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A.I.D. Loan Number 615-T-008

6150160/37

LOAN AGREEMENT

Among

The Republic of Kenya

and

The Agricultural Finance Corporation

and the

United States of America

for

Kenya Livestock Development

Date: September 11, 1974

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ANNEX A	Project Description	

LOAN AGREEMENT dated September 11, 1974, among the Republic of Kenya ("Borrower"), the Agricultural Finance Corporation ("AFC"), and the United States of America acting through the Agency for International Development ("A.I.D.").

ARTICLE I

The Loan

SECTION 1.01. The Loan. A.I.D. agrees to lend to the Borrower pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed nine million six hundred thousand (\$9,600,000) United States dollars ("Loan") to assist the Borrower and AFC in carrying out the Project described in Section 1.02 ("Project"). The Loan shall be used exclusively to finance United States dollar costs ("Dollar Costs") and local currency costs ("Local Currency Costs") of goods and services required for the Project. The aggregate amount of disbursements under the Loan is hereinafter referred to as "Principal".

SECTION 1.02. The Project. The Project comprises a portion of a multilateral project to be financed by the Governments of Canada, Kenya, and the United Kingdom, together with A.I.D. and the International Development Association ("I.D.A."). The Project to be financed jointly by Borrower and A.I.D. shall consist of three parts or sub-projects (hereinafter referred to as Project Part A, Project Part C and Project Part F(111) in conformity with the I.D.A. Credit Agreement for the Second Livestock Development Project) which are more specifically described, as follows:

Project Part A shall consist of Borrower's relending to AFC a portion of the proceeds of the Loan ("Reloan") and the onlending ("Sub-loans") by AFC, to ranching enterprises ("Sub-Borrowers") of these funds together with other funds as may be provided by Borrower or AFC for Subloans under this Agreement, and shall include administrative activities related to such AFC onlending.

Project Part C shall consist of goods and services to assist the development and improvement of livestock grazing areas and livestock production in the North Eastern Province of Kenya.

Project Part F(111) shall consist of consultant studies for the meat processing industry in Kenya.

The Project is more fully described in Annex A, attached hereto, which Annex may be modified in writing. The goods and services to be financed under the Loan shall be listed in the Implementation Letters referred to in Section 9.03 ("Implementation Letters").

SECTION 1.03. Use of Funds Generated by Other United States Assistance. The Borrower shall use for the Project, in lieu of any United States dollars that would otherwise be disbursed under the Loan to finance the Local Currency Costs of the Project, any currencies other than United States dollars that may become available to the Borrower after the date of this Agreement in connection with assistance (other than the Loan) provided by the United States of America to the Borrower to the extent and for the purposes that A.I.D. and the Borrower may agree in writing. Any such funds used for the Project shall reduce

the amount of the Loan (to the extent that it shall not then have been disbursed) by an equivalent amount of United States dollars computed, as of the date of the agreement between A.I.D. and the Borrower as to the use of such funds, using the most favorable exchange rate to the dollar then lawfully existing in Kenya.

ARTICLE II

Loan Terms

SECTION 2.01. Interest. The Borrower shall pay to A.I.D. interest which shall accrue at the rate of two percent (2%) per annum for ten (10) years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement (as such date is defined in Section 7.04), and shall be computed on the basis of a 365-day year. Interest shall be payable semiannually. The first payment of interest shall be payable no later than six (6) months after the first disbursement hereunder on a date to be specified by A.I.D.

SECTION 2.02. Repayment. The Borrower shall repay to A.I.D. the Principal within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semiannual installments of Principal and Interest. The first installment of Principal shall be payable nine and one-half (9½) years after the date on which the first payment is due in accordance with Section 2.01. A.I.D. shall

provide the Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

SECTION 2.03. Application, Currency, and Place of Payment. All payments of interest and Principal by the Borrower hereunder shall be made in United States dollars and shall be applied first to the payment of interest due and payable and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, all such payments shall be made to the Office of Financial Management, Agency for International Development, Washington, D. C., U.S.A., and shall be deemed made when received by the Office of Financial Management.

SECTION 2.04. Prepayment. Upon payment of all interest and refunds then due and payable, the Borrower may prepay, without penalty, all or any part of the Principal. Any such prepayment shall be applied to the installments of Principal in the inverse order of their maturity.

SECTION 2.05. Renegotiation of the Terms of the Loan. The Borrower agrees to negotiate with A.I.D., at such time or times as A.I.D. may request, an acceleration of the repayment of the Loan in the event that there is any significant improvement in the internal and external economic and financial position and prospects of Kenya.

ARTICLE III

Re loans and Subloans (Project Part A)

SECTION 3.01. Reloan. The Borrower agrees to reloan to AFC all of the Loan funds allocated for Part A by this Agreement in accordance

with the terms and conditions hereof and of a Reloan Agreement between the Borrower and AFC to be approved by A.I.D. in writing prior to execution, and in accordance with such procedures as may be specified in Implementation Letters. Upon approval by A.I.D. and the execution of such Reloan Agreement, the Borrower agrees to enforce such Agreement in accordance with the terms thereof. As shall be stated in such Reloan Agreement, AFC shall repay Principal and shall pay interest to the Borrower in such currency as is, at the time of payment, legal tender in the Republic of Kenya. AFC will pay the Borrower interest at a rate of three percent (3%) per annum on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement. AFC shall repay the Principal and shall pay all accrued interest within twenty (20) years from the date of the first disbursement under the Reloan Agreement in approximately equal semiannual installments. The first installments of Principal shall be due five (5) years after the first disbursement, thus giving AFC a five-year grace period on the repayment of Principal. No amendments or material modification shall be made in the Reloan Agreement without the prior written consent of A.I.D.

