

FORM OF FLOATING RATE SERIAL NOTE: VENEZUELA FORM - ALL CREDITS

**[This is a standard form of floating rate Serial Note issued by a Borrower in Venezuela.]**

[BORROWER]

PROMISSORY NOTE<sup>1</sup>

Number \_\_\_\_ of \_\_\_\_ Notes

For U.S. DOLLARS \$[Amount in Numbers: This amount should only be the amount of one installment], plus interest.

MATURITY DATE [Date: This date should represent the due date of one installment only].

1. I, [full name of an authorized officer of the Borrower], of legal age, domiciled in [name of city], Venezuela, a \_\_\_\_\_ citizen, [marital status], [occupation], holder of identity card No. \_\_\_\_\_, acting in my capacity as [title] of the company [full name of the Borrower], a corporation [or state if other type of company], domiciled in [name of city], Venezuela, registered with the Mercantile Registry for the Judicial Circuit [identify Judicial Circuit], under No. \_\_\_\_\_, Volume \_\_\_\_\_, on [date of registration], duly authorized by [specify document accrediting representation and authority: Articles of Incorporation, Bylaws, Resolution of the Board, etc.], declare: that my principal, [name of Borrower] (the "Maker")<sup>2</sup>, for value received to its satisfaction OWES AND WILL PAY WITH NO NOTICE OR PROTEST, TO [name of the Lender] (the "Lender") or its order, at [name and address of a banking institution in United States that is authorized to accept deposits], United States of America, on \_\_\_\_\_, \_\_\_\_\_ the principal sum of \_\_\_\_\_, U.S. Dollars (U.S.\$\_\_\_\_\_) and to pay interest on the principal balance hereof from time to time outstanding, as hereinafter provided, at the rate of \_\_\_\_\_ percent (\_\_\_ %) per annum above LIBOR<sup>3</sup> (as hereinafter defined). Beginning on the Eximbank Claim Payment Date (hereinafter defined), the definition of Special LIBOR shall apply for all purposes, including, without limitation, the fifth paragraph hereof, in place of the definition of LIBOR.<sup>4</sup>

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<sup>1</sup>Do not consolidate or otherwise move around the paragraphs in this Note. Specific provisions of this Note are identified in the Agreement by the paragraphs in which such provisions appear.

<sup>2</sup>For the avoidance of any doubt, the Borrower and the Maker referred to in this Note form are the same Person.

<sup>3</sup>If using an alternative reference rate (*i.e.*, "Treasury", "Prime", etc.) in place of a rate based on the London Interbank Offered Rate, then all references to LIBOR in this Note should instead refer to such alternative reference rate and the third paragraph of the Note should be modified to define the alternative interest rate basis term.

<sup>4</sup>All references to Special LIBOR remain even if using an alternative reference rate in place of LIBOR.

2. Interest on this Note is payable semi-annually thereafter on \_\_\_\_\_ and \_\_\_\_\_ of each year (each, a "Payment Date"), beginning on \_\_\_\_\_, \_\_\_\_\_. Interest will be calculated on the basis of the actual number of days elapsed (including the first day, but excluding the last day) over a year of 360 days.<sup>5</sup>

