

SPECIMEN NOTE - SINGLE DISBURSEMENT OR CONSOLIDATION NOTE BRAZIL

MEDIUM TERM SINGLE BUYER INSURANCE POLICY (the "Policy")

**[This specimen form of note allows for alternative floating reference rates (e.g. LIBOR, Treasury, Prime) or a fixed rate. It also contains standard alternative interest rates to be effective under certain circumstances (e.g. illegality, inability to quote).]**

**THIS FORM OF NOTE MAY NOT BE USED FOR VENEZUELAN AND MEXICAN TRANSACTIONS; SEE EIB-97-9 AND EIB-92-59.**

[Name of Buyer]

SINGLE DISBURSEMENT<sup>1</sup>  
PROMISSORY NOTE

US\$ \_\_\_\_\_

[Date of Issuance]

[City and State of Issuance]

Capitalized terms used in this Note shall have the meaning specified in Paragraph 7, below or in other provisions of this Note.

1. **Promise to Pay.** FOR VALUE RECEIVED, [name and address of the Buyer] (the "Maker")<sup>2</sup> by this promissory note (this "Note") hereby unconditionally promises to pay to the order of [Lender] (the "Lender") at [name and address of a banking institution in United States that is authorized to accept deposits] the principal sum of \_\_\_\_\_ United States Dollars [and \_\_\_\_\_ cents] (US\$ \_\_\_\_\_)<sup>3</sup> in installments as hereinafter provided and to pay interest on the principal balance hereof from time to time outstanding, as hereinafter provided, at the Applicable Interest Rate.

2. Alternatively, at the Lender's sole discretion and upon written notice to the Maker, the Lender may opt for payment to take place in the Federative Republic of Brazil, at the address that Lender indicates to the Maker in such notice.

3. **Payments.**<sup>4</sup> A. Principal. The principal hereof shall be paid in \_\_\_\_\_

<sup>1</sup>If this Note is being used to consolidate two or more separate notes, delete this line.

<sup>2</sup>Buyer and the Maker are the same Person.

<sup>3</sup>The principal amount should be the financed portion as specified in the Policy.

<sup>4</sup>The Policy requires that principal installments be approximately equal and interest be paid concurrently with principal.

(\_\_\_\_\_) installments, the first of which shall be in the sum of \_\_\_\_\_ U.S. Dollars [and \_\_\_\_\_ cents] (US\$\_\_\_\_\_) and shall be due and payable on \_\_\_\_\_ [5-25], \_\_\_\_\_. The remaining installments shall each be in the sum of \_\_\_\_\_ U.S. Dollars [and \_\_\_\_\_ cents] (US\$\_\_\_\_\_) and shall be due and payable semi-annually thereafter on each Payment Date; provided that, on the last Payment Date, the Maker shall repay in full the principal amount hereof then outstanding.

B. Interest. Interest on this Note is payable on each Payment Date, beginning on \_\_\_\_\_<sup>5</sup> \_\_\_\_\_. 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.

C. Default Interest. 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 then Applicable Interest Rate until the end of the then current Interest Period, and (y) thereafter [Lender to specify rate].<sup>6</sup>

From and after the Eximbank Claim Payment Date, 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 then Applicable Interest Rate.

D. Other. All payments (including, without limitation, prepayments) received under this Note shall be applied in the manner and order of priority determined by the Lender or other holder hereof in its sole discretion.

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.

All payments to be made by the Maker under this Note shall be made 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 [Buyer's Country] restrictions and conditions of whatever nature.

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<sup>5</sup>Insert a date between the 5th and 25th of the applicable month.

<sup>6</sup>The Lender has the option to delete this paragraph.

4. **Prepayments.** The Maker may from time to time prepay on any Payment Date all or part of the principal amount of this Note, *provided* that: (a) any partial prepayment shall be in a minimum principal amount of \_\_\_\_\_ Dollars [**and** \_\_\_\_\_ cents] (US\$\_\_\_\_\_)<sup>7</sup>; (b) the Maker shall have given the Lender at least ten (10) days' prior written notice of the prepayment (which notice shall be irrevocable); and (c) the Maker shall have paid in full all amounts due under this Note as of the date of such prepayment, including interest which has accrued to the date of prepayment on the amount prepaid.

5. **Acceleration.**<sup>8</sup> Upon default in the prompt and full payment of any installment of principal of, or the interest on, this Note, the entire outstanding principal amount hereof and interest on the Note to the date of payment shall immediately become due and payable at the option and upon the demand of the holder hereof.

6. **Waivers.** 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 to exercise any of its rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance.

7. **Costs.** To the maximum extent permitted by law, the Maker agrees to pay on demand all costs and expenses of the holder hereof that are incurred in connection with the enforcement of this Note, including, but not limited to, reasonable fees and expenses of counsel.