SECTION 3.02. Subloans.

(a) The Borrower and AFC agree that AFC using Reloan funds, shall promptly and effectively make Subloans to Sub-Borrowers in accordance with such terms, rates and procedures as may be specified in Implementation Letters and in the Reloan Agreement.

(b) Except as A.I.D. may otherwise agree in writing, Subloans shall be made on the following conditions:

(1) Sub-Borrowers shall pay interest on the outstanding Subloan balance and on any due and unpaid interest at a rate not less than eight percent (8%) per annum;

(2) Each Subloan shall be repayable and all accrued interest thereon shall be payable within a period not to exceed ten (10) years from the date of first disbursement under the respective Subloan;

(3) AFC shall permit individual Sub-Borrowers a grace period not to exceed three (3) years during which interest only shall be paid.

SECTION 3.03. Subloan Policy. With the exception of the specific provisions contained herein and in the Reloan Agreement, the Borrower shall take steps to assure that AFC shall, and AFC agrees to, make Subloans in accordance with all statutes, charters, interest rate structures, rules, regulations, policies and procedures ("standards") that are approved by the Borrower. Further, the Borrower shall take steps to assure that AFC shall, and AFC agrees to, not apply new standards in any Subloan Agreement without the written consent of the Borrower.

ARTICLE IV

Conditions Precedent to Disbursement

SECTION 4.01. Conditions Precedent to Initial Disbursement.

Prior to the first disbursement or to the issuance of the first Letter

of Commitment under the Loan, the Borrower shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) An opinion of the Borrower's Attorney General that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;

(b) A statement of the names of the persons holding or acting in the office of the Borrower specified in Section 9.02, and a specimen signature of each person specified in such statement;

(c) Evidence of the source and availability of funds for the Borrower's contribution required by Section 5.10(a), together with detailed evidence of the budgeting or commitment and ready availability of funds necessary to meet the Borrower's anticipated obligations for project activities during the Borrower's fiscal year of 1974/75.

(d) Evidence that all conditions to the effectiveness of the I.D.A. "Development Credit Agreement" (Second Livestock Development Project), other than the effectiveness of this Agreement, have been satisfied, together with an executed copy of said I.D.A. agreement.

SECTION 4.02. Additional Conditions Precedent to Disbursement (Project Part A). Prior to the first disbursement or to the issuance of the first Letter of Commitment under the Loan, in connection with Project Part A, AFC shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) An opinion of the chief legal counsel of AFC or of other counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of AFC and that it constitutes a valid and legally binding obligation of AFC in accordance with all of its terms;

(b) The name of the person or persons who will act as representative or representatives of AFC pursuant to Section 9.02 together with evidence of his or their authority and a specimen signature of each person, certified as to its authenticity;

(c) Opinion of legal counsel satisfactory to A.I.D. that AFC has been duly organized or created under the laws of Kenya, that AFC has taken all corporate and legal actions under the laws and regulations of Kenya and has full power, without legal inhibition, essential to the effective implementation of the Project Part A, and that its performance of obligations under the Reloan Agreement will not conflict with, or result in any violation of, any applicable franchise, concession, license, permit, decree, order, statute, ordinance, or regulation.

(d) Certified copies of the charter, bylaws, statutes, and other documentation governing the operations of AFC, including the interest rate structure, rules, regulations, policies, and procedures to be used in making Subloans and copies of AFC's Subloan form, if any, and such other information as A.I.D. may reasonably request.

SECTION 4.03. Conditions Precedent to Additional Disbursement
(Project Part C). Prior to any disbursement or to the issuance of any

Letter of Commitment under the Loan, in connection with Project Part C for the purpose of financing the procurement of equipment, the Borrower shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) Evidence of satisfactory arrangements for equipment servicing and purchasing of spare parts, including establishment of a separate logistic and accounting section for North Eastern Province range water development within the Ministry of Agriculture's Water Department;

(b) Evidence that an equipment maintenance program will be undertaken, including guidelines for maintenance of equipment;

(c) An equipment utilization schedule, including a firm plan for the first year of Project implementation and a projected plan for succeeding project years.

SECTION 4.04. Conditions Precedent to Additional Disbursement (Project Part F(111)). Prior to any disbursement or to the issuance of any Letter of Commitment under the Loan in connection with Project Part F(111), the Borrower shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D., an executed contract or contracts with a consulting firm or firms acceptable to A.I.D.

SECTION 4.05. Terminal Dates for Meeting Conditions Precedent to Disbursement.