3. For purposes of this Note, (a) "LIBOR" shall mean, in relation to any Interest Period (as hereinafter defined), the rate of interest per annum (rounded upward, if necessary, to the nearest 1/16 of 1%) quoted by the principal London office of the Lender or an affiliate of the Lender designated by the Lender at approximately 11:00 a.m. (London time) two Business Days (as hereinafter defined) prior to the first day of such Interest Period for the offering to leading banks in the London interbank market of United States Dollar deposits for a period and in an amount comparable to such Interest Period and the principal amount upon which interest is to be paid during such Interest Period;<sup>6</sup> (b) "Special LIBOR" shall mean, with respect to any Interest Period, the rate of interest per annum specified as the Dollar LIBOR Interbank fixing rate in the Financial Times under the table entitled "Money Rates", in effect on the day two Business Days prior to the first day of the relevant Interest Period for a term similar to the term of such Interest Period; *provided* that if no rate is specified for such day, the applicable rate shall be the rate specified for the immediately preceding day for which a rate is specified, and if more than one rate is specified, the applicable rate shall be the highest of all such rates; (c) "Interest Period" shall mean (i) the period commencing on \_\_\_\_\_ (the "Disbursement Date") and ending on, but not including, the next Payment Date (as hereinafter defined); *provided*, however, that if the Disbursement Date is within sixty (60) days of such Payment Date<sup>7</sup>, the Interest Period shall end on the next succeeding Payment Date; and (ii) thereafter the period commencing on each Payment Date and ending on, but not including, the next Payment Date; and (d) "Business Day" shall mean any day [on which dealings in Dollar deposits are carried on in the London interbank market and] on which commercial banks in London and New York City are open for domestic and foreign exchange business.<sup>8</sup>

4. In the event that any amount of the principal hereof or accrued interest on this Note is not paid in full when due (whether at stated maturity, by acceleration or otherwise), the Maker shall pay to the Lender on demand interest on such unpaid amount (to the extent permitted by applicable law) for the period from the date such amount was due until such amount shall have been paid in full at an interest rate per annum equal to (x) \_\_\_\_% per annum above the interest rate then applicable under first paragraph hereof until the end of the then current Interest Period, and (y) thereafter \_\_\_\_% per annum above the [**the Lender to specify rate**].

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<sup>5</sup>If using a day count basis of actual/365 days or 60/360 days instead of actual/360 days, modify this reference.

<sup>6</sup>If using an alternative reference rate based on the London Interbank Offered Rate but using a different definition of LIBOR, then this definition should be modified to reflect that definition.

<sup>7</sup>If the Lender and a Borrower agree on a longer or shorter billing cycle, then such alternative billing cycle period should be specified here.

<sup>8</sup>The bracketed text is only to be used if the reference rate is a "LIBOR" based rate. The Lender is permitted to use an alternative definition of Business Day if it is accepted in writing by Eximbank.

5. Notwithstanding the fourth paragraph hereof, beginning on the date (the "Eximbank Claim Payment Date") on which the Export-Import Bank of the United States ("Eximbank") shall have made a claim payment to the Lender following any failure of the Maker to pay in full any amount of the principal hereof or accrued interest on this Note when due, in the event any amount of principal of or accrued interest on this Note owing to Eximbank is not paid in full when due (whether at stated maturity, by acceleration or otherwise), the Maker shall pay to Eximbank on demand interest on such unpaid amount (to the extent permitted by applicable law) for the period from the date such amount was due until such amount shall have been paid in full, at an interest rate per annum equal to one percent (1%) per annum above the interest rate then applicable under the first paragraph hereof.

6. All payments received hereunder shall be applied in the following order of priority: (a) interest due on demand on any unpaid amounts (to the extent permitted by applicable law) of principal and accrued interest; (b) interest due pursuant to the first paragraph of this Note; (c) principal due under this Note; and (d) all other amounts due under this Note and not otherwise provided for in this paragraph.

7. Whenever any payment falls due on a day which is not a Business Day, the due date for payment shall be extended to the next following Business Day.

8. All payments to be made by the Maker under this Note shall be made only and exclusively in United States Dollars in immediately available and freely transferable funds no later than 11:00 A.M. (New York City time) on the date on which due, without set-off, counterclaim, deduction, withholding on account of taxes levied or imposed under the laws of the Government of Venezuela or any political subdivision or taxing authority thereof, restrictions and conditions of whatever nature.

