PROTOCOL

At the signing of the Convention between the Government of the United States of America and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Convention"), the Government of the United States of America and the Government of Japan have agreed upon the following provisions, which shall form an integral part of the Convention.

1. Notwithstanding the provisions of Article 2 of the Convention:

(a) the United States excise tax on insurance policies issued by foreign insurers shall not be imposed on insurance or reinsurance policies, the premiums on which are the receipts of a business of insurance carried on by an enterprise of Japan, to the extent that the risks covered by such premiums are not reinsured with a person not entitled to the benefits of the Convention or any other tax convention entered into by the United States that provides exemption from such tax; and

(b) the United States excise tax with respect to private foundations shall not be imposed on:

(i) dividends or interest derived by private foundations organized in Japan at a rate in excess of the rates provided for in Articles 10 and 11 of the Convention, respectively; and

(ii) royalties or other income derived by private foundations organized in Japan.

2. With reference to subparagraph (e) of paragraph 1 of Article 3 of the Convention, the term "any other body of persons" includes an estate, trust, and partnership.

3. With reference to subparagraph (m) of paragraph 1 of Article 3 of the Convention, it is understood that a pension fund shall be treated as exempt from tax with respect to the activities described in clause (ii) of that subparagraph even though it is subject to the tax stipulated in Articles 8 or 10-2 of the Corporation Tax Law (Law No. 34 of 1965) of Japan or paragraph 1 of Article 20 of its supplementary provisions.

4. In general, where an enterprise of a Contracting State which has carried on business in the other Contracting State through a permanent establishment situated therein, receives, after the enterprise has ceased to carry on business as aforesaid, profits attributable to the permanent establishment, such profits may be taxed in that other Contracting State in accordance with the principles stated in Article 7 of the Convention.

5. With reference to Article 9 of the Convention, it is understood that, in determining the profits of an enterprise, application of the arm's length principle under that Article is generally based on a comparison of the conditions in the transaction made between the enterprise and an enterprise associated with it and the conditions in transactions between independent enterprises. It is also understood that the factors affecting comparability shall include:

(a) the characteristics of the property or services transferred;

(b) the functions of the enterprise and the enterprise associated with it, taking into account the assets used and risks assumed by the enterprise and the enterprise associated with it;

(c) the contractual terms between the enterprise and the enterprise associated with it;

(d) the economic circumstances of the enterprise and the enterprise associated with it; and

(e) the business strategies pursued by the enterprise and the enterprise associated with it.

6. With reference to paragraphs 4 and 5 of Article 10 of the Convention, a United States Real Estate Investment Trust (hereinafter referred to as a "REIT") or a company which is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income in Japan is "diversified" if the value of no single interest in real property exceeds 10 percent of the total interests of such person in real property. For purposes of this paragraph, foreclosure property will not be considered an interest in real property. Where such person holds an interest in a partnership, it shall be treated as owning directly a proportion of the partnership's interests in real property corresponding to the proportion of its interest in the partnership.

7. With reference to paragraph 9 of Article 10 of the Convention, it is understood that the amount of such income that is equivalent to the amount of dividends that would have been paid if such activities had been conducted in a separate legal entity shall be, for any taxable year, the after-tax earnings from the company's activities described in that paragraph, adjusted to take into account changes in the company's investment in the Contracting State imposing the tax referred to in that paragraph.

8. Fees received in connection with a loan of securities, guarantee fees and commitment fees paid by a resident of a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other Contracting State unless the beneficial owner of such fees carries on business in the first-mentioned Contracting State through a permanent establishment situated therein and such fees are attributable to, or the right in respect of which such fees are paid is effectively connected with, such permanent establishment.

9. With reference to Article 13 of the Convention, it is understood that distributions made by a REIT shall be taxable under paragraph 1 of that Article, to the extent that they are attributable to gains derived from the alienation by the REIT of real property situated in the United States.

10. (a) With reference to Article 14 of the Convention, it is understood that the benefits enjoyed by employees under stock option plans relating to the period between grant and exercise of an option are regarded as "other similar remuneration" for the purposes of that Article.

(b) It is further understood that where an employee:

(i) has been granted a stock option in the course of an employment;

(ii) has exercised that employment in both Contracting States during the period between grant and exercise of the option;

(iii) remains in that employment at the date of the exercise; and

(iv) under the domestic law of the Contracting States, would be taxable in both Contracting States in respect of such benefits,

then, in order to avoid double taxation, a Contracting State of which, at the time of the exercise of the option, the employee is not a resident may tax only that proportion of such benefits which relates to the period or periods between grant and exercise of the option during which the individual has exercised the employment in that Contracting State. With the aim of ensuring that no unrelieved double taxation arises the competent authorities of the Contracting States shall endeavor to resolve by mutual agreement under Article 25 of the Convention any difficulties or doubts arising as to the interpretation or application of Articles 14 and 23 of the Convention in relation to such stock option plans.

11. With reference to subparagraph (c) of paragraph 1 of Article 22 of the Convention, the shares in a class of shares are considered to be regularly traded on one or more recognized stock exchanges in a taxable year if the aggregate number of shares of that class traded on such stock exchange or exchanges during the preceding taxable year is at least 6 percent of the average number of shares outstanding in that class during that preceding taxable year.

12. With reference to paragraph 2 of Article 22 of the Convention, in determining whether a person is "engaged . . . in the active conduct of a trade or business" in a Contracting State under that paragraph, activities conducted by a partnership in which such person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares) or if another person possesses, directly or indirectly, at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares) in each person.

13. (a) For the purposes of applying the Convention, the United States may treat an arrangement created by a sleeping partnership (Tokumei Kumiai) contract or similar contract as not a resident of Japan, and may treat income derived subject to the arrangement as not derived by any participant in the arrangement. In that event, neither the arrangement nor any of the participants in the arrangement will be entitled to benefits of the Convention with respect to income derived subject to the arrangement.

(b) Nothing in the Convention shall prevent Japan from imposing tax at source, in accordance with its domestic law, on distributions that are made by a person pursuant to a

sleeping partnership (Tokumei Kumiai) contract or other similar contract and that are deductible in computing the taxable income in Japan of that person.

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

DONE in duplicate at Washington this sixth day of November, 2003, in the English and Japanese languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF JAPAN: