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DLF LOAN NUMBER 129

# Loan Agreement

(Viet Nam: Viet Nam Railway System Project)

BETWEEN THE

VIET NAM RAILWAY SYSTEM,

THE

GOVERNMENT OF VIET NAM

AND THE

DEVELOPMENT LOAN FUND

DATED: August 19, 1960

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## Loan Agreement

**AGREEMENT**, dated the *10<sup>th</sup>* day of *August*, 1960, between the VIET NAM RAILWAY SYSTEM (hereinafter called the "Borrower"), an agency of the Government of Viet Nam, the GOVERNMENT OF VIET NAM (hereinafter called the "Guarantor"), and the DEVELOPMENT LOAN FUND (hereinafter called the "DLF"), an agency of the Government of the United States of America.

### W I T N E S S E T H :

**WHEREAS** the Borrower has undertaken the modernization of the railway system in Viet Nam; and

**WHEREAS** the Borrower has made application for a loan from the DLF to be used to assist in financing this project; and

**WHEREAS** the Guarantor is prepared to guarantee unconditionally and as a primary obligor payment of all obligations of the Borrower incurred pursuant to such loan and to give certain other assurances relating thereto; and

**WHEREAS** the establishment of such a loan will assist, on the basis of self-help and mutual cooperation, the development of the economic resources and productive capabilities of Viet Nam; and

**WHEREAS** such a loan will be in furtherance of the purposes and policies of the legislation governing the DLF;

**NOW, THEREFORE**, the Borrower, the Guarantor and the DLF hereby agree as follows:

**ARTICLE I****The Loan; The Project; Use of Loan**

SECTION 1.01. *Amount.* The DLF agrees to lend to the Borrower, through disbursements by the DLF in accordance with this Loan Agreement, on the terms and conditions in this Loan Agreement, an amount not to exceed Nine Million Seven Hundred Thousand United States Dollars (\$9,700,000), for the project specified in Section 1.02. The amount so disbursed shall hereinafter be called the "Loan."

SECTION 1.02. *The Project.* This Loan is made to assist the Borrower in carrying out a project (hereinafter called the "Project") for the modernization of the railway system in Viet Nam through dieselization and replacement of obsolete locomotives and railroad cars and establishment of necessary repair and maintenance facilities.

SECTION 1.03. *Use of Loan; Eligible Items.* The Borrower shall cause the Loan to be utilized, in accordance with the terms of this Loan Agreement, exclusively to finance the reasonable foreign exchange costs of acquisition, importation or installation of equipment, materials and services (hereinafter called "Eligible Items"), required to carry out the Project and approved in writing by the DLF or its designee.

**ARTICLE II****Terms of Repayment; Interest**

SECTION 2.01. *Payment Obligations.* The Borrower agrees to repay the Loan, and to pay interest on the Loan, in accordance with the terms of this Loan Agreement and the promissory note or notes (hereinafter called "Note" or "Notes") issued and outstanding pursuant to Article

III. All payments required of the Borrower under this Loan Agreement, except for payments pursuant to Sections 3.04 and 9.04, with respect to portions of the Loan against which Notes have been issued in accordance with Article III, shall be made to the holder or holders of such Note or Notes, and shall be applied first to the payment of accrued interest on the Notes and then to the repayment of principal of the Notes due and payable. All other payments, including payments pursuant to Sections 3.04 and 9.04, shall be made to the DLI' and shall be applied first to the payment of accrued interest and then to the repayment of principal due unless the section governing such payment provides otherwise. The person or entity entitled to payment as specified in this Section shall hereinafter be called the "Payee".

SECTION 2.02. *Currency of Payment.* All obligations of the Borrower to make payments under this Loan Agreement and the Notes shall be computed and stated in United States dollars, and, except for dollar payments required under Sections 9.02 and 9.04, shall be discharged by the payment of such coin or currency as at the time of payment is legal tender in Viet Nam for payment of public and private debts (hereinafter called "Currency of Payment").

SECTION 2.03. *Amount of Currency of Payment.* (a) The amount of Currency of Payment equivalent to the United States dollar amount of the obligation for which payment is due shall be computed on the basis of the rate of exchange prescribed in Section 2.04 existing on the "Reference Date", as defined in Section 2.05, applicable to such payment; provided, that in any case where payment is made after the due date for that payment, the Payee may require that it be computed on the basis of the prescribed rate of exchange existing on the date of payment.

(b) In the event that there is no prescribed rate of ex-

change on any Reference Date, the amount of Currency of Payment equivalent to the United States dollar amount of the obligation for which payment is due shall be computed and paid on the basis of the prescribed rate of exchange existing on the date, nearest preceding the Reference Date applicable to the payment, on which such a rate can be ascertained. Within sixty (60) days after the first date after the Reference Date on which a prescribed rate of exchange can be ascertained, the Borrower shall, upon the request of the Payee, make prompt payment to the Payee of the amount of Currency of Payment required to make the total payment of Currency of Payment equivalent in value to the United States dollar amount of the obligation against which the payment was made, computed on the basis of the prescribed rate of exchange existing on the first date following the Reference Date on which such a rate can be ascertained.

SECTION 2.04. *Rate of Exchange.* For purposes of the payments required by this Article, the prescribed rate of exchange between Currency of Payment and United States dollars on any particular date shall be the effective rate of exchange at which United States dollars are sold on that date in exchange for Currency of Payment to residents of Viet Nam, exclusive of government entities, for effecting: (1) the payment of interest and repayment of principal on loans; (2) the transfer of dividends and other forms of earnings on capital investments in Viet Nam; and (3) the transfer of investment capital; provided, that there is only one such rate in Viet Nam for such transactions. If there is no such single rate of exchange applicable to all of the three categories of transactions referred to in the preceding sentence, the applicable rate of exchange on any particular date shall be the highest (i.e., the largest number of units of Currency of Payment per United States dollar) effective rate of exchange at which United States dollars are sold

or offered for sale on that date to residents of Viet Nam, exclusive of government entities, in exchange for Currency of Payment to effect transactions within any of the three categories referred to in the preceding sentence.

