

No. 2089

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**INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT  
and  
NETHERLANDS**

**Guarantee Agreement — *KLM Project* — (with annexed Loan Regulations No. 4 and Loan Agreement — *KLM Project* — between the Bank and Koninklijke Luchtvaart Maatschappij N. V. and related letter). Signed at Washington, on 20 March 1952**

*Official text: English.*

*Registered by the International Bank for Reconstruction and Development on 11 February 1953.*

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**BANQUE INTERNATIONALE POUR  
LA RECONSTRUCTION ET LE DÉVELOPPEMENT  
et  
PAYS-BAS**

**Contrat de garantie — *Projet de la KLM* — (avec, en annexe, le Règlement n° 4 sur les emprunts et le Contrat d'emprunt — *Projet de la KLM* — entre la Banque et la Koninklijke Luchtvaart Maatschappij N. V. et une lettre y relative). Signé à Washington, le 20 mars 1952**

*Texte officiel anglais.*

*Enregistré par la Banque internationale pour la reconstruction et le développement le 11 février 1953.*

No. 2089. GUARANTEE AGREEMENT<sup>1</sup> (*KLM PROJECT*)  
BETWEEN THE KINGDOM OF THE NETHERLANDS  
AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON,  
ON 20 MARCH 1952

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AGREEMENT, dated March 20, 1952, between KINGDOM OF THE NETHERLANDS (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith between the Bank and Koninklijke Luchtvaart Maatschappij N. V. (hereinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement,<sup>2</sup> the Bank has agreed to make to the Borrower a loan in the aggregate principal amount of seven million dollars (\$7,000,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee such Loan and the obligations of the Borrower in respect thereof; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to guarantee such Loan and the obligations of the Borrower in respect thereof;

NOW THEREFORE the parties hereto hereby agree as follows :

*Article I*

*Section 1.01.* The parties to this Guarantee Agreement accept all the provisions of Loan Regulations No. 4<sup>2</sup> of the Bank dated December 6, 1950, subject, however, to the modifications thereof set forth in Schedule 3<sup>3</sup> to the Loan Agreement (said Loan Regulation No. 4, as so modified, being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

*Section 1.02.* Wherever used in this Guarantee Agreement, unless the context shall otherwise require : (i) the term " metropolitan areas of the Guarantor " shall mean the territory of the Guarantor on the continent of Europe ; and (ii)

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<sup>1</sup> Came into force on 25 April 1952, upon notification by the Bank to the Government of Netherlands.

<sup>2</sup> See p. 216 of this volume.

<sup>3</sup> See p. 240 of this volume.

the term "Agency" shall mean any agency or instrumentality of the Guarantor or of any political subdivision of the Guarantor in its metropolitan areas and shall include any institution or organization which is owned or controlled directly or indirectly by the Guarantor or by any such political subdivision of the Guarantor.

### Article II

*Section 2.01.* Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, 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 and other charges on, the Loan, the principal of and interest on the Notes and the premium, if any, on the prepayment of the Loan or the Notes, all as set forth in the Loan Agreement and the Notes.

### Article III

*Section 3.01.* It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on governmental assets. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor or of any of its political subdivisions in its metropolitan areas or of any Agency as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Notes, and that in the creation of any such lien express provision shall be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to any of the following: (i) to any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; or (ii) to any lien on commercial goods to secure debt maturing by its terms not more than one year after the date on which it is incurred and to be paid out of the proceeds of sale of such commercial goods; or (iii) to any pledge of foreign securities in connection with a program for their liquidation, to secure external debt maturing by its terms not more than two years after the date on which it is incurred and to be paid out of the proceeds of the sale of such securities.

*Section 3.02. (a)* The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan shall be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor.

