CONSERVATION

Agreement between the
UNITED STATES OF AMERICA
and the PHILIPPINES

Signed at Manila September 19, 2002

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

PHILIPPINES

Conservation

Agreement signed at Manila September 19, 2002;
Entered into force November 1, 2002.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES CONCERNING THE ESTABLISHMENT OF A TROPICAL FOREST CONSERVATION FUND AND A TROPICAL FOREST CONSERVATION BOARD

The Government of the United States of America (U.S. Government) and the Government of the Republic of the Philippines (Government of the Philippines), hereinafter known as the Parties,

Seeking to facilitate the conservation, protection, restoration, and sustainable use and management of tropical forests, which provide a wide range of benefits to humankind,

Desiring to enhance the friendship and spirit of cooperation between the Parties;

Recognizing that rapid rates of tropical deforestation and forest degradation continue to be serious problems in many regions of the world,

Also recognizing that the alleviation of external debt can reduce economic pressures on countries and result in increased protection for tropical forests,

Further recognizing that economic benefits to local communities of sustainable uses of tropical forests are critical to the protection of tropical forests,

Wishing to ensure that resources freed from debt are targeted to the conservation of tropical forests,

Also *wishing* to further the Agreement Between the Government of the United States of America and the Government of the Republic of the Philippines Regarding the Reduction of a Certain Debt Owed to the Government of the United States and its Agencies of this date, hereinafter known as the Debt Reduction Agreement, which reduces certain debt owed the U.S. Government through the exchange of old obligations for a new obligation, known as the New Tropical Forest Conservation Act (New TFCA) Obligation,

Have agreed as follows:

ARTICLE I
PURPOSE

The purpose of this Agreement is to provide for the establishment of a Tropical Forest Conservation Fund and Administering Board in order to promote activities designed to conserve, maintain or restore the forests of the Philippines.

ARTICLE II
TROPICAL FOREST CONSERVATION FUND

1. The Government of the Philippines shall establish a Tropical Forest Conservation Fund, hereinafter known as the Fund, in accordance with its own laws. The Fund shall be administered by the Board established pursuant to Article III. Any monies deposited in the Fund, or grants made from the Fund, will be free from any taxation, levies, fees or other charges imposed by the Parties to the extent permissible by the laws of the Parties.

2. Subject to Article III(2) and Article IV(5) of the Debt Reduction Agreement, the Government of the Philippines shall ensure that the entire amount of interest falling due on the New TFCA Obligation on or after the entry into force of this Agreement is deposited in full in local currency in the Fund in accordance with the repayment schedule provided by the U.S. Government to the Government of the Philippines pursuant to the Debt Reduction Agreement.

3. Monies, in the form of local currencies or other currencies, from other sources, including but not limited to public and private creditors of the Government of the Philippines and voluntary contributions from the Government of the Philippines, other governments, and non-governmental entities may also be deposited into the Fund.

4. Amounts deposited shall be subject to the requirements and considerations of this Agreement. Subject to Article IX(3), deposits in the Fund made pursuant to Article II(2) shall be the joint property of the Government of the Philippines and the US Government until they are disbursed pursuant to the procedures set forth in Article VI. The Board and the fiscal agent shall develop a provision to be included in the grant agreements to address the recovery of funds misspent or misused by, and the return of any unused grant funds held by, a grantee in default.

5. The Government of the Philippines, in consultation with the U.S. Government, shall select a fiscal agent for the Fund who shall be charged with investment and disbursement of the monies in the Fund. The contract between the Government of the Philippines and the fiscal agent shall be concluded by the closing date as specified in Article II of the Debt Reduction Agreement and shall specify the relationship of the fiscal agent with the Board. The fiscal agent is responsible for promptly notifying the Board in writing when the Government of the Philippines makes a deposit in the Fund pursuant to paragraph 2 of this Article, or if a deposit is overdue.

6. Deposits in the Fund shall be prudently invested by the fiscal agent until disbursed. Returns on investment shall be deposited by the fiscal agent in the Fund until disbursed, pursuant to the procedures set forth in Article VI.

7. The fiscal agent shall make every effort to ensure that such investments yield a positive real rate of return within acceptable limits of risk. To accomplish this goal, the fiscal agent may be authorized by the Parties jointly to convert all or part of the monies in the Fund into U.S. dollars or other hard currencies for investment purposes. To the extent that prudent investment practices cannot accomplish this goal, the Government of the Philippines shall ensure that the

value of the deposits in the Fund is maintained in terms of an agreed price index. The fiscal agent shall provide periodic reports to the Board and the Parties on the status of investments.

ARTICLE III
ESTABLISHMENT AND COMPOSITION OF THE BOARD

1. The Government of the Philippines shall establish, in consultation with domestic nongovernmental entities with an interest in forests (such as local community organizations, and scientific, academic, and forestry organizations), in accordance with its laws a Tropical Forest Conservation Board, hereinafter known as the Board, to administer the Fund. The Board shall be discrete and separate from any existing Board, Commission, Foundation, or other entity.

2. The Board shall consist of nine members. It shall be composed of:

   A. Two representatives appointed by the U.S. Government;
   B. Two representatives appointed by the Government of the Philippines; and
   C. Five representatives of a broad range of nongovernmental forest-related interests within the Philippines, including representatives from:
      (i) environmental nongovernmental organizations;
      (ii) local community development nongovernmental organizations;
      (iii) scientific, academic, and/or forestry organizations.

3. The representatives under Article III(2)(C) shall constitute a majority of the members of the Board. They shall be named to the Board by the Government of the Philippines in consultation with a range of domestic nongovernmental entities in the Philippines and with the consent of the U.S. Government.

4. Board members named pursuant to Article III(2)(A) and (B) shall serve *ad honorem* and at the discretion of the naming Party. Board members described in Article III(2)(C) shall serve *ad honorem*, except as provided in Article IV(9), and in their expert capacity for a four (4) year term, and may be removed prior to the end of their term only for malfeasance. A member shall be permitted to serve consecutive terms if both Parties agree.

5. A Board member may not participate in the approval of any proposed grant which, if approved, would result in a financial benefit for the member, any member of his family, an organization which employs the member or with which the member has an affiliation, or an organization in which the member or any member of his family has a direct financial interest. Further, a Board member may not participate in the approval of any proposed grant to an organization which the member represents.

ARTICLE IV
FUNCTIONS OF THE BOARD

1. The Board shall be responsible for administration and management of the Fund and disbursements from the Fund to support eligible activities, and for oversight of activities financed from the Fund, pursuant to this Agreement. The

Government of the Philippines, in consultation with the U.S. Government, shall ensure that the Board has the necessary authority to carry out the functions assigned to it in this Agreement.

2. The Board shall:

A. issue and widely disseminate a public announcement on the call for grant applications which states the purpose of the fund, eligible activities and applicants in accordance with Article V, the criteria for the selection of grant recipients, the schedule of the grants process, and any other procedural and format requirements established by the Board;

B. receive applications for grants from entities described in Article V(2) and award grants to such entities for activities consistent with Article V(1) on the basis of evaluating applications for their merits and chances of success;

C. publicly announce grants awarded by the Board;

D. develop with each grant recipient a Grant Agreement, which outlines the terms of the grant;

E. present the following to the Parties annually according to a schedule to be mutually agreed upon by the Parties:

(1) a plan and annual budget for approval of the Parties showing prospective activities, including expected administrative and program costs. The first such plan and budget are to be presented within three (3) months from the date of the Board's establishment;

(2) a report on grant activities for the previous year, including multi-year activities funded by the Board, which shall include for each grant awarded, information as to the grant recipient, grant amount, activity funded, and status of implementation, as well as information on the status of audits of randomly selected grants; and

(3) a financial audit in accordance with generally accepted international standards by an independent auditor, covering the previous program year, the first such audit to be presented one (1) year from the date of the Board's establishment or at such time as $1 million in grants has been disbursed, whichever comes first.

F. hire an executive director to coordinate and execute with the guidance of the Board all necessary actions required for the adequate functioning of the Board, including the hiring of necessary support staff with the approval of the Board.

3. Proposed grants with a life-of-project total in excess of $100,000 endorsed by the Board shall be presented by the Board to both Parties. If either Party disapproves such a grant, that Party must notify the Board of its disapproval, in which case the Board shall not award the proposed grant. Proposed grants not disapproved by either Party within thirty (30) Philippine business days of presentation to the

Parties members on the Board shall no longer be subject to either Party's disapproval.

4. The Board shall adopt by majority vote bylaws and procedures for its operation, which shall be subject to the approval of the Parties. No disbursements pursuant to Article VI may be made prior to the adoption of these procedures.

5. The Board shall approve procedures and schedules for the grant process, including procedures and schedules relating to public announcements, grant applications and review, monitoring, and auditing.

6. The Board shall establish and make public selection criteria for awarding grants, which should include means for evaluating the merits of an application and the chances of success of proposed activities.

7. The Board shall monitor performance under grant agreements to determine whether time schedules and other performance goals are being achieved. Grant agreements shall provide for periodic progress reports from the grantee to the Board. Such reports will review all activity components essential to the successful achievement of the goals of the activity.

8. The Board shall meet at least once every three (3) months.

9. The Board may draw sums from the Fund necessary to pay for reasonable administrative expenses of the Board, including the audit required pursuant to paragraph (2)(E)(3) of this Article. Board members appointed under Article III (2)(C) of this Agreement may be compensated from the Fund only for travel expenses and reasonable per diem. Such expenses incurred by Board members appointed under Article III (2)(A) and (B) shall be borne by the respective Party. Administrative expenses shall not exceed a ceiling established by the Parties and adjusted as needed, taking into account anticipated administrative expenses and funds available in the Fund. The initial ceiling will be established within one hundred twenty (120) Philippine business days of the entry into force of the Agreement.

10. The Board's bylaws, written policies, operating procedures, summaries of proceedings, books, records, reports, and any organizing statutes shall be retained in the files of the Board. A permanent record shall also be maintained of the decision criteria used in the award of each grant. The Board shall make available for easy public inspection its bylaws, written policies, operating procedures, summaries of proceedings, and decision criteria used in the award of each grant. Upon request, authorities of either Party shall be granted access to all Board documents, including minutes of meetings, books, records, and reports.

ARTICLE V
ELIGIBLE ACTIVITIES AND GRANT RECIPIENTS

1. Amounts deposited in the Fund shall be used to provide grants to conserve, maintain, or restore tropical forests in the Philippines through one or more of the following eligible types of activities:

A. Establishment, restoration, protection and maintenance of parks, protected areas, and reserves. Such activities could include, for example, demarcation of protected forest areas and indigenous reserves, establishment of new or expanded protected forests and buffer zones, identification of unique or representative forest areas, or inventory and protection of areas featuring species richness and high levels of endemism.

B. Development and implementation of scientifically sound systems of natural resource management including land and ecosystem management practices. Such activities could include, for example, development and implementation of scientifically sound systems of forest land and forest resources management; forest resources assessment and inventory; land and resource use monitoring and evaluation; application of criteria and indicators for forest conservation and sustainable management; development and implementation of forest management information systems; development and implementation of watershed ecosystem management and community based forest management strategies; adoption of research-based forest technologies; plantation establishment of degraded lands; natural forest regeneration, rehabilitation and management; or testing and application of silvicultural techniques.

C. Training programs to increase scientific, technical and managerial capacities of individuals and organizations involved in forest conservation efforts. Such activities could include, for example, short-term training courses, internships and study tours; development of community extension services; environmental education and public awareness programs; enhancement of university curricula in forest management or conservation biology; or education and training to develop capacity of local nongovernmental organizations.

D. Restoration, protection, or sustainable use of diverse animal and plant species. Such activities could include, for example, rehabilitation of degraded forests; sustainable hunting, fishing, animal farming; improvement of forest health and vitality and relevant research and development; efforts to assess and address problems of forest law enforcement and associated illegal practices.

E. Research and identification of medicinal uses of tropical forest plant life to treat human diseases, illnesses and health related concerns. Such activities could include, for example, ethnobotany studies; sample collection and analysis; or technical document preparation, publication and dissemination.

F. Development and support of the livelihoods of individuals living in or near a tropical forest in a manner consistent with protecting such a tropical forest. Such activities could include, for example, development of community-based and women's enterprises and other environmentally friendly livelihood enterprises involving wood or non-wood products; application of low impact logging practices; or development of multiple-use tree species outside natural forests.

2. Recognizing in particular the urgent need to conserve the remaining forests of the Philippines, especially coastal forest resources, the Parties intend to devote special attention to eligible activities related to coastal forest resource management and protection, including combating illegal logging and developing sustainable community-based enterprises.

3. Entities in the Philippines which shall be eligible to receive grants from the Fund are:

   A. Nongovernmental environmental, forestry, conservation, and indigenous people organizations of, or active in, the Philippines, including those involved in development, education, science research, or forest management;

   B. Other appropriate local or regional entities of, or active in, the Philippines.

   C. In exceptional circumstances, the Government of the Philippines.

4. In providing grants, priority shall be given to projects that are run by nongovernmental organizations and other private entities and that involve local communities in their planning and execution.

5. Grants shall be awarded within the financial capacity of the Board and strictly on the merits of proposals presented to the Board and the chances of success of proposed activities, without regard to whether the applicant does or does not have representation in the Board.

ARTICLE VI
DISBURSEMENT OF FUNDS

1. The Board shall instruct the fiscal agent appointed pursuant to Article II (5) to disburse grant monies from the Fund to entities selected to receive grants pursuant to Article V. All disbursements shall be made pursuant to a Grant Agreement.

2. The fiscal agent of the Fund appointed pursuant to Article II (5) shall make disbursements promptly to designated recipients in accordance with directions received from the Board. In no case shall more than ten (10) Philippine business days elapse between the fiscal agent's receipt of a direction for disbursement and actual disbursement of funds.

ARTICLE VII
DISPUTE RESOLUTION AND REVIEW

1. Upon the written request of either Party, the Parties shall consult each other concerning the implementation or interpretation of this Agreement. These consultations shall be completed within sixty (60) Philippine business days as defined in the Debt Reduction Agreement after a request for consultations is received from the other Party.

2. Consultations between the Parties concerning the interpretation or implementation of this Agreement may be conducted through written submissions between the Department of State of the U.S. Government and the Department of Finance of the Government of the Philippines. Unless the U.S. Government otherwise notifies the Government of the Philippines, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs shall be the contact point in the Department of State. Unless the Government of the Philippines otherwise notifies the U.S. Government, the Secretary of Finance shall be the contact point in the Department of Finance.

3. Either Party may request consultations with the Board and the other Party after reviewing the Boards reports and audits presented pursuant to Article IV. Such request shall be made in writing. These consultations shall be completed within sixty (60) Philippine business days after a request for consultations is received from the other Party.

4. The Parties shall meet to review the operation of this Agreement one (1) year from the date of its entry into force, and periodically thereafter as the Parties so agree.

ARTICLE VIII
SUSPENSION OF DISBURSEMENTS

1. If at any time either of the Parties determines that any issue requiring consultation under Article VII has not been satisfactorily resolved, such Party may notify the other in writing.

2. Notwithstanding any other provisions of this Agreement, upon receipt of such written notification from the U.S. Government, the Government of the Philippines shall immediately suspend disbursements to be made under Article VI.

3. Notwithstanding any other provisions of this Agreement, upon providing such written notification to the U.S. Government, the Government of the Philippines may immediately suspend disbursements to be made under Article VI.

4. Suspension of disbursements pursuant to paragraph 2 or 3 above shall mean that no further approval of grants shall be undertaken until the Parties have agreed to resume such activity. However, disbursements pursuant to already approved grant agreements shall proceed unless the specific grant agreement is suspended pursuant to the terms of the grant agreement.

5. Should the Parties jointly certify in writing to the Board that the manner in which a grant agreement was awarded was inconsistent with Article III(5), Article IV(2), Article IV(3), Article IV(6), Article V(1), Article V(3), Article V(5), or the operating procedures of the Board, the Parties may require the Board to suspend disbursements under that grant agreement. Should disbursements be so suspended, no further approval of any grants shall be undertaken until both Parties agree to resume such activity.

6. If the Government of the Philippines fails to require that the Board suspend disbursements made under Article VI within seven (7) Philippine business days of receiving written notification from the U.S. Government ("the Notification Period"), the U.S. Government may, at its discretion, direct the Government of the Philippines to freeze the Fund until both Parties jointly confirm in writing that the issues that led to freezing of the Fund have been resolved.

ARTICLE IX
TERMINATION

1. Either Party may terminate this Agreement upon six (6) months' written notice to the other Party.

2. No disbursements from the Fund shall occur after a Party has given notice to terminate the Agreement, unless the parties expressly agree in writing to permit disbursements pursuant to specific grant agreements concluded before notice to terminate is given. The termination of the Agreement shall not prevent expenditures of funds disbursed before notice to terminate is given.

3. Upon termination of this Agreement, amounts generated by the Debt Reduction Agreement remaining in the Fund (including accrued interest traceable to deposits under the Debt Reduction Agreement) shall be converted into United States dollars and paid to the U.S. Treasury Account referred to in the Debt Reduction Agreement.

ARTICLE X
ENTRY INTO FORCE, AMENDMENT AND OTHER ARRANGEMENTS

1. This Agreement shall enter into force thirty (30) Business Days (as defined in the Debt Reduction Agreement) after signature and shall remain in force unless terminated by the Parties in accordance with Article IX.

2. This Agreement may be amended by written agreement of the Parties.

3. Nothing in this Agreement shall prejudice other arrangements between the Parties concerning debt reduction or cooperation and assistance for tropical forest conservation purposes.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Manila, Philippines this 19th day of September 2002, in duplicate in the English language.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

JOSEPH P. MUSSOMELI
Deputy Chief of Mission
U.S. Department of State

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

JOSE ISIDRO N. CAMACHO
Secretary
Department of Finance

Witnesses:

MICHAEL J. YATES
Director
U.S. Agency for International Development

HEHERSON T. ALVAREZ
Secretary
Department of Environment and Natural Resources