SECTION 2.05. *Reference Date.* With respect to any payment required of the Borrower under this Loan Agreement and the Notes, the Payee may at any time give notice to the Borrower of the United States dollar amount of the obligation for which payment is due, and may designate in such notice a date, in no event to be more than thirty (30) days prior to the date payment is due, which shall be termed the "Reference Date". If no date is thus designated prior to the date on which such payment is due, the Reference Date shall be deemed to be the date on which the payment is due.

SECTION 2.06. *Interest.* Interest shall accrue, from the dates of the respective disbursements under this Loan Agreement, at the rate of three and one-half percent ( $3\frac{1}{2}\%$ ) per annum, computed on the basis of a 365-day year. Interest shall be payable semi-annually on all outstanding balances until the loan is repaid, the first interest payment to be due and payable six (6) months after the first disbursement.

SECTION 2.07. *Amortization.* The Loan shall be repayable in semi-annual installments, in accordance with the amortization schedule set forth in Schedule 4 attached to this Loan Agreement, the first installment to be repayable one (1) year after the first disbursement. If at any time prior to the date specified in Section 4.07 the Borrower so requests, or if, upon final disbursement by the DLF under this Loan Agreement, the aggregate amount of disbursements by the DLF does not equal the amount authorized to be loaned, the amount authorized to be loaned shall be reduced and the amortization schedule shall be

revised by reducing installments due so that the first six (6) installments shall be unchanged and the remaining installments shall be in such amounts as shall provide for twenty-three (23) approximately equal aggregate amounts of principal and interest; provided, however, that there shall be no reduction of installments against which repayment has been made or Notes have been issued by the Borrower and negotiated by the DLF.

SECTION 2.08. *Prepayment.* (a) With respect to any part of the Loan for which Notes have not been issued and negotiated, the Borrower shall have the right to prepay without penalty on the due date of the seventh installment of principal, and on the due date of any succeeding installment of principal, all or any part of the principal of such part of the Loan by payment of the principal amount so prepaid with interest thereon to the date of prepayment is made; provided, that the Borrower may not make prepayments at any time: (i) when there is no rate of exchange as prescribed by Section 2.04, or (ii) where there is no such prescribed rate of exchange on the Reference Date for the installment due date on which the prepayment is made, or (iii) except as the DLF may otherwise agree in writing, after the occurrence of any of the Events of Default referred to in Section 9.01. Any such prepayment shall be credited to the remaining installments of principal in the inverse order of their maturity, and the United States dollar value thereof shall be determined on the basis of the prescribed rate of exchange existing on the Reference Date applicable to the installment due date on which the prepayment is made.

(b) If the prescribed rate of exchange existing on the Reference Date for the installment of principal due one year from the date of the prepayment was made differs from the rate of exchange at which the credit to principal

was computed, the DLF shall adjust such credit on the basis of such later rate of exchange.

### **ARTICLE III**

#### **Promissory Notes**

**SECTION 3.01. *Issuance of Notes.*** If and as the DLF shall from time to time request, the Borrower shall, as soon as practicable and within such period, not less than thirty (30) days after the date of any request therefor, as the DLF shall specify in such request, execute and deliver to or on the order of the DLF Notes in the aggregate principal amount specified in such request, not exceeding, however, the aggregate amount of the Loan which shall be outstanding at the time of such request and for which Notes shall not theretofore have been so delivered or requested.

**SECTION 3.02. *Terms of Notes.*** The Notes shall bear interest at the same rate as the Loan, and shall have such maturities and be in such denominations as the DLF shall specify in such request except that the aggregate principal amount of such Notes of any maturity shall not exceed the amount of the corresponding installment of the Loan.

**SECTION 3.03. *Form of Notes.*** The Notes shall be printed, lithographed or engraved, shall be written in the English language, and shall substantially conform in text and form to the Installment Note Form or to the Serial Note Form set forth in Schedules 1 and 2 attached to this Loan Agreement, as the DLF may specify. The Notes shall be signed in the name and on behalf of the Borrower by such authorized persons as the Borrower shall designate in writing.

**SECTION 3.04. *DLF Guaranty of Notes.*** If the DLF shall transfer, assign or sell any Note and shall extend any

guaranty in connection with part or all of any payment thereunder, the Borrower shall reimburse the DLF for any amount paid by the DLF under such guaranty by reason of any failure of the Borrower to make payment in accordance with the terms of such Note and this Loan Agreement.

SECTION 3.05. *Rights of Holders of Notes.* No holder (other than the DLF) of any Note shall, by virtue of being the holder thereof, be entitled to exercise any rights under this Loan Agreement or be subject to any of the conditions or obligations imposed upon the DLF hereby. The provisions of this Section shall not impair or affect any rights or obligations under the terms of any Note.

SECTION 3.06. *Payments on Notes.* The payment of the principal of any Note shall *pro tanto* discharge the obligation of the Borrower to repay that part of the Loan to which the Note relates; and the payment of interest on any Note shall *pro tanto* discharge the obligation of the Borrower to pay interest on that part of the Loan to which the Note relates.

SECTION 3.07. *Negotiability of Notes.* Each Note issued pursuant to the Loan Agreement shall be freely negotiable by the holder thereof.

SECTION 3.08. *Duties of Borrower with Respect to Notes.* The Borrower shall promptly furnish to the DLF such information and legal opinions and take such other steps, including, but not limited to, the execution of such applications and other documents, modification of the Notes to perfect negotiability, and the appointment of a trustee to protect Note holders, as the DLF shall reasonably request in order to facilitate the public or private sale of the Notes or to list any of the Notes on any securities exchange in compliance with applicable laws and regulations. To the extent necessary to comply with the requirements of any

such sale or listing, the Borrower shall, if the DLF shall so request, appoint and maintain an agency for authentication of such Notes.