(a) If all the conditions specified in Section 4.01 shall not have been met within three (3) months from the date of this Agreement,

or such later date or dates as A.I.D. may agree to in writing, A.I.D. at its option, may terminate this Agreement by giving written notice to the Borrower and AFC. In the event of such a termination, this Agreement and all the obligations of the parties hereto shall terminate.

(b) Except as A.I.D. may otherwise agree in writing:

(1) If the conditions specified in Section 4.02 shall not have been satisfied within three (3) months from the date of this Agreement; or

(2) If the conditions specified in Section 4.03 shall not have been satisfied within six (6) months from the date of this Agreement; or

(3) If the conditions specified in Section 4.04 shall not have been satisfied within one (1) year from the date of this Agreement; then A.I.D. may terminate this Agreement by giving notice to the Borrower, and AFC in respect to Section 4.02 conditions; provided, however, that termination resulting from the failure to meet conditions specified in Sections 4.02, 4.03, and 4.04 shall be effective only as to that Part of the Project to which the unsatisfied condition or conditions apply, and such termination shall not affect disbursements in support of other Parts of the Project for which all conditions have been timely satisfied. Upon the giving of such notice, this Agreement, or that portion thereof so affected, and all obligations of the parties hereto with respect to such affected portions and Parts of the Project shall terminate.

SECTION 4.06. Notification of Meeting Conditions Precedent to Disbursement. A.I.D. shall notify the Borrowers, and AFC in the case of Section 4.01 and Section 4.02 conditions, upon determination by A.I.D. that the conditions precedent to disbursement specified in Sections 4.01, 4.02, 4.03 and 4.04 have been met.

ARTICLE V

Covenants and Warranties

SECTION 5.01. Execution of the Project. AFC, with respect to Project Part A, and the Borrower shall carry out the Project with due diligence and efficiency and in conformity with sound financial and administrative practices. It is the understanding of the parties hereto that Borrower bears the primary responsibility for fulfilling the representations, warranties and covenants herein, despite the fact that in regard to Project Part A, AFC and the Sub-Borrowers may be in a direct position to effect the performance of such undertakings. Accordingly, the Borrower agrees to take such steps as may be reasonable, necessary and proper to insure the due and faithful performance of such undertakings by AFC and Sub-Borrowers. Included among the obligations hereunder shall be the forwarding to AFC and the enforcement of various A.I.D. determinations and Implementation Letters made or issued pursuant hereto.

SECTION 5.02. Continuing Consultation. The Borrower, and AFC in regard to Project Part A, and A.I.D. shall from time to time, at the request of any party, exchange views through their representatives

with regard to the progress of the Project, the performance by the Borrower and AFC of their obligations under this Agreement and the Reloan Agreement and other matters relating to the Project.

SECTION 5.03. Disclosure of Material Facts and Circumstances.

The Borrower represents and warrants that all facts and circumstances disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Loan are accurate and complete, and there has been disclosed to A.I.D. accurately and completely, all facts and circumstances that might materially affect the Project and the discharge of the Borrower's obligations under this Agreement. The Borrower agrees to promptly inform A.I.D. of any facts and circumstances that may hereafter arise that might materially affect, or that it is reasonable to believe might materially affect, the Project or the discharge of the Borrower's obligations under this Agreement.

SECTION 5.04. Commissions, Fees and Other Payments.

(a) The Borrower warrants and covenants that in connection with obtaining the Loan, or taking any action under or with respect to this Agreement or the Reloan Agreement, it has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid nor will there be paid or agreed to be paid by any other person or entity, commissions, fees or other payments of any kind, except as regular compensation to the Borrower's full-time officers and employees or as compensation for bonafide professional, technical or comparable services to which it is a party or of which it has knowledge (indicating whether

such payment has been made or is to be made on a contingent basis), and if the amount or any such payment is deemed unreasonable by A.I.D., the same shall be adjusted in a manner satisfactory to A.I.D.

(b) The Borrower warrants and covenants that no payments have been or will be received by the Borrower, or any official of the Borrower, in connection with the procurement of goods and services financed hereunder, except fees, taxes or similar payments legally established in Kenya.

SECTION 5.05. Maintenance and Audit of Records. The Borrower shall maintain or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating to the Project, this Agreement and the Reloan Agreement.

(a) AFC shall maintain in regard to Project Part A, books and records which shall, without limitation, be adequate to show:

- (i) the receipt and use made of the Loan funds disbursed to AFC;
- (ii) the nature and extent of solicitations of prospective suppliers of goods and services to be furnished under Subloans;
- (iii) the eligibility of the Sub-Borrowers receiving the Subloans, including the economic, technical and financial analysis made by AFC with respect to each application for a Subloan which is subsequently financed in whole or in part by the Loan; and
- (iv) the financial conditions of AFC and the Sub-Borrowers, including those in default of payment of interest or repayment of Principal, and the progress of the Project.

(b) The Borrower's books and records, in regard to Project Part C and Project Part F(iii), shall, without limitation, be adequate to show:

- (i) the receipt and use made of goods and services acquired with the funds disbursed pursuant to this Agreement;
- (ii) the nature and extent of solicitations of prospective suppliers of goods and services acquired;
- (iii) the basis for the award of contracts and orders to successful bidders; and
- (iv) the progress of the Project.