8. **Definitions.**

A. Applicable Interest Rate. shall mean: (i) Prior to the Eximbank Claim Payment Date and with respect to any Interest Period<sup>9</sup>:

(a) the Reference Rate (as defined below) plus [**or minus**] \_\_\_\_% ;or

(b) if the Lender shall have determined (which determination shall be conclusive and binding for all purposes, absent manifest error), prior to the commencement of any

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<sup>7</sup>Lender to insert minimum prepayment amount. Eximbank does not permit the Lender to include a mandatory prepayment provision for market disruption, illegality or any other event that the Lender anticipates may make it impossible for the Credit to be maintained on the terms originally agreed upon by the Lender, the Buyer and Eximbank.

<sup>8</sup>All notes must contain an acceleration clause substantially the same as this provision granting, as between the Maker and the note holder, the right to accelerate. However, under most Medium Term Policies the Lender may **not** accelerate without Eximbank consent.

<sup>9</sup>If this is a Fixed Rate Note, delete subparagraphs (a), (b) and (c) and insert the following: "a per annum rate equal to [**Lender to specify**] percent (\_\_\_\_%)."

Interest Period that: (a) by reason of circumstances affecting the relevant market, adequate and fair means do not exist for ascertaining the Reference Rate for an Interest Period; or (b) the relevant Reference Rate used to determine the rate of interest does not cover the funding cost to the Lender of making or maintaining the disbursements evidenced hereby, then the Lender, so long as such condition shall exist, shall give notice to the Maker of the rate of interest which the Lender determines is equal to \_\_\_\_% above the [**Lender to specify**] (expressed as an annual rate), and interest shall accrue during each applicable Interest Period at the rate set forth in the notice; or

(c) if, in the Lender's reasonable judgment, it becomes unlawful at any time for the Lender to make or maintain disbursements based upon the Reference Rate, the Lender, so long as such condition shall exist, shall give notice to the Maker of the rate of interest which the Lender determines is equal to \_\_\_\_% above the [**Lender to specify**] (expressed as an annual rate), and interest shall accrue during each applicable Interest Period at the rate set forth in such notice.

(ii) From and after the Eximbank Claim Payment Date, Special LIBOR plus \_\_\_\_%<sup>10</sup>.

B. Business Day<sup>11</sup> shall mean any day [**on which dealings in Dollar deposits are carried on in the London interbank market and**] on which the Federal Reserve Bank of New York [**and commercial banks in London and New York City are**]/[is] open for domestic and foreign exchange business.

C. Eximbank shall mean the Export-Import Bank of the United States, an independent agency of the United States.

D. Eximbank Claim Payment Date shall mean the date on which Eximbank pays a claim to the Lender under its Medium Term Single Buyer [**Policy/Commitment No.**\_\_\_\_\_].<sup>12</sup>

E. Interest Period shall mean the period commencing on \_\_\_\_\_ and extending up to, but not including, the next Payment Date and thereafter, the period commencing on each Payment Date and extending up to, but not including, the next Payment Date.

F. Payment Date shall mean each \_\_\_\_\_ and \_\_\_\_\_, commencing on \_\_\_\_\_, \_\_\_\_\_.

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<sup>10</sup> All references to Special LIBOR remain even if the Lender's interest rate is not based on LIBOR.

<sup>11</sup> The bracketed text must be used if the Reference Rate is a "LIBOR" based rate.

<sup>12</sup> The Commitment Number may be used if the Policy is not issued by the date of signing.

G. Reference Rate shall mean [See Attachment].<sup>13</sup>

H. Special LIBOR<sup>14</sup> shall mean, with respect to any Interest Period, the rate of interest per annum specified as the London Interbank Offered Rate (LIBOR) on the Reuters Decision 2000 application under the Price History Display 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.

**9. Other Provisions.**

**A. THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, U.S.A.**

B. To the extent permitted by applicable law, the illegality or unenforceability of any provision of this Note shall not in any way affect or impair the legality or enforceability of the remaining portions of this Note.

C. Captions contained in this Note are for convenience only and do not affect the meaning of any provision hereof.

**(signature page follows)**

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<sup>13</sup>Delete and correct alphabetizing if Fixed Rate is used.

<sup>14</sup>The provisions in this Note relating to Special “LIBOR” should be included in all notes.

D. This Note is made in \_\_\_\_\_ [city, state/province, country] as of the date first written above.

[Buyer]

By \_\_\_\_\_  
(Signature)<sup>15</sup>  
Name \_\_\_\_\_  
(Print)  
Title \_\_\_\_\_  
(Print)

Por Aval:

By: \_\_\_\_\_  
(Signature)<sup>16</sup>

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

Title: \_\_\_\_\_  
(Print)

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<sup>15</sup> Personal Makers should sign in their personal capacities only. Corporate Makers should sign only in their corporate capacities with proper reference to their corporate titles. If any person other than an officer of the Maker signs the Note, proof of authority must be attached.