SECTION 3.09. *Exchange of Notes.* At any time when the holder of any Note or Notes shall so request, the Borrower shall, upon surrender of such Note or Notes for such purpose, execute and deliver to the holder a new Note or Notes in exchange therefor in an aggregate principal amount equal to the unpaid principal amount of the Note or Notes surrendered, and of like tenor, bearing interest from the date to which interest has been paid on such Note or Notes, and payable to the order of such person or persons and in such other denomination or denominations as such holder may reasonably request.

SECTION 3.10. *Replacement of Notes.* Upon receipt of evidence satisfactory to the Borrower of the loss, theft, destruction, or mutilation of any Note and, in the case of loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Borrower, or, in the case of any such mutilation, upon surrender and cancellation of such Note, the Borrower shall execute and deliver a new Note of like tenor and unpaid principal amount in lieu of such lost, stolen, destroyed or mutilated Note.

SECTION 3.11. *Transfer of Notes.* The DLF shall notify the Borrower of any transfer by it of the Notes and shall record on the Notes so transferred all payments made thereon prior to such transfer.

## ARTICLE IV

### Letters of Commitment and Disbursement

SECTION 4.01. *Request for Letters of Commitment.* The Borrower may from time to time, in order to obtain dis-

bursements under this Loan Agreement, request the DLF to issue Letters of Commitment to one or more banking institutions in the United States designated by the Borrower.

SECTION 4.02. *Issuance of Letters of Commitment.* Upon receipt of any request in accordance with Section 4.01 and upon performance of all the conditions precedent to disbursement under this Loan Agreement, the DLF shall issue, in such form and under such procedures as it shall specify, a Letter of Commitment to the designated bank undertaking to make reimbursement to such bank for payments made by the bank, through letters of credit or otherwise, to the Borrower or any designee of the Borrower. Banking charges incurred in connection with Letters of Commitment shall be for the account of the Borrower.

SECTION 4.03. *Notice of Issuance of Letters of Commitment.* The DLF shall promptly notify the Borrower of the issuance pursuant to this Article of any Letter of Commitment and of the terms thereof.

SECTION 4.04. *Documentation.* Letters of Commitment issued pursuant to this Article shall provide that payments under them by banks can only be made upon presentation to the banks of such documentation as the DLF may specify.

SECTION 4.05. *Other Forms of Disbursement.* Disbursements may also be made under this Loan Agreement through such other means and by such other procedures as the Borrower and the DLF may mutually agree in writing.

SECTION 4.06. *Terminal Date for Requests for Letters of Commitment and Other Forms of Disbursement.* Except

as the DLF may otherwise agree in writing, no requests for the issuance of Letters of Commitment and no requests for disbursement other than under a Letter of Commitment shall be made pursuant to this Loan Agreement after September 30, 1962.

*SECTION 4.07. Terminal Date for Requests for Disbursement under Letters of Commitment.* Except as the DLF may otherwise agree in writing, no disbursement under a Letter of Commitment issued hereunder shall be made against documentation submitted after March 31, 1963 to any bank designated under Section 4.01.

## **ARTICLE V**

### **Conditions Precedent**

*SECTION 5.01. Legal Opinions and Supporting Documents.* Prior to and as a condition precedent to the issuance of the first Letter of Commitment or disbursement under this Loan Agreement, there shall be delivered to the DLF, in form and substance satisfactory to it, evidence that the execution and delivery of this Loan Agreement on behalf of the Borrower and the Guarantor have been duly authorized or ratified by all necessary governmental action. As part of the evidence to be furnished pursuant to this Section, the Borrower and the Guarantor shall furnish to the DLF an opinion or opinions of the Minister of Justice of the Government of Viet Nam, or of other legal counsel satisfactory to the DLF, demonstrating to the satisfaction of the DLF:

- (a) That the Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and the Guarantor and constitutes a valid and binding obligation of the

Borrower and the Guarantor in accordance with its terms; and

- (b) That the Notes, if and when executed and delivered in accordance with the Loan Agreement, will constitute valid and binding obligations of the Borrower in accordance with their terms and that, except as stated in such opinion, no further signature nor formality is required for that purpose; and
- (c) That the guaranties by the Guarantor of payment of the Notes when executed and delivered in accordance with this Loan Agreement will constitute valid and binding obligations of the Guarantor in accordance with their terms and that, except as stated in such opinion, no further signature nor formality is required for that purpose; and
- (d) That the persons designated pursuant to Section 5.02 have the authority to carry out any of the acts required or permitted in accordance with Section 10.02(b).

SECTION 5.02. *Designation of Representatives.* Prior to and as a condition precedent to the issuance of the first Letter of Commitment or disbursement under this Loan Agreement, the Borrower and Guarantor shall each designate a person by title or name for the purpose of Section 10.02(b).

SECTION 5.03. *Terminal Date for Fulfillment of Conditions in Sections 5.01 and 5.02.* If all of the acts required to be performed under Sections 5.01 and 5.02 have not been performed by August 31, 1960, or such other date as shall be agreed upon by the Borrower, the Guarantor and the DLF, the DLF may at any time thereafter at its option terminate this Loan Agreement by giving notice to the

Borrower and the Guarantor. Upon the giving of such notice, this Loan Agreement and all obligations of the parties hereunder shall forthwith terminate.

**SECTION 5.04. *Additional Conditions Precedent.*** Prior to and as additional conditions precedent to the issuance of the first Letter of Commitment or disbursement under this Loan Agreement, the Borrower, except as the DLF may otherwise agree in writing, shall furnish to the DLF:

- (a) A report containing the amounts and recipients of any commissions, fees or payments of any kind which have been made or agreed to be made to any person, firm or corporation (other than full-time officers and employees of the Borrower or the Guarantor or its agencies) as compensation for bona fide professional, technical or other comparable services incident to presenting the merits of the application for the Loan, in connection with any negotiations incident to obtaining the Loan or in connection with operations under the Loan Agreement.
- (b) Evidence satisfactory to the DLF that sufficient Currency of Payment will be available to the Borrower to meet the anticipated costs of the Project in such currency.
- (c) A contract with an engineering consultant mutually satisfactory to the Borrower and the DLF on terms and conditions mutually satisfactory to the Borrower and the DLF.