Such books and records shall be regularly audited, in accordance with sound auditing standards, for such periods and at such intervals as A.I.D. may require and shall be maintained for five (5) years after the date of the last disbursement by A.I.D. or until all sums due A.I.D. under this Agreement have been paid, whichever date shall occur first.

SECTION 5.06. Reports. The Borrower, and AFC with regard to Project Part A, shall furnish to A.I.D. such information and reports relating to the Loan, to the Reloan, to the Subloans and to the Project as A.I.D. may reasonably request.

SECTION 5.07. Inspection and Audit. The authorized representatives of A.I.D. shall have the right at all reasonable times to inspect and audit the carrying out of the Project, the utilization of all goods and services financed under the Loan, the use of the proceeds of the Reloan and the Subloans and the Borrower's and AFC's books, records and other documents relating to the Project, the Loan, the Reloan and the Subloans. The Borrower and AFC shall each cooperate with A.I.D. to

facilitate such inspections and audits and the Borrower shall permit representatives of A.I.D. to visit any part of Kenya for any purpose relating to the foregoing.

SECTION 5.08. Continuance of Representation and Materials Furnished to Satisfy Conditions Precedent. Unless A.I.D. otherwise agrees in writing, the Borrower and AFC shall continue in force and effect for the life of this Agreement, exactly as originally made or furnished, any representation made or opinion or agreement furnished to satisfy a Condition Precedent under this Agreement.

SECTION 5.09. Taxation. This Agreement, the Reloan Agreement, the Loan, the Reloan and any evidence of indebtedness issued in connection therewith shall be free from, and the principal and interest under the Loan and the Reloan shall be paid without deduction for and free from any taxation or fees imposed under the laws in effect within Kenya. No taxes, tariffs, duties or levies of any nature whatsoever shall be paid with funds provided under the Loan. To the extent that (a) any contractor, including any consulting firm, any personnel of such contractor financed hereunder, and any property or transactions relating to such contracts and (b) any commodity procurement transaction financed under the Loan are not exempt from identifiable taxes, tariffs, duties and other levies imposed under the laws in effect in Kenya, the Borrower shall, as and to the extent prescribed in and pursuant to Implementation Letters, pay or reimburse the same under Section 5.10(b) of this Agreement with funds other than those provided under the Loan.

SECTION 5.10. Funds and Other Resources to be Provided by the Borrower.

(a) The Borrower agrees to make contributions, in cash or kind, to Project Part A, equal in value to at least five hundred thirty thousand (U.S.\$530,000) United States dollars. The Borrower further agrees to make contributions either in cash or kind, to Project Part C which equal in value at least three million seven hundred thousand (U.S.\$3,700,000) United States dollars. Except as A.I.D. may otherwise specify in writing, such contributions in whole or in part, may be provided to meet operational, administrative or capital costs of Project Part A and Project Part C.

(b) In addition to its required contribution under Section 5.10(a) hereof, the Borrower shall provide promptly as needed, all funds, in addition to the Loan, and all other resources required for the punctual and effective carrying out of the Project.

SECTION 5.11. Management. The Borrower, and AFC in regard to Project Part A, shall provide qualified and experienced management for the Project and shall train staff as may be appropriate for the maintenance and operation of the Project.

SECTION 5.12. Operation and Maintenance. The Borrower shall operate, maintain and repair Project Part C and all facilities, structures and goods provided in connection therewith in conformity with sound engineering, financial, administrative and livestock management practices and in such manner as to ensure the continuing and successful achievement of the purposes of Project Part C.

SECTION 5.13. Utilization of Goods and Services.

(a) Goods and services financed under the Loan shall be used exclusively for the Project, except as A.I.D. may otherwise agree in writing. Upon completion of the Project, or at such other time as goods financed under the Loan can no longer usefully be employed for the Project, the Borrower may use or dispose of such goods in such a manner as A.I.D. may agree to in writing prior to such use or disposition.

(b) Except as A.I.D. may otherwise agree in writing, no goods or services financed under the Loan shall be used to promote or assist any foreign-aid project or activity associated with or financed by any country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

SECTION 5.14. Investment Guaranty Project Approval by the Borrower. Any construction work to be financed under the Agreement is hereby stated to be a project approved by the Government of Kenya pursuant to the agreement between the Government of Kenya and the Government of the United States of America on the subject of investment guaranties under that agreement covering a contractor's investment in that project.

SECTION 5.15. Organization, Authority and Operation of AFC. With regard to Project Part A, Borrower and AFC represent, warrant and agree as follows:

(a) AFC is a duly organized entity existing in good standing under the laws of Kenya;

(b) there are no pending or threatened actions or proceedings before any court or administrative agency which materially and adversely affect the financial conditions or operations of AFC;

(c) the operations and affairs of AFC are and will be conducted with due diligence and efficiency and in accordance with sound technical, administrative and financial practices, in conformity with the laws of Kenya and in conformity with the statutes, charter, by-laws, regulations, policies and procedures and any other information submitted to A.I.D. pursuant to Section 4.02(d) hereof;

(d) Borrower and AFC will inform A.I.D. in writing of any change in the nature of the operations of AFC or of any material modification of the statutes, charter, by-laws, rules, regulations and policies which adversely affect the ability and willingness of AFC to fulfill its obligations hereunder;

(e) the consolidated financial report for AFC as of March 31, 1974, and the related revenue and expenditure statement for the year then ended (copies of which will be furnished to A.I.D.) correctly sets forth the financial condition of AFC as of such date and the results of its operations for such year, and since the date of the said balance sheet there has been no materially adverse change in the financial condition of AFC.