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the Bank of any condition which shall arise that shall interfere with, or threaten to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(c) The Guarantor shall afford all reasonable opportunity for credited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

*Section 3.03.* It is the intention of the parties that the principal of and interest and other charges on the Loan and the Notes shall be paid without deduction for and free from any taxes, fees, imposts, levies or duties of any nature now or at any time hereafter imposed under the laws of the Guarantor or laws in effect in its territories. To that end, the Guarantor covenants to hold harmless the Bank and the holder or holders from time to time of Notes outstanding from and against liability for any such taxes, fees, imposts, levies or duties; provided, however, that the provisions of this Section shall not apply to taxation of or imposts, levies, duties or fees upon payments under any Note to a holder thereof other than the Bank when such Note is beneficially owned by an individual or corporate resident of the Guarantor.

*Section 3.04.* The Loan Agreement, the Guarantee Agreement, the Notes and the Mortgage shall be free from any taxes or fees that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery, registration, recordation or filing thereof.

*Section 3.05.* The principal of, and interest and other charges on, the Loan and the Notes shall be paid free from all restrictions imposed by the laws of the Guarantor or laws in effect in its territories.

*Section 3.06.* The Guarantor will not take or permit any of its political subdivisions or agencies to take any action which would prevent or interfere with the performance by the Borrower of any of the covenants, agreements and obligations in the Loan Agreement or the Mortgage contained, and will take or cause to be taken all action reasonably necessary and appropriate to enable the Borrower to perform such covenants, agreements and obligations, including, without limitation, any action necessary to make it possible for the Borrower from time to time as needed to acquire against guilders or other currency such amounts in dollars as are required to enable the Borrower to purchase the airplanes and equipment described in Schedule 2<sup>1</sup> to the Loan Agreement.

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<sup>1</sup> See p. 240 of this volume.

*Article IV*

*Section 4.01.* The Guarantor shall endorse its guarantee on each Note to be executed and delivered by the Borrower. Such guarantee shall be substantially in the form set forth in Schedule 4-B<sup>1</sup> to the Loan Agreement and shall be dated the date of such Note.

*Section 4.02.* The guarantee on the Notes shall be signed in the name and on behalf of the Guarantor by the Minister of Finance and the Minister of Transport and Public Works of the Guarantor or by such person or persons as they shall designate in writing.

*Article V*

*Section 5.01.* The covenants and agreements on the part of the Guarantor contained in Article II, in Sections 3.03, 3.04 and 3.05 of Article III and in Section 4.01 of Article IV of this Guarantee Agreement and in Sections 7.02 and 7.03 of the Loan Regulations are made for the benefit of the several holders from time to time of the Notes as well as for the benefit of the Bank.

*Article VI*

*Section 6.01.* The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Guarantor : Kingdom of the Netherlands, Ministry of Finance, Kneuterdijk 22, The Hague, The Netherlands.

For the Bank : International Bank for Reconstruction and Development, 1818 H Street, N.W., Washington 25, D.C., United States of America.

*Section 6.02.* The Minister of Finance and Minister of Transport and Public Works of the Guarantor are designated for the purposes of Section 8.03 of the Loan Regulations.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Guarantee Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

Kingdom of the Netherlands :

By L. SOUTENDIJK  
Authorized Representative

International Bank for Reconstruction and Development :

By R. L. GARNER  
Vice President

<sup>1</sup> See p. 246 of this volume.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 6 DECEMBER 1950

REGULATIONS APPLICABLE TO LOANS MADE BY THE BANK TO BORROWERS OTHER THAN  
MEMBER GOVERNMENTS

[*Not published herein. See United Nations, Treaty Series, Vol. 158, p. 222.*]

## LOAN AGREEMENT

(KLM PROJECT)

AGREEMENT, dated March 20, 1952, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V. (hereinafter called the Borrower).

### *Article I*

#### LOAN REGULATIONS ; SPECIAL DEFINITION

*Section 1.01.* The parties to this Agreement accept all the provisions of Loan Regulations No. 4<sup>1</sup> of the Bank dated December 6, 1950, subject, however, to the modifications thereof set forth in Schedule 3<sup>2</sup> to this Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

*Section 1.02.* As used in this Agreement, the term "airplane" or "airplanes" shall include airplane hulls and such engines, propeller assemblies, appliances, communications equipment, instruments, accessories, parts and equipment as may be installed in or appurtenant to any airplane hull at the time referred to.