## **ARTICLE VI**

### **Rules Concerning Procurement**

**SECTION 6.01. *Local Currency Costs.*** Costs of Eligible

Items which can be paid in Currency of Payment may not be financed under this Loan Agreement.

**SECTION 6.02. *Eligibility Date.*** No Eligible Items may be financed under this Loan Agreement which were firmly ordered or contracted for prior to the effective date of this Loan Agreement.

**SECTION 6.03. *Reasonable Price.*** No Eligible Items may be financed under this Loan Agreement unless they have been procured at reasonable prices, which should normally approximate the lowest competitive price for the Eligible Item procured, quality, time and cost of delivery, and other factors considered. Except as the DLF may otherwise agree in writing, procurement of Eligible Items financed under this Loan Agreement will be based upon solicitation of a reasonable selection of suppliers.

**SECTION 6.04. *Small Business Notification.*** At least thirty (30) days prior to the time any order in an amount exceeding Five Thousand United States dollars (\$5,000) for Eligible Items to be financed under this Loan Agreement is placed or is agreed to be placed, the Borrower shall cause to be received by the DLF, in accordance with procedures established from time to time by the DLF, a description of the Eligible Items to be purchased, in the English language, with specifications in terms of United States standards, and of the manner of submitting bids to the purchaser thereof; provided however, that the DLF may, upon application by the Borrower, reduce the thirty (30) day period or waive any or all requirements of this Section in its application to particular purchase transactions where it deems such action necessary or appropriate.

**SECTION 6.05. *Source of Procurement.*** All Eligible Items

financed under this Loan Agreement shall have their origin in and shall be procured from the United States.

SECTION 6.06. *Shipping.* (a) No Eligible Items financed under this Loan Agreement may be shipped to the Borrower by any transportation medium owned, operated or under the control of a country (other than Viet Nam) not included in Code 899 of the International Cooperation Administration Geographic Code Book as in effect at the time of shipment.

(b) The Borrower shall ensure that at least fifty percent (50%) of the gross tonnage of all Eligible Items (computed separately for dry bulk carriers, dry cargo liners and tankers) financed under this Loan Agreement which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. The DLF shall determine, for purposes of the foregoing sentence, whether United States-flag commercial vessels are available at fair and reasonable rates. The Borrower may at any time apply to the DLF for such an administrative determination.

SECTION 6.07. *Marine Insurance.* Marine insurance on Eligible Items may be financed under this Loan Agreement; provided, that such insurance is placed at the lowest available competitive rates; provided further, however, that if the Guarantor, in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, discriminates by statute, decree, rule or regulation against any marine insurance company authorized to do business in any State of the United States of America, Eligible Items financed under this Loan Agreement, if insured against

marine risk, shall during the continuance of such discrimination be so insured in the United States with a company or companies authorized to do a marine insurance business in any State of the United States of America.

SECTION 6.08. *Bonds.* The Borrower shall obtain such bonds, including but not limited to performance and payment bonds, as the DLF may reasonably request.

## ARTICLE VII

### Covenants and Warranties

SECTION 7.01. *Execution of Project.* The Borrower shall cause the Project to be carried out with diligence and efficiency, in conformity with sound engineering and financial practices. The Borrower shall cause the Project to be carried out in conformity with any contracts, plans, specifications, and schedules approved by the DLF or the engineering consultant employed pursuant to Section 5.04(e) and shall obtain DLF concurrence prior to any material modification of such contracts, plans, specifications, and schedules. The Borrower shall cause all equipment and machinery financed under this Loan Agreement to be adequately maintained and repaired, in accordance with sound engineering practices, as necessary or appropriate. The Borrower and the Guarantor agree to complete the Project, and to provide the resources required, in addition to this Loan, for that purpose.

SECTION 7.02. *Utilization of Eligible Items.* The Borrower shall cause all Eligible Items financed under this Loan Agreement to be used exclusively for the Project; provided that in the case of any such Eligible Items which are not fully expended through their use thereon, the foregoing provision shall apply until the completion of the Proj-

ect or until such time as such Eligible Items can no longer be usefully employed thereon; and provided further that no such Eligible Items shall be exported from Viet Nam without prior approval of the DLF so long as the DLF may require.

SECTION 7.03. *Source of Other Equipment, Materials and Services Utilized in Project.* The Borrower covenants that all Eligible Items not financed under this Loan Agreement shall originate in Viet Nam or from sources included in Code 899 of the International Cooperation Administration Geographic Code Book as in effect at the time such equipment, materials or services are firmly ordered or otherwise contracted for. With respect to Eligible Items other than services, the term "source" as used in the preceding sentence shall mean the country or area from which the Eligible Items are shipped to Viet Nam except that where Eligible Items are shipped from a free port or bonded warehouse in substantially the same form in which received therein, the term "source" shall mean that country or area from which the Eligible Items were shipped to the free port or bonded warehouse.

SECTION 7.04. *Marking.* The Borrower shall make appropriate arrangements to assure compliance with such instructions as may be furnished by the DLF with respect to publicity for the Loan, signs at Project sites and marking of Eligible Items and the shipping containers thereof, or any combination of the foregoing.

SECTION 7.05. *Maintenance of Books and Records; Inspections and Information.* (a) The Borrower shall maintain or cause to be maintained books and records adequate to identify the Eligible Items financed under this Loan Agreement; to disclose their costs and their use in the Project; to show, with respect to contracts or orders for such Eligible

Items, the nature and extent of the solicitation of prospective suppliers and the basis for the award of such contracts or orders; to indicate the progress of the Project; and to reflect, in accordance with consistently maintained sound accounting practices, the financial condition and operations of the Borrower. Such books and records shall be maintained for so long as the DLF may require. The DLF shall have the right at all reasonable times to examine such books and records and all other documents, correspondence, memoranda and other records relating to this Loan Agreement.

(b) The Borrower and the Guarantor shall enable the DLF to inspect the Project and the utilization of all Eligible Items financed under this Loan Agreement. The Borrower and the Guarantor shall cooperate with, and give reasonable assistance to, the DLF to enable such examination, observation and review to be accomplished fully and expeditiously and shall afford, or arrange to have afforded, all reasonable opportunity for authorized representatives of the DLF to visit any part of Viet Nam for purposes related to the Loan. The Borrower shall promptly furnish to the DLF such financial, progress and other reports and information as the DLF may reasonably request.

**SECTION 7.06. *Notice of Adverse Developments.*** The Borrower shall promptly inform the DLF of any conditions which interfere with, or threaten to interfere with, the servicing of the Notes or the accomplishment of the purposes of the Loan.

**SECTION 7.07. *Use of Currency of Payment.*** The Guarantor agrees that Currency of Payment paid to the DLF pursuant to this Loan Agreement or the Notes may be used by the DLF or by any agency of the Government of the United States for any expenditures of or payments by the DLF or any agency of the Government of the United States, including any expenditures or payments by the

DLF for purposes of loans or other transactions authorized by the legislation governing the DLF, as it is or may hereafter from time to time be amended. However, the use of such Currency of Payment by the DLF or by any agency of the Government of the United States to finance exports from Viet Nam or its territories, or the sale of such Currency of Payment for other currencies to entities other than agencies of the Government of the United States, will be undertaken only upon agreement in advance by the Guarantor. The DLF agrees to take into account the economic position of the Guarantor in any contemplated use of Currency of Payment received by the DLF hereunder.

*SECTION 7.08. Commissions, Fees and Other Payments.*

(a) The Borrower and the Guarantor covenant that each will promptly report to the DLF any commissions, fees or payments of any kind which are made or agreed to be made to any person, firm or corporation (other than full-time officers and employees of the Borrower, the Guarantor or its agencies) as compensation for bona fide professional, technical or other comparable services in connection with operations under this Loan Agreement. In the event that the DLF shall determine any commission, fee or payment reported under this Section or under Section 5.04(a) to be unreasonable, the Borrower hereby agrees to effect an adjustment thereof satisfactory to the DLF.

(b) The Borrower and the Guarantor warrant that no commissions, fees or payments of any kind, other than the commissions, fees or payments reported to the DLF pursuant to Sections 5.04(a) and 7.08(a), have been or will be made to any person, firm or corporation (other than full-time officers and employees of the Borrower, the Guarantor or its agencies) in connection with the application which has resulted in the making of the Loan by the DLF, in connection with any negotiations incident to obtaining the Loan or in connection with any operations undertaken

and contracts or orders financed under this Loan Agreement.

SECTION 7.09. *Subordination of Loan by Guarantor.* The Guarantor and the Borrower agree that no payments on the principal of the loan extended to the Borrower by the Guarantor shall be made until the principal of and interest on this Loan has been fully paid.

## ARTICLE VIII

### Guaranty

SECTION 8.01. *Guaranty of Obligations of Borrower.* Without limitation or restriction upon any of the other covenants on its part contained in this Loan Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of and the interest on the Loan and the Notes issued and outstanding pursuant to Article III, or any other payment required under this Loan Agreement.

SECTION 8.02. *Guaranty on Notes.* With respect to any Notes issued by the Borrower pursuant to Section 3.01 or in exchange for or replacement of Notes so issued, the Guarantor hereby agrees to endorse thereon its unconditional guaranty of payment in the form and text specified in Schedule 3 attached to this Loan Agreement.

SECTION 8.03. *Further Duties of Guarantor.* The Guarantor shall cooperate fully with the DLF to assure that the purposes of this Loan Agreement will be accomplished. To that end, the Guarantor shall furnish such information and take such steps related to making the guaranty of the Notes operative as the DLF shall reasonably request.

**SECTION 8.04. *Taxation on Loan Agreement, Notes and Payments Thereunder.*** The Guarantor agrees that this Loan Agreement and the Notes shall be free from, and the principal of and interest on the Loan and the Notes shall be paid without deduction for and free from, any taxation, including fees and impositions, imposed under the laws of Viet Nam or laws in effect in its territory.

## **ARTICLE IX**

### **Remedies of the DLF**

**SECTION 9.01. *Events of Default; Termination of Letters of Commitment and Other Disbursements.*** The occurrence of any of the following events shall be deemed to be an Event of Default, entitling the DLF, at its option, to (i) decline to issue further Letters of Commitment, (ii) cancel, after giving notice to the Borrower, outstanding Letters of Commitment to the extent that they have not been utilized through the issuance of irrevocable letters of credit and through bank payments made other than under irrevocable letters of credit, and (iii) decline to make disbursements other than under outstanding irrevocable letters of credit:

- (a) Failure to make full payment of any installment of principal or payment of interest when due, or of any other payment required under this Loan Agreement or the Notes; provided, that the DLF may, on the basis of any such default, exercise any of its options under this Section only while such default continues.
- (b) A breach on the part of the Borrower or the Guarantor in the performance of any other covenant or agreement under this Loan Agreement.
- (c) Determination that a representation made by or on behalf of the Borrower in obtaining the Loan

or pursuant to this Loan Agreement is incorrect in a material respect.

- (d) An extraordinary situation which the DLF determines makes it improbable that the Borrower will be able to perform its obligations under this Loan Agreement or that the Loan will fulfill the purposes for which it is made.

SECTION 9.02. *Acceleration of Loan.* Upon the occurrence of any of the Events of Default referred to in subsections (a), (b), and (c) of Section 9.01, and in accordance with the terms of such subsections, the DLF, at its option, may declare all or any part of the unpaid principal of the Loan and the Notes to be due and payable immediately, specifying which installments are included, and may declare that such principal and installments declared to be due and payable shall be payable in United States dollars, and upon any such declaration such principal and installments shall become so due and payable immediately; provided, however, that the DLF shall not exercise its option under this Section unless the default is not cured within sixty (60) days after the DLF gives notice of its intention to exercise its option under this Section.

SECTION 9.03. *Waivers of Default.* No delay in exercising or omission to exercise, any right, power or remedy accruing to the DLF under this Loan Agreement or the Notes arising as a result of the occurrence of any of the events specified in Section 9.01 hereof shall be construed as an acquiescence by the DLF in such event or as a waiver by the DLF of its rights, powers or remedies arising as a result of the occurrence of that event or any other such event.