SECTION 5.16. AFC Activities. In regard to Project Part A, AFC agrees:

(a) to use its best efforts to abstain from buying cattle for resale to Sub-Borrowers or acting as agent or broker in cattle purchases by Sub-Borrowers; provided, however, in regard to proposed transactions in which AFC considers it necessary to buy cattle or to act as agent or broker, AFC shall publicly and widely advertise its cattle requirements, if A.I.D., after consultation with AFC, so requires;

(b) to use its best effort to encourage Group Ranch Chairmen, their representatives or Ranch Managers to be present at and actively participate in cattle purchases financed under the Subloans.

The Borrower agrees to assure that AFC complies with the obligations specified in this Section 5.16.

SECTION 5.17. Range Development Activities. The Borrower with regard to Project Part C, agrees:

(a) to reconstruct, as required to maintain range carrying capacity, pre-existing pans located within or adjacent to the North Eastern Province and completed prior to the commencement of activities under Project Part C;

(b) to take necessary steps to control the extent of livestock grazing on any overgrazed or improperly utilized range land in the North Eastern Province and to maintain in force such laws and acts as may be necessary and proper for the performance of its obligations under this Section 5.17(b);

(c) that no more than twenty percent (20%) of the livestock or meat products generated annually by Project Part C will be exported

for use or consumption in the United States of America during the life of the Loan;

(d) to operate and maintain reservoirs and boreholes in the North Eastern Province and to use its best efforts to establish a program or operating procedure under which costs of such operation and maintenance will be recovered from the water users;

(e) to prepare and approve applicable range block management plans prior to the development of each individual grazing block;

(f) to implement as far as practicable, subject to evaluation and approval by A.I.D. and Borrower, the recommendations of A.I.D.-financed range management consultants;

(g) to improve and maintain access roads to the range areas in the North Eastern Province as necessary for project implementation and livestock operations;

(h) to actively employ the Ministry of Agriculture Livestock Marketing Division, or any successor organization, in livestock marketing operations in the North Eastern Province, until it is mutually determined by the Borrower and A.I.D. that the services of the Livestock Marketing Division are no longer necessary for the successful continuance of such livestock marketing;

(i) to provide a Field Supervisor for the Ministry of Agriculture range water construction operations in the North Eastern Province.

SECTION 5.18. I.D.A. Credit Agreement. The Borrower and AFC represent and warrant that they are in compliance with respectively

the I.D.A. Development Credit Agreement and the I.D.A. Project Agreement for the Second Livestock Development Project and agree that they shall continue to comply with the terms, conditions and covenants of such I.D.A. Agreements, respectively.

ARTICLE VI

Procurement

SECTION 6.01. Procurement from Code 941 Countries. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Section 7.01 shall be used exclusively to finance the procurement for the Project of goods and services having their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into therefor. Ocean shipping shall qualify as an eligible service provided the vessel furnishing the transportation service is registered in a country included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

SECTION 6.02. Procurement from Kenya and Code 941 Countries. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Section 7.02 shall be used exclusively to finance the procurement for the Project of goods and services having their source in Kenya and their origin in Kenya or any other country included in A.I.D. Geographic Code 941 as in effect at the time orders are placed or contracts are entered into therefor.

SECTION 6.03. Eligibility Date. Except as A.I.D. may otherwise agree in writing, no goods or services procured pursuant to orders placed or contracts entered into prior to the date of this Agreement and no Subloans for which AFC has disbursed funds prior to the date of this Agreement may be financed under the Loan.

SECTION 6.04. Goods and Services not Financed Under the Loan. Goods and services procured for the Project, but not financed under the Loan, shall have their source and origin in countries included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

SECTION 6.05. Implementation of Procurement Requirements. The definitions applicable to the eligibility requirements of Sections 6.01, 6.02 and 6.04 will be set forth in detail in Implementation Letters.

SECTION 6.06. Plans, Specifications and Contracts.

(a) Except as A.I.D. may otherwise agree in writing, the Borrower shall furnish to A.I.D. promptly upon preparation, all plans, specifications, construction schedules, bid documents, contracts and agreements relating to the Project and any modification therein, whether or not the goods and services to which they relate are financed under the Loan.

(b) Except as A.I.D. may otherwise agree in writing, all of the plans, specifications and construction schedules furnished pursuant to subsection (a) above, shall be approved by A.I.D. in writing.

(c) Except as A.I.D. may otherwise agree in writing, all bid documents and documents related to the solicitation of proposals

relating to goods and services financed under the Loan shall be approved by A.I.D. in writing prior to their issuance. All plans, specifications and other documents relating to goods and services financed under the Loan shall be in terms of United States standards and measurements, except as A.I.D. may otherwise agree in writing.