<sup>16</sup> Signature of the Guarantor is required below the signature of the Buyer and below the Guarantee language.

**FOR VALUE RECEIVED**, the undersigned, as primary obligor, hereby unconditionally and irrevocably guarantees the full, prompt and complete payment when due (whether at scheduled maturity, by reason of acceleration or otherwise) of the principal of, and interest on, the foregoing promissory note, and hereby waives acceptance, diligence, presentment, demand, protest and notice of every kind whatsoever (including, without limitation, notice of default or non-payment), as well as any requirement that the holder exhaust any right or take any action against the Maker of such note, and hereby consents to any extension of time, renewal and other modification of such note. This is a continuing, absolute and unconditional guarantee of payment and not merely of collection, **[for which the full faith and credit of \_\_\_\_\_ is pledged]**<sup>17</sup>. To the maximum extent permitted by applicable law, the undersigned hereby waives all defenses of a surety or guarantor to which it might be entitled in law, equity or otherwise.

[Name of Guarantor]

By: \_\_\_\_\_  
Signature<sup>18</sup>

Name: \_\_\_\_\_  
Print

Title: \_\_\_\_\_  
Print

\_\_\_\_\_

<sup>17</sup>Use only if Guarantor is sovereign.

<sup>18</sup>Personal guarantors should sign in a personal capacity. Corporate guarantors should signing in the corporate capacities with proper reference to their corporate titles. If any person other than an officer of the guarantor signs the guarantee, then proof of authority must be attached.

**(SPECIMEN NOTE RATE ATTACHMENT)**

This Attachment contains several specimen interest rates which may be used as the Reference Rate. If the interest rate is based on a Reference Rate which is NOT the same as one of those defined in this Attachment, then the Lender uses such rate at its own risk and such note will not be a note in the form provided by Eximbank for purposes of the Policy.

1. Reference Rate based on LIBOR: Choose one of the following:

Reference Rate shall mean, in relation to any Interest Period, the rate of interest per annum (rounded upward, if necessary, to the nearest 1/16 of 1%) quoted by the principal London office of \_\_\_\_\_ **[Lender to specify, e.g., “the Lender” or “an affiliate of the Lender designated by the Lender” or “Citibank, N.A.” or “Bank of America, N.A.”]** for offering to leading banks in the London interbank market of United States Dollar deposits at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period 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.

**OR**

Reference Rate shall mean, in relation to any Interest Period, the rate of interest per annum (rounded upward, if necessary, to the nearest 1/16 of 1%) specified as the London Interbank Offered Rate (LIBOR) in the Wall Street Journal under the table entitled “Money Rates” as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period 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.

**OR**

Reference Rate shall mean, in relation to any Interest Period, the rate of interest per annum (rounded upward, if necessary, to the nearest 1/16 of 1%) specified as the London Interbank Offered Rate (LIBOR) in the Reuters Decision 2000 application under the Price History Display in effect at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period 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.

**OR**

Reference Rate shall mean, in relation to any Interest Period, the rate of interest per annum (rounded upward, if necessary, to the nearest 1/16 of 1%) specified as the London Interbank Offered Rate (LIBOR) on the Telerate Screen, page 3750, at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period 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.

2. Reference Rate based on Prime: Choose one of the following:

Reference Rate shall mean, in relation to any Interest Period, the rate of interest per annum announced publicly by [Lender to specify, e.g., “the Lender” or “Bank of America, N.A.” or “Citibank, N.A.”] as its “Prime Rate” and in effect two Business Days prior to the first day of such Interest Period.

**OR**

Reference Rate shall mean, in relation to any Interest Period, the rate of interest per annum specified as the Prime Rate in the Wall Street Journal under the table entitled “Money Rates” as of two Business Days prior to the first day of such Interest Period.

3. Reference Rate based on U.S. Treasuries: Choose one of the following

Reference Rate shall mean, in relation to any Interest Period, the rate of interest per annum equal to the sum (rounded upwards, if necessary, to the next 0.001%) of the then current yield to maturity of the fixed rate U.S. Treasury securities with a remaining term to maturity approximating the then weighted average life to maturity of this Note, (not less than six months), as specified in \_\_\_\_\_ as of two Business Days prior to the first day of such Interest Period.

Reference Rate shall mean, in relation to any Interest Period, the rate of interest per annum equal to the current yield to maturity specified in the Federal Reserve Statistical Release H.15 (519) Selected Interest Rates for Treasury Bills under the category entitled “U.S. Government Securities, Treasury Constant Maturities”, as of two Business Days prior to the first day of such Interest Period for U.S. Treasuries securities having a remaining maturity (not less than six months) approximating the then average life to maturity of this Note.