SECTION 9.04. *Refunds.* If the DLF determines that any disbursement made by it under this Loan Agreement is not

supported by the documentation submitted by the Borrower in accordance with this Loan Agreement or is not made or used in accordance with the terms of this Loan Agreement, or is in violation of the legislation governing the DLF, the Borrower shall pay the DLF, within thirty (30) days after receipt of request, an amount in United States dollars not to exceed the amount of such disbursement; provided, that such request by the DLF shall be made no later than five (5) years after the date on which the disbursement was made. The DLF shall reduce the Loan by the amount of any such payment upon its receipt by the DLF, and the DLF shall cause the obligation of the Borrower to make payments under the Notes to be reduced accordingly.

## ARTICLE X

### Miscellaneous

SECTION 10.01. *Effective Date of Loan Agreement.* This Loan Agreement shall enter into effect as of the day and year first above written.

SECTION 10.02. (a) *Use of Representatives.* All actions to be performed under the Loan Agreement by the Borrower, the Guarantor or the DLF may be performed by their respective duly authorized representatives, and all rights of the Borrower, the Guarantor or the DLF under this Loan Agreement may be exercised by their respective duly authorized representatives.

(b) Any action required or permitted to be taken, and any documents (not including Notes) required or permitted to be executed, under this Loan Agreement on behalf of the Borrower or the Guarantor may be taken or executed by the persons designated pursuant to Section 5.02 or any person or persons authorized in writing by them. Any modi-

fication or amplification of the provisions of the Loan Agreement may be agreed to on behalf of the Borrower and the Guarantor by written instrument executed on behalf of the Borrower and the Guarantor by their representatives designated pursuant to Section 5.02 or any person authorized in writing by said representatives.

SECTION 10.03. *Successors to Rights of DLF.* If, by operation of any law of the United States or by virtue of assignment, any corporate or other agency of the Government of the United States succeeds to the rights and obligations of the DLF under this Loan Agreement and the Notes, such agency shall be deemed to be the DLF for purposes of this Loan Agreement and the Notes.

SECTION 10.04. *“Disbursements.”* As used in this Loan Agreement, the term “disbursements” shall mean any payments by the DLF whether made directly to the Borrower or its designee or made to a banking institution pursuant to a Letter of Commitment issued under this Loan Agreement.

SECTION 10.05. *“Sections”; “Articles.”* All references in this Loan Agreement to “Sections” or “Articles” shall be deemed to refer to Sections and Articles of this Loan Agreement, unless specific provision is made to the contrary.

SECTION 10.06. *Applicable Law.* This Loan Agreement and each of the Notes shall be deemed to be a contract made under the laws of the District of Columbia, United States of America, and shall be governed by and construed in accordance with the laws of the District of Columbia, United States of America.

SECTION 10.07. *Notice.* Any notice, request or communi-

cation given, made or sent by the Borrower, the Guarantor, or the DLF pursuant to this Loan Agreement or the Notes shall be in writing and shall be deemed to have been duly given, made or sent when it shall be delivered by hand or by mail, telegram, cable or radiogram to the party to which it is addressed, as follows:

To the Borrower:

Mail Address:

Viet Nam Railway System  
No. 2 Cong-Truong Dien-Hong  
Saigon, Viet Nam

Cable Address:

FERNAM  
Saigon, Viet Nam

To the Guarantor:

Mail Address:

Minister of Finance  
Government of Viet Nam  
Saigon, Viet Nam

To the DLF:

Mail Address:

The Managing Director  
Development Loan Fund  
Washington 25, D. C.  
United States of America

Cable Address:

DEVLOAN  
Washington, D. C.

IN WITNESS WHEREOF the Borrower, the Guarantor, and the DLF, each acting through its respective duly authorized representative, have caused this Loan Agreement to be signed in their respective names and delivered as of the day and year first above written.

VIET NAM RAILWAY SYSTEM

By:

Representative



GOVERNMENT OF VIET NAM

By:

Ambassador



DEVELOPMENT LOAN FUND

By:

Managing Director



**SCHEDULE 1**

(Promissory Notes Should be on a Single Sheet of Paper)

**Promissory Note**

(Installment Note Form)

Washington, D. C.

—19—

**FOR VALUE RECEIVED**, [Borrower] (hereinafter called the "Obligor") hereby promises to pay to or order, the principal sum in Currency of Payment, as hereinafter defined, equivalent to United States Dollars (\$ \_\_\_\_\_), and to pay interest in Currency of Payment from the date hereof at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum, computed on the basis of a 365-day year, payable semi-annually on the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ each year, on the principal amount of this Promissory Note (hereinafter called "Note") from time to time outstanding. Payments of principal and interest by the Obligor pursuant to the terms of this Note shall be made at the office of [to be designated by the DLF] \_\_\_\_\_. The first payment of interest on this Note shall be due on \_\_\_\_\_. The principal of this Note shall be repaid in semi-annual installments beginning on \_\_\_\_\_, in the amounts and at the times set forth below.

[Insert schedule of repayments specified by the DLF in its request made in accordance with the provisions of the Loan Agreement referred to below.]

This Note is issued by the Obligor in accordance with a Loan Agreement dated \_\_\_\_\_ between the Obligor, [name of any other parties to Loan Agreement], and the DEVELOPMENT LOAN FUND (hereinafter called the "Loan Agreement"). No reference herein to the Loan Agreement shall confer upon the holder hereof any rights thereunder or impair the obligation of the Obligor, which is absolute and unconditional, to pay the principal of and interest on this Note at the times and place in the amounts and in the currency herein prescribed.

Obligations of the Obligor under this Note shall be discharged by the payment to the holder hereof of such coin or currency as at the time of payment is legal tender in [Country of Borrower] for payment of public and private debts (herein called "Currency of Payment"). The amount of Currency of Payment equivalent to the United States dollar amount of the obligation of the Obligor for which payment is due shall be computed on the basis of the rate of exchange prescribed herein existing on the "Reference Date," as defined herein, applicable to such payment; provided that in any case where payment is made after the due date for that payment, the holder

may require that it be computed on the basis of the prescribed rate of exchange existing on the date of payment.