(d) Except as A.I.D. may otherwise agree in writing, the following contracts financed under the Loan shall be approved by A.I.D. in writing prior to their execution:

- (i) contracts for engineering and other professional services,
- (ii) contracts for construction services,
- (iii) contracts for such other services as A.I.D. may specify, and
- (iv) contracts for such equipment and materials as A.I.D. may specify.

(e) Except as A.I.D. may otherwise agree in writing, consulting firms used by the Borrower for the Project but not financed under the Loan, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Borrower for the Project but not financed under the Loan shall be acceptable to A.I.D.

SECTION 6.07. Reasonable Price. No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the Loan, as more fully described in Implementation Letters. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures therefor prescribed in Implementation Letters.

SECTION 6.08. Employment of Third-Country Nationals Under Construction Contracts. The employment of personnel to perform services under the construction contracts financed under the Loan shall be subject to requirements with respect to third-country nationals prescribed in Implementation Letters.

SECTION 6.09. Shipping and Insurance.

(a) Goods financed under the Loan shall be transported to Kenya on flag carriers of any country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

(b) Unless A.I.D. shall determine that privately owned United States flag commercial vessels are not available at fair and reasonable rates for such vessels, (i) at least fifty percent (50%) of the gross tonnage of all goods financed under the Loan (computed separately for dry bulk carriers, dry cargo liners and tankers) and transported on ocean vessels shall be transported on privately owned United States flag commercial vessels, and (ii) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed under the Loan and transported on dry cargo liners shall be paid to or for the benefit of privately owned United States flag commercial vessels.

(c) No such goods may be transported on any ocean vessel (or aircraft) (i) which A.I.D., in a notice to the Borrower, has designated as ineligible to carry A.I.D.-financed goods or (ii) which has been chartered for the carriage of A.I.D.-financed goods unless such charter has been approved by A.I.D.

(d) If in connection with the placement of marine insurance on shipments financed under the United States legislation authorizing assistance to other nations, the Government of Kenya, by statute, decree, rule or regulation favors any marine insurance company of any other country over any marine insurance company authorized to do business in any state of the United States of America, goods procured from the United States and financed under the Loan shall during the continuance of such discrimination be insured against marine risk in the United States of America with a company or companies authorized to do a marine insurance business in any state of the United States of America.

(e) Unless A.I.D. otherwise agrees in writing, Borrower shall insure, or cause to be insured, all goods financed under the Loan against risks incident to their transit to the point of their use in the Project. Such insurance shall be issued upon terms consistent with sound commercial practice and cover the full value of the goods, and the proceeds thereof shall be payable in United States dollars or in any other freely convertible currency. Any indemnification received by the Borrower under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse Borrower for the replacement or repair of such goods. Any such replacements shall have their source and origin in countries specified in Section 6.01 and otherwise be subject to the provisions of this Agreement.

SECTION 6.10. Notification to Potential Suppliers. In order that all United States firms shall have the opportunity to participate in furnishing goods and services to be financed under the Loan, the Borrower shall furnish to A.I.D. such information with regard thereto, and at such time, as A.I.D. may request in Implementation Letters.

SECTION 6.11. United States Government-Owned Excess Property. Where practicable, Borrower shall utilize, with respect to goods financed under the Loan to which the Borrower takes title at the time of procurement, such United States Government-owned Excess Property as may be consistent with the requirements of the Project and as may be available within a reasonable period of time. The Borrower shall seek assistance from A.I.D., and A.I.D. will assist the Borrower in ascertaining the availability of and in obtaining such Excess Property. A.I.D. will make arrangements for any necessary inspection of such property by the Borrower or its representative. The costs of inspection and of acquisition, and all charges incident to the transfer to the Borrower of such Excess Property, may be financed under the Loan. Prior to the procurement of any goods, other than Excess Property, financed under the Loan and after having sought such A.I.D. assistance, the Borrower shall advise A.I.D. in writing, on the basis of information then available to it, either that such goods cannot be made available from United States Government-owned Excess Property on a timely basis or that the goods that can be made available are not technically suitable for use in the Project.

SECTION 6.12. Information and Marking. The Borrower shall give publicity to the Loan and the Project as a program of United States' aid, identify the Project site, and mark goods financed under the Loan, as prescribed in Implementation Letters.

ARTICLE VII

Disbursements

SECTION 7.01. Disbursement for United States Dollar Costs - Letters of Commitment to United States' Banks. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request A.I.D. to issue Letters of Commitment for specified amounts to one or more United States' banks satisfactory to A.I.D. committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, through the use of Letters of Credit or otherwise, for Dollar Costs of goods and services procured for the Project in accordance with the terms and conditions of this Agreement. Payment by a bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as A.I.D. may prescribe in Letters of Commitment and Implementation Letters.

Banking charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Borrower and may be financed under the Loan.

SECTION 7.02. Disbursement for Local Currency Costs. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request disbursement by A.I.D. of local currency for Local Currency

Costs of goods and services procured for the Project in accordance with the terms and conditions of this Agreement by submitting to A.I.D. such supporting documentation as A.I.D. may prescribe in Implementation Letters. A.I.D., at its option, may make such disbursements from Kenya currency owned by the U.S. Government or obtained by A.I.D. with United States dollars.