9. If the Maker (or \_\_\_\_\_ (the "Guarantor"), in the event it makes any payment on behalf of the Maker pursuant to its guarantee attached hereto)<sup>9</sup> shall be required by law to deduct any taxes from or in respect of any sum payable hereunder to the Lender, including Venezuelan withholding taxes applicable to interest payments (herein referred to as "Withholding Taxes"), (a) the Maker (or the Guarantor, as the case may be) shall forthwith pay to the Lender such additional amount as may be necessary so that after making all required deductions for Withholding Taxes (including deductions applicable to additional amounts payable under this paragraph), the Lender receives an amount equal to the sum it would have received had no such deductions been made, (b) the Maker (or the Guarantor, as the case may be) shall make such deductions, and (c) the Maker (or the Guarantor, as the case may be) shall pay the full amount deducted to the relevant taxing authority in accordance with applicable law. The Maker further agrees to send to the Lender, within fifteen (15) days after such Withholding Taxes are paid or withheld, evidence of payment in full of the Withholding Taxes.

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<sup>9</sup>The four parenthetical provisions in this paragraph which refer to the Guarantor are only to be included if a guarantee by a Guarantor is issued in support of the Borrower's obligation under the Note.

10. This promissory note is one of a series of [total number of Notes in letters] promissory notes numbered 1 to [number of highest numbered Note in numbers] inclusive, in the aggregate principal amount of \_\_\_\_\_ (U.S.\$ \_\_\_\_\_) and maturing semiannually in the order in which numbered from [first due date] to [last due date].

11. The right is reserved to prepay on any Payment Date, without penalty or premium, all or any part of the principal hereof on the maturity date of any promissory note of this series, *provided* that (a) all subsequently maturity promissory notes of this series have been paid in full or are paid in full concurrently with such prepayment so that the promissory notes of this series shall be prepayable only in the inverse order of their maturities and (b) the Maker shall have given the Lender and Eximbank at least ten (10) days' prior written notice of the prepayment (which notice shall be irrevocable). In the event of any prepayment hereunder, by acceleration or otherwise, the Maker shall, upon the request of the holder hereof, promptly pay to an indemnify such holder for all costs and loss (including interest) actually incurred by the holder and any loss (including loss of profit resulting from the re-employment of funds) sustained by the holder as a consequence of such prepayment.

12. For any legal action or proceeding with respect to this promissory note, the Maker, the holder hereof and any other signatories of this promissory note expressly submit themselves to any Federal Court of the United States of America sitting in the States of \_\_\_\_\_ or the District of Columbia, any State court thereof, or to the competent courts of the City of Caracas, Federal District, Republic of Venezuela, or to the competent courts of the domicile of the Maker, at the election of the holder hereof, wherefore they waive expressly any other jurisdiction to which they might have a right, including but not limited to, jurisdiction by reason of their present or future domiciles, or by reason of the place of payment of this promissory note.

13. The Maker agrees to pay all costs of collection of this promissory note, including attorney's fees whether payment thereof is enforced by suit or otherwise.

14. Upon default in the prompt and full payment of interest on this promissory note or upon default in the prompt and full payment of the principal or interest on any other promissory note of this series, the entire unpaid principal of this promissory note and interest thereon to the date of payment shall immediately become due and payable at the option and upon demand of the holder hereof.

15. The Maker hereby waives demand, diligence, presentment, protest and notice of every kind, and warrants to the holder that all action and approvals required for the execution and delivery hereof as a legal, valid and binding obligation of the undersigned, enforceable in accordance with the terms hereof, have been duly taken and obtained. The failure of the holder hereof or of Eximbank to exercise any of its rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance.

16. The lack of validity for any reason of any clause hereof shall in no way affect the remaining provisions herein set forth.

17. THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, U.S.A.<sup>10</sup>

City: [This should be a city in the U.S.A.]

Date: [This date should be the same for each note of the series]

By \_\_\_\_\_  
(Signature)

Name \_\_\_\_\_  
(Print)

Title \_\_\_\_\_  
(Print Title, and Name of Maker)

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<sup>10</sup>If the Note is in a face amount of \$250,000.00 or less, it may be governed by the laws of the District of Columbia if the Lender prefers.