In the event that there is no prescribed rate of exchange on any Reference Date, the amount of Currency of Payment equivalent to the United States dollar amount of the obligation for which payment is due shall be computed and paid on the basis of the prescribed rate of exchange existing on the date nearest preceding the Reference Date. Within sixty (60) days after the first date after the Reference Date on which the prescribed rate of exchange can be ascertained, the Borrower shall, upon the request of the holder of this Note, make prompt payment to such holder of the amount of Currency of Payment required to make the total payment of Currency of Payment equivalent in value to the United States dollar amount of the obligation against which the payment was made, computed on the basis of the prescribed rate of exchange existing on the first date following the Reference Date on which such a rate can be ascertained.

For all purposes of this Note, the applicable rate of exchange between Currency of Payment and United States dollars on any particular date shall be the effective rate of exchange at which United States dollars are sold on that date in exchange for Currency of Payment to residents of [Country of Borrower], exclusive of government entities, for effecting: (1) the payment of interest and repayment of principal on loans; (2) the transfer of dividends and other forms of earnings on capital investments in [Country of Borrower]; and (3) the transfer of investment capital; provided, that there is only one such rate in [Country of Borrower] for such transactions. If there is no such single rate of exchange applicable to all of the three categories of transactions referred to in the preceding sentence, the applicable rate of exchange on any particular date shall be the highest (i.e., the largest number of units of Currency of Payment per United States dollar) effective rate of exchange at which United States dollars are sold or offered for sale on that date to residents of [Country of Borrower], exclusive of government entities, in exchange for Currency of Payment to effect transactions within any of the three categories referred to in the preceding sentence.

The holder of this Note may at any time give notice to the Borrower of the United States dollar amount of the obligation for which payment is due, and may designate in such notice a date, in no event to be more than thirty (30) days prior to the date payment is due, which shall be termed the "Reference Date." If the date thus designated falls on a legal holiday in [Country of Borrower], the Reference Date shall be deemed to be the next succeeding business date in [Country of Borrower]. If no date is thus designated by the holder prior to the date on which such payment is due, the Reference Date shall be deemed to be the date on which the payment is due.

At any time when the holder of the Note shall so request, the Obligor shall, upon surrender of this Note, with or without other Notes of the

Obligor containing this privilege of exchange, execute and deliver to the holder a new Note or Notes in exchange therefor in an aggregate principal amount equal to the unpaid principal amount of the Note or Notes surrendered, and of like tenor, bearing interest from the date to which interest has been paid on such Note or Notes, and payable to the order of such person or persons and in such other denomination or denominations as such holder may request.

Upon receipt of evidence satisfactory to the Obligor of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of indemnity reasonably satisfactory to the Obligor, and upon surrender and cancellation of the Note if mutilated, the Obligor shall make and deliver to the holder, in substitution, a new Note, of like tenor and unpaid principal amount.

Upon the default in the payment of any installment of principal due or any interest due on this Note, the holder hereof may declare all or any part of the unpaid principal of the Note to be due and payable immediately, and upon such declaration such principal shall be due and payable immediately. In addition, under the Loan Agreement, the DEVELOPMENT LOAN FUND at its option, upon the occurrence of certain events, may declare the unpaid principal of all or any part of this Note or any other Notes issued under the Loan Agreement and then outstanding (if not already due) to be due and payable immediately, and may further declare all or any part of such unpaid principal declared to be due and payable immediately and any other amount of principal which is due and payable under this Note or any other Note issued under the Loan Agreement and then outstanding to be payable in United States dollars; and upon any such declaration such principal shall be due and payable immediately in accordance with such declaration.

Notice to the Obligor under this Note shall be deemed duly given when delivered by hand or by mail, telegram, cable or radiogram to [Name] at [Address].

The principal of and interest on this Note shall be paid without deduction for and free from any taxation, including fees and impositions, now or at any time hereafter imposed under the laws of [Country of Borrower] or laws in effect in its territory.

No delay in exercising, or omission to exercise, any right, power or remedy of the holder hereof with respect to this Note, where such right, power or remedy arises as a result of a default of the Obligor in the prompt and full payment of interest on or repayment of principal of this Note, shall be construed as a waiver by the holder of its rights, powers or remedies arising as a result of that default, while it shall continue, or any other such default.

[BORROWER]

By:

[Title]

**SCHEDULE 2**

(Promissory Notes Should be on a Single Sheet of Paper)

**Promissory Note**

(Series Note Form)

Washington, D. C.

—19—

**FOR VALUE RECEIVED**, [Borrower] (hereinafter called the "Obligor") hereby promises to pay to or order, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the office of [to be designated by the DLF], a principal sum in Currency of Payment, as hereinafter defined, equivalent to \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_), and to pay interest in Currency of Payment from the date hereof at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum, computed on the basis of a 365-day year, on the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ of each year, on the principal amount of this Promissory Note (hereinafter called "Note"). The first payment of interest on this Note shall be due on \_\_\_\_\_.

This Note is one of a Series of \_\_\_\_\_ ( \_\_\_\_\_ ) promissory notes known as "Promissory Notes, Series \_\_\_\_\_" (hereinafter called "Series \_\_\_\_\_ Notes") issued by the Obligor in accordance with a Loan Agreement dated \_\_\_\_\_ between the Obligor, [name of any other parties to Loan Agreement], and the DEVELOPMENT LOAN FUND (hereinafter called the "Loan Agreement"). No reference herein to the Loan Agreement shall confer upon the holder hereof any rights thereunder or impair the obligation of the Obligor, which is absolute and unconditional, to pay the principal of and interest on this Note at the times and place and in the amounts and in the currency herein prescribed.