The United States dollar equivalent of the local currency made available hereunder will be the amount of United States dollars required by A.I.D. to obtain Kenya currency if purchased; or if otherwise obtained, the dollar equivalent of the funds disbursed, on the date of disbursement using the most favorable exchange rate to the dollar then lawfully existing in Kenya.

SECTION 7.03. Other Forms of Disbursement. Disbursements of the Loan may also be made through such other means as the Borrower and A.I.D. may agree to in writing.

SECTION 7.04. Date of Disbursement. Disbursements by A.I.D. shall be deemed to occur (a) in the case of disbursements pursuant to Section 7.01, on the date on which A.I.D. makes a disbursement to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment, and (b) in the case of disbursements pursuant to Section 7.02, on the date on which A.I.D. disburses the local currency to the Borrower or its designee.

SECTION 7.05. Terminal Dates for Commitment and Disbursement.

(a) Except as A.I.D. may otherwise agree in writing, in connection with Project Part A no disbursement shall be made against documentation

received by A.I.D. or its designee after September 30, 1978 ("terminal date for disbursement").

(b) Except as A.I.D. may otherwise agree in writing, no Letter of Commitment, or other commitment document which may be called for by another form of disbursement under Section 7.03, shall be issued in response to requests received by A.I.D. in connection with Project Part C after March 31, 1979, and in connection with Project Part F(iii) after September 30, 1976, and no disbursement shall be made against documentation received by A.I.D. or any bank described in Section 7.01 in connection with Project Part C after September 30, 1979 ("terminal date for disbursement") and in connection with Project Part F(iii) after March 31, 1977 ("terminal date for disbursement").

(c) If funds remain available under the Loan for any part of the Project after the applicable terminal date for disbursement as specified above, then A.I.D., at its option, may at any time or times after the respective terminal dates for disbursement reduce the Loan by all or any portion of such funds for which documentation for the disbursement thereof has not been received on or before the applicable terminal date for disbursement.

ARTICLE VIII

Cancellation and Suspension

SECTION 8.01. Cancellation by the Borrower. The Borrower may, with the prior written consent of A.I.D., by written notice to A.I.D., cancel any part of the Loan (1) which, prior to the giving of such

notice, A.I.D. has not disbursed or committed itself to disburse, or (ii) which has not then been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit.

SECTION 8.02. Events of Default; Acceleration. If any one or more of the following events ("Events of Default") shall occur:

(a) The Borrower shall have failed to pay when due any interest or installment of Principal required under this Agreement;

(b) The Borrower, or AFC in regard to Project Part A, shall have failed to comply with any provision of the Reloan Agreement or of this Agreement, including, but without limitation, the obligation to carry out the Project with due diligence and efficiency;

(c) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and A.I.D., or any of its predecessor agencies, then A.I.D. may, at its option, give to the Borrower notice that all or any part of the unrepaid Principal shall be due and payable sixty (60) days thereafter, and unless the Event of Default is cured within such sixty (60) days:

- (i) such unrepaid Principal and any accrued interest hereunder shall be due and payable immediately; and
- (ii) the amount of any further disbursements made under then outstanding irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

SECTION 8.03. Suspension of Disbursement. In the event that at any time:

- (a) An Event of Default has occurred;
- (b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement or that AFC will be able to perform its obligations under the Reloan Agreement and/or this Agreement; or
- (c) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.;
- (d) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies;

then A.I.D. may, at its option:

- (i) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit, in which event A.I.D. shall give notice to the Borrower promptly thereafter;
- (ii) decline to make disbursements other than under outstanding commitment documents;
- (iii) decline to issue additional commitment documents;
- (iv) at A.I.D.'s expense, direct that title to goods financed under the Loan shall be transferred to A.I.D. if the goods are from a source outside Kenya, are in a deliverable state and have not been offloaded in ports of entry in Kenya. Any disbursement made or to be made under the Loan with respect to such transferred goods shall be deducted from Principal.

SECTION 8.04. Cancellation by A.I.D. Following any suspension of disbursements pursuant to Section 8.03, if the cause or causes for such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to irrevocable Letters of Credit.

SECTION 8.05. Continued Effectiveness of Agreement. Notwithstanding any cancellation, suspension of disbursement, or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of all Principal and any accrued interest hereunder.

SECTION 8.06. Refunds.

(a) In the case of any disbursement not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement not made or used in accordance with the terms of this Agreement, A.I.D., notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement, may require the Borrower to refund such amount in United States dollars to A.I.D. within thirty (30) days after receipt of a request therefor. However, in the event that such disbursement was originally made in local currency and if A.I.D. determines that the amount of such refund can be used to pay the Local Currency Costs of other goods and services approved for financing under the Loan, A.I.D. will accept such refund

in local currency. Refunds under this section shall be made available first for the cost of goods and services procured for the Project hereunder, to the extent justified; the remainder, if any, shall be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursement under the Loan shall continue for five years following the date of such disbursement.