PERSONAL GUARANTEE<sup>11</sup>

I, [full name], of legal age, domiciled in [name of city], Venezuela, a \_\_\_\_\_ citizen, [marital status], [occupation], holder of identity card No. \_\_\_\_\_, declare that I personally constitute myself as GUARANTOR (and POR AVAL) of this promissory note as well as cosurety and principal payor of all the obligations assumed by [name of the Borrower] before [name of the Lender] which have given rise hereto, under the same terms provided for herein and to cover any extension or modification subsequently granted to [name of the Borrower] regarding which there is no obligation to notify me.

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
(Printed)

CORPORATE GUARANTEE<sup>12</sup>

I, [full name], of legal age, domiciled in [name of city], Venezuela, a \_\_\_\_\_ citizen, [marital status], [occupation], holder of identity card No. \_\_\_\_\_, acting in my capacity as [title] of the company [full name of the Guarantor], a corporation [or state if other type of company], domiciled in [name of city], Venezuela, registered with the Mercantile Registry for the Judicial Circuit [identify Judicial Circuit], under No. \_\_\_\_\_, Volume \_\_\_\_\_, on [date of registration], duly authorized by [specify document accrediting representation and authority: Articles of Incorporation, Bylaws, Resolution of the Board, etc.], authorized for this purpose by the Articles of Incorporation, Bylaws of the Company and by the Resolution [insert here whether the Resolution was adopted at a Board of Directors meeting or a Shareholders Meeting, date held, etc.] declare: that my principal, [name of the Guarantor], constitutes itself as GUARANTOR (and POR AVAL) of this promissory note as well as cosurety and principal payor of all the obligations assumed by [name of the Borrower] before the [name of the Lender], which have given rise hereto, under the same terms provided for herein and to cover any extension or modification subsequently granted to the [name of the Borrower], regarding which there is no obligation to notify it.

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
(Printed)  
Title [title and name of Guarantor]

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<sup>11</sup> When preparing the note, only the guarantee language that relates to the type of guarantee required by Eximbank should be used. Language pertaining to the other types of guarantee should be deleted.

<sup>12</sup> When preparing the note, only the guarantee language that relates to the type of guarantee required by Eximbank should be used. Language pertaining to the other types of guarantee should be deleted.

GOVERNMENT GUARANTEE<sup>3</sup>

I, [full name], of legal age, domiciled in [name of city], Venezuela, a \_\_\_\_\_ citizen, [marital status], [occupation], holder of identity card No. \_\_\_\_\_, acting in my capacity as [title], of [insert the name of the government entity issuing the guarantee and its full identification, registration data, domicile, etc.], authorized for this purpose by [insert here whether government entity issuing the guarantee is authorized by the constitution, statute and/or Resolution of its Board of Directors, date held, etc.] declare: that my principal, [name of country if this is a full faith and credit transaction; if not, then name of government entity], constitutes itself as GUARANTOR (and POR AVAL) of this promissory note as well as cosurety and principal payor of all the obligations assumed by [name of the Borrower] before the [name of the Lender], which have given rise hereto, under the same terms provided for herein and to cover any extension or modifications subsequently granted to the [name of the Borrower], regarding which there is no obligation to notify it.

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
(Printed)  
Title [title and name of Government entity]<sup>4</sup>

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<sup>3</sup> When preparing the note, only the guarantee language that relates to the type of guarantee required by Eximbank should be used. Language pertaining to the other types of guarantee should be deleted.

<sup>4</sup>Under the Venezuelan Public Credit Act of 1980, as amended on October 26, 1992, government guarantees of any obligations (without regard to obligor) cannot be issued. This Act is an organic law and therefore an absolute majority of each legislative chamber is needed to provide any exception to the statutory limitation. Eximbank will therefore not permit any Venezuelan governmental guarantee unless it is provided evidence, satisfactory to Eximbank in its sole opinion, of such an exemption or of a satisfactory modification or repeal of the Act.