### *Article II*

#### THE LOAN

*Section 2.01.* The Bank agrees to lend to the Borrower, on the terms and conditions in this Agreement set forth or referred to, the sum of seven million dollars (\$7,000,000).

*Section 2.02.* The Borrower shall pay to the Bank a commitment charge at the rate of three-quarters of one per cent ( $\frac{3}{4}$  of 1 %) per annum on the principal amount of the Loan not withdrawn from time to time.

*Section 2.03.* The Borrower shall pay interest at the rate of four and one-eighth per cent ( $4\frac{1}{8}$  %) per annum on the principal amount of the Loan withdrawn and outstanding from time to time.

<sup>1</sup> See above.

<sup>2</sup> See p. 240 of this volume.

*Section 2.04.* Except as the Borrower and the Bank shall otherwise agree, the charge payable for special commitments entered into by the Bank at the request of the Borrower pursuant to Section 4.02 of the Loan Regulations shall be at the rate of one-half of one per cent ( $\frac{1}{2}$  of 1 %) per annum on the principal amount of such special commitment outstanding from time to time.

*Section 2.05.* Interest and other charges shall be payable semi-annually on January 1 and July 1 in each year.

*Section 2.06.* The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule 1<sup>1</sup> to this Agreement.

### Article III

#### USE OF PROCEEDS OF THE LOAN

*Section 3.01.* The Borrower shall apply the proceeds of the Loan exclusively to the cost of the airplanes and related equipment described in Schedule 2<sup>2</sup> to this Agreement, entitled "Description of the Project."

*Section 3.02.* The Borrower shall use all airplanes described in Schedule 2 to this Agreement in commercial passenger or cargo traffic in connection with the conduct by it of civil air transport services under the Netherlands flag.

### Article IV

#### WITHDRAWAL OF PROCEEDS OF LOAN

*Section 4.01.* The Bank shall open a Loan Account on its books in the name of the Borrower and shall credit to such Account the amount of the Loan. The amount of the Loan may be withdrawn from the Loan Account as hereinafter and in the Loan Regulations provided, and subject to the rights of cancellation and suspension set forth in the Loan Regulations.

*Section 4.02.* Prior to delivery of the fifth airplane described in Schedule 5<sup>3</sup> to this Agreement, the Borrower shall be entitled to withdraw from the Loan Account from time to time amounts equivalent to seven twenty-thirds ( $7/23$ ) of: (i) such amounts as shall have been expended by the Borrower in cash and in dollars after September 30, 1950, on account of the purchase price of the airplanes included in the Project; and (ii) if the Bank shall so agree, such amounts as shall be required by the Borrower to meet payments on account of the purchase price of such airplanes payable in dollars in cash. Upon delivery to the Borrower of such fifth airplane, the Borrower shall be entitled to withdraw from the Loan Account all amounts, if any, remaining undisbursed under the Loan.

### Article V

#### NOTES

*Section 5.01.* The Borrower shall execute and deliver Notes representing the principal amount of the Loan as hereinafter in this Article provided.

<sup>1</sup> See p. 238 of this volume.

<sup>2</sup> See p. 240 of this volume.

<sup>3</sup> See p. 246 of this volume.

*Section 5.02.* The payment of the principal of any Notes shall *pro tanto* discharge the obligation of the Borrower to repay the principal of the Loan ; and the payment of interest on any Notes and of the service charge, if any, provided for in Section 5.04 of this Agreement shall *pro tanto* discharge the obligation of the Borrower to pay interest on the Loan.

*Section 5.03. (a)* Except as the Bank shall otherwise notify the Borrower, the Borrower shall within 10 days after any withdrawal from the Loan Account execute and deliver to or on the order of the Bank Notes in the aggregate principal amount of the Loan so withdrawn.

*(b)* To the extent that Notes are not required to be executed and delivered pursuant to paragraph *(a)* of this Section, the Borrower shall, if and as the Bank shall from time to time request, execute and deliver to or on the order of the Bank within 10 days after the date of the request Notes in the aggregate principal amount specified in such request not exceeding, however, the aggregate principal amount of the Loan which shall have been withdrawn and which shall be outstanding at the time of such request and for which Notes shall not theretofore have been so delivered or requested.

