 일부를 구성한다. 일반적으로 Loan Agreement의 Exhibit로는 인출통지서, 약속어음, 법률의견서를 첨부하게 된다.

57) 約束어음은 표제 또는 어음면에 "Promissory Note"라는 표시가 있어야 한다.

58) 영미법상 어음要件은 아니지만 발행일, 발행지, 어음번호, 어음금액을 기재하는 것이 보통이다.

59) 어음행위자가 對價를 받고 有償으로 본건 어음행위를 하였음을 의미한다.

60) 無條件으로 지급약속을 하는 것이며 "subject to or governed by other agreement" 등의 문구가 있으면 무효가 된다.

61) 약속어음의 유통성(negotiability)을 보장하는 문구로서 "Pay to A, or order"라고도 한다.

62) 본건 어음금의 지급지 및 지급통화를 기재한다.

63) 어음금액은 일정 금액(certain amount)이거나 만기 전에 일정한 방법(예: 이자계산 방법)으로 이를 확정할 수 있어야 한다.

64) 본건 어음행위의 원인이 되는 계약관계(underlying agreement)를 가리킨다.

65) 어음상에 정의되지 않은 용어는 대출 계약서에서 규정한 대로 의미를 갖지만 이 어음의 效力이 대출 계약서에 의존한다는 것은 아니다.

transactions) and without set-off or counterclaim, free and clear of and without deduction for any present or future taxes, restrictions or conditions of any nature.⁶⁶⁾ If the Borrower is required to make any such deduction or withholding from any such payment, the Borrower shall pay such additional amounts as are provided in the Loan Agreement.⁶⁷⁾

In case an Event of Default shall occur, the principal of, and accrued interest on, this Note may be declared due and payable⁶⁸⁾ in the manner and with the effect provided in the Loan Agreement, presentment, demand, protest or notice of any kind⁶⁹⁾ being expressly waived by the Borrower except as provided in the Loan Agreement.

The Borrower hereby authorizes and empowers the Lender to acknowledge on its behalf by endorsement below the receipt by the Borrower of each Advance.⁷⁰⁾

This Note shall be governed by and interpreted in accordance with the laws of the State of New York, U.S.A., the place of payment hereunder.⁷¹⁾

By _____
 Name:
 Title:

Date of Drawdown	Amount of Advance	Principal of Note to Date	Acknowledgement of Borrower
------------------	-------------------	---------------------------	-----------------------------

Exhibit C : **Drawdown Certificate** [생략]

66) 원인이 되는 대출계약과 마찬가지로 원리금이 相計, 反訴, 각종 세금의 원천징수로 공제됨이 없이 지급되어야 한다는 문구이다.
 67) 만일 공제 또는 원천징수가 있는 경우에는 대출 계약에 따라 그러한 공제, 원천징수가 없었던 것만큼 해당금액을 추가부담(gross up)해야 한다.
 68) 채무불이행 사유가 있는 때에는 차주가 期限利益을 상실(acceleration)하고 어음의 제시, 청구, 지급거절이나 통지 없이 대출 계약에 정한 방법으로 원리금을 즉시 지급해야 한다는 의미이다.
 69) 어음 소지인의 지급제시, 청구, 지급거절, 통지 등 어음채권의 보전절차를 면제함으로써 채권자의 권리행사를 용이하게 하는 것이 보통이다.
 70) 대주로부터 자금인출이 있을 때마다 차주가 이를 수령하였음을 확인하는 권한을 이 어음에 背書함으로써 대주에게 위임하고 있다.
 71) 어음거래의 준거법은 지급이 행하여지는 뉴욕 州法으로 하는 것이 바람직하다.