Obligations of the Obligor under this Note shall be discharged by the payment to the holder hereof of such coin or currency as at the time of payment is legal tender in [Country of Borrower] for payment of public and private debts (herein called "Currency of Payment"). The amount of Currency of Payment equivalent to the United States dollar amount of the obligation of the Obligor for which payment is due shall be computed on the basis of the rate of exchange prescribed herein existing on the "Reference Date", as defined herein, applicable to such payment; provided that in any case where payment is made after the due date for that payment, the holder may require that it be computed on the basis of the prescribed rate of exchange existing on the date of payment.

In the event that there is no prescribed rate of exchange on any Reference Date, the amount of Currency of Payment equivalent to the United States dollar amount of the obligation for which payment is due shall be computed and paid on the basis of the prescribed rate of exchange existing on the date nearest preceding the Reference Date. Within sixty (60) days after the first date after the Reference Date on which the prescribed rate of exchange can be ascertained, the Borrower shall, upon the request of the holder of this Note, make prompt payment to such holder of the amount of Currency of Payment required to make the total payment of Currency of Payment equivalent in value to the United States dollar amount of the obligation against which the payment was made, computed on the basis of the prescribed rate of exchange existing on the first date following the Reference Date on which such a rate can be ascertained.

For all purposes of this Note, the applicable rate of exchange between Currency of Payment and United States dollars on any particular date shall be the effective rate of exchange at which United States dollars are sold on that date in exchange for Currency of Payment to residents of [Country of Borrower], exclusive of government entities, for affecting: (1) the payment of interest and repayment of principal on loans; (2) the transfer of dividends and other forms of earnings on capital investments in [Country of Borrower]; and (3) the transfer of investment capital; provided, that there is only one such rate in [Country of Borrower] for such transactions. If there is no such single rate of exchange applicable to all of the three categories of transactions referred to in the preceding sentence, the applicable rate of exchange on any particular date shall be the highest (i.e., the largest number of units of Currency of Payment per United States dollar) effective rate of exchange at which United States dollars are sold or offered for sale on that date to residents of [Country of Borrower], exclusive of government entities, in exchange for Currency of Payment to effect transactions within any of the three categories referred to in the preceding sentence.

The holder of this Note may at any time give notice to the Borrower of the United States dollar amount of the obligation for which payment is due, and may designate in such notice a date, in no event to be more than thirty (30) days prior to the date payment is due, which shall be termed the "Reference Date." If the date thus designated falls on a legal holiday in [Country of Borrower], the Reference Date shall be deemed to be the next succeeding business day in [Country of Borrower]. If no date is thus designated by the holder prior to the date on which such payment is due, the Reference Date shall be deemed to be the date on which the payment is due.

At any time when the holder of this Note shall so request, the Obligor shall, upon surrender of this Note, with or without other Notes of the Obligor containing this privilege of exchange, execute and deliver to the holder a new Note or Notes in exchange therefor in an aggregate principal amount equal to the unpaid principal amount of the Note or Notes surrendered, and of like tenor, bearing interest from the date to which interest has been

paid on such Note or Notes, and payable to the order of such person or persons and in such other denomination or denominations as such holder may request.

Upon receipt of evidence satisfactory to the Obligor of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction of indemnity reasonably satisfactory to the Obligor, and upon surrender and cancellation of the Note if mutilated, the Obligor shall make and deliver to the holder, in substitution, a new Note, of like tenor and unpaid principal amount.

Upon the default in the payment of any interest due on this Note or upon the default in the payment when due of any interest on or principal of any other Series Notes, the holder hereof may declare the principal of this Note to be due and payable immediately, and upon such declaration such principal shall be due and payable immediately. In addition, under the Loan Agreement, the DEVELOPMENT LOAN FUND at its option, upon the occurrence of certain events, may declare the unpaid principal of all or any part of this Note or any other Notes issued under the Loan Agreement and then outstanding (if not already due) to be due and payable immediately, and may further declare all or any part of such unpaid principal declared to be due and payable immediately and any other amount of principal which is due and payable under this Note or any other Note issued under the Loan Agreement and then outstanding to be payable in United States dollars; and upon any such declaration such principal shall be due and payable immediately in accordance with such declaration.

Notice to the Obligor under this Note shall be deemed duly given when delivered by hand or by mail, telegram, cable or radiogram to [Name] at [Address].

The principal of and interest on this Note shall be paid without deduction for and free from any taxation, including fees and impositions, now or at any time hereafter imposed under the laws of [Country of Borrower] or laws in effect in its territory.

No delay in exercising, or omission to exercise, any right, power or remedy of the holder hereof with respect to this Note or any other promissory note issued under the Loan Agreement, where such right, power or remedy arises as a result of a default of the Obligor in the prompt and full payment of interest on or repayment of principal of this Note, shall be construed as a waiver by the holder of its rights, powers or remedies arising as a result of that default, while it shall continue, or any other such default.

[BORROWER]

By:

[Title]

**SCHEDULE 3**

**Guaranty**

**FOR VALUE RECEIVED**, the [Guarantor] as primary obligor and not as surety merely, hereby unconditionally guarantees, and pledges its full faith and credit for, the due and punctual payment of interest and repayment of principal required of the Obligor under the within Note, free from taxes and impositions as therein provided, prior notice to, demand upon or action against the Obligor on said Note or the [Guarantor] being hereby waived.

Dated:

[GUARANTOR]

By:

[Title]

**SCHEDULE 4****Amortization Schedule**

<b>Semi-annual Installment Number</b>	<b>Payment of Principal</b>
1	\$ 50,000.00
2	50,000.00
3	50,000.00
4	50,000.00
5	50,000.00
6	50,000.00
7	335,466.82
8	341,337.49
9	347,310.90
10	353,388.84
11	353,573.14
12	365,865.67
13	372,268.32
14	378,783.02
15	385,411.72
16	392,156.42
17	399,019.16
18	406,002.00
19	413,107.03
20	420,336.40
21	427,692.29
22	435,176.91
23	442,792.50
24	450,541.37
25	458,425.84
26	466,448.30
27	474,611.14
28	482,916.84
29	491,367.88
	<hr/>
	<b>₱0,700,000.00</b>