(b) In the event that A.I.D. receives a refund from any contractor, supplier, or banking institution, or from any other third party connected with the Loan, with respect to goods or services financed under the Loan, and such refund relates to an unreasonable price for goods or services, or to goods that did not conform to specifications, or to services that were inadequate, A.I.D. shall first make such refund available for the cost of goods and services procured for the Project hereunder, to the extent justified, the remainder to be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan will be reduced by the amount of such remainder.

SECTION 8.07. Expenses of Collection. All reasonable costs incurred by A.I.D., other than salaries of its staff, in connection with the collection of any refund or in connection with amounts due A.I.D. by reason of the occurrence of any of the events specified in Section 8.02 may be charged to the Borrower and reimbursed to A.I.D. in such manner as A.I.D. may specify.

SECTION 8.08. Nonwaiver of Remedies. No delay in exercising or omission to exercise any right, power, or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any such rights, powers, or remedies.

ARTICLE IX

Miscellaneous

SECTION 9.01. Communications. Any notice, request, document, or other communication given, made, or sent by the Borrower, AFC or A.I.D. pursuant to this Agreement shall be in writing or by telegram, cable, or radiogram and shall be deemed to have been duly given, made, or sent to the party to which it is addressed when it shall be delivered to such party by hand or by mail, telegram, cable, or radiogram at the following addresses:

TO BORROWER:

Mail Address: Permanent Secretary
Ministry of Finance and Planning
Treasury
Post Office Box 30007
Nairobi, Kenya

Cable Address: FINANCE, NAIROHI, KENYA

TO AFC:

Mail Address: The General Manager
Agricultural Finance Corp.
P. O. Box 30367
Nairobi, Kenya

Cable Address: KENAGBAN

TO A.I.D.:

Mail Address: Director
Regional Economic Development Services Office
o/o Director
U.S. A.I.D. Mission to Kenya
P. O. Box 30261
Nairobi, Kenya

Cable Address: AMEMBASSY NAIROBI

Borrower and AFC, in addition, shall provide the Director, U.S. A.I.D. Mission to Kenya, with a copy of each communication sent to A.I.D. Other addresses may be substituted for the above upon the giving of notice. All notices, requests, communications, and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

SECTION 9.02. Representatives. For all purposes relative to this Agreement, the Borrower will be represented by the individual holding or acting in the office of Permanent Secretary to the Treasury, Ministry of Finance and Planning, AFC will be represented by the individual holding or acting in the office of General Manager of AFC, and A.I.D. will be represented by the individual holding or acting in the office of Director, Regional Economic Development Services Office, Nairobi, Kenya. Such individuals shall have the authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, Borrower shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. Until receipt by A.I.D. of written notice of revocation of the authority of

any of the duly authorized representatives of the Borrower designated pursuant to this Section, it may accept the signature of any such representative or representatives on any instrument as conclusive evidence that any action effected by such instrument is duly authorized.

SECTION 9.03. Implementation Letters. A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Agreement.

SECTION 9.04. Promissory Notes. At such time or times as A.I.D. may request, the Borrower shall issue promissory notes or such other evidences of indebtedness with respect to the Loan, in such form, containing such terms and supported by such legal opinions as A.I.D. may reasonably request.

SECTION 9.05. Termination Upon Full Payment. Upon payment in full of the Principal and of any accrued interest, this Agreement and all obligations of the Borrower and A.I.D. under this Loan Agreement shall terminate.

IN WITNESS WHEREOF, The Republic of Kenya, the Agricultural Finance Corporation, and the United States of America, each acting through its duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

REPUBLIC OF KENYA

By: *[Signature]*
Title: *Kenya Secretary Treasury.*

AGRICULTURAL FINANCE CORPORATION

By: *[Signature]*
Title: *General Manager.*

UNITED STATES OF AMERICA

By: *[Signature]*
Title: *Counselor*

Project Description

The Project comprises a portion of the Second Livestock Development Project to be financed by the Governments of Kenya, Canada, the United Kingdom and the United States, and the International Development Association (I.D.A.) and project beneficiaries. A.I.D. financing will be provided for the activities described below:

1. Ranch Development - Part A.

The Loan will provide the Kenya currency equivalent of up to \$4,100,000 for onlending by the Borrower to AFC. These funds, together with such funds as may be provided for Subloans by the Borrower or AFC under Section 5.10 of this Agreement, shall be used to finance the procurement of cattle by Sub-Borrowers. Group, company or cooperative and commercial ranches, as further defined in Implementation Letters, shall be eligible Sub-Borrowers. Subloans shall be made to the following:

- (a) Approximately 60 group ranches most of which being in Kajiado, Narok and Samburu Districts;
- (b) Approximately 21 company or cooperative ranches most of which being in Taita/Taveta, Tana River, Kwale, Kilifi and Kitui Districts;
- (c) Approximately 100 commercial ranches most of which being in Nakuru, Laikipia, Nyandarua and Machakos Districts.

2. Northeast Range Development - Part C.

The Loan will provide up to \$5,300,000 to finance goods and services to assist in the planning, design and construction of roads, pans, water facilities and buildings required to develop and improve livestock grazing areas and livestock production in Kenya's North Eastern Province.

3. Meat Processing Study - Part F(111).

The Loan will provide up to \$200,000 to assist in financing a contract or contracts for consultant studies to determine measures to improve and develop the meat processing industry in Kenya.