*(e)* Notes shall be payable to such payee or payees as the Bank shall specify.

*Section 5.04.* The Notes shall bear interest at such rate or rates as the Bank shall from time to time request, not in excess, however, of the rate of interest on the Loan. If the rate of interest on any Note shall be less than the rate of interest on the Loan, the Borrower shall, in addition to the interest payable on such Note, pay to the Bank a service charge on the principal amount of the Loan represented by such Note at a rate equal to the difference between the interest rate upon the Loan and the interest rate on such Note. Such service charge shall be payable in dollars on the dates on which such interest is payable.

*Section 5.05.* Principal of and interest and prepayment premium on the Notes shall be payable in dollars.

*Section 5.06.* The maturities of the Notes shall correspond to the maturities of installments of the principal amount of the Loan set forth in Schedule 1 to this Agreement. Except as the Bank shall otherwise notify the Borrower, Notes executed and delivered pursuant to Section 5.03 *(a)* of this Agreement shall have the earliest maturities specified in Schedule 1 to this Agreement for which Notes shall not theretofore have been executed and delivered, and Notes delivered pursuant to any request under Section 5.03 *(b)* of this Agreement shall have such maturities as the Bank shall specify in such request ; provided, however, that the aggregate principal amount of Notes of any maturity shall at no time exceed the corresponding installment of the principal amount of the Loan.

*Section 5.07.* Any Note executed and delivered prior to execution of a Netherlands security instrument pursuant to Section 6.06 of this Agreement shall be substantially in the form set forth in Schedule 4-A<sup>1</sup> to this Agreement. Any Note executed and delivered after execution and delivery of a Netherlands security instrument shall be substantially

<sup>1</sup> See p. 244 of this volume.

in the form provided in such Schedule 4-A, except that it shall contain such modifications as the Bank shall reasonably request in order to recite that it is secured by the lien of such Netherlands security instrument and in order to conform to the laws or financial usages in the territories of the Guarantor relating to Notes secured by such an instrument. Any Note executed and delivered prior to execution and delivery of such Netherlands security instrument shall be exchangeable at the option of and without charge to the holder for a like aggregate principal amount of Notes executed and delivered after execution and delivery of such Netherlands security instrument.

*Section 5.08.* Each Note executed and delivered pursuant to Section 5.03 (a) of this Agreement shall be dated the date of the withdrawal from the Loan Account in respect of which it is executed and delivered. Each Note executed and delivered pursuant to Section 5.03 (b) of this Agreement shall be dated as the Bank shall specify; provided that upon any delivery of Notes pursuant to Section 5.03 (b) appropriate adjustment shall be made so that there shall be no loss to the Bank or to the Borrower in respect of interest or other charges, if any, on the principal amount of the Loan represented by such Notes.

*Section 5.09.* Each Note shall have the guarantee of the Guarantor endorsed thereon substantially in the form set forth in Schedule 4-B<sup>1</sup> to this Agreement, dated the date of such Note.

*Section 5.10.* Any Notes executed and delivered pursuant to any request under Section 5.03 (b) shall be in such denominations as the Bank shall specify in such request.

*Section 5.11.* The Borrower shall, as soon as practicable after the Bank shall so request, execute and deliver to the Bank Notes bearing interest at one rate in exchange for Notes bearing interest at another rate not in excess of the rate of interest on the Loan. The Bank shall reimburse the Borrower for the reasonable cost of any such exchange.

*Section 5.12.* The Notes shall be signed in the name of and on behalf of the Borrower by the Borrower's Executive Vice President in Charge of Finance and Accounting or such person or persons as he shall appoint in writing.

*Section 5.13.* If the Bank shall guarantee any payment under any Note, the Borrower shall reimburse the Bank for any amount paid by the Bank under such guarantee by reason of any failure of the Borrower and the Guarantor to make payment in accordance with the terms of such Note.

*Section 5.14.* (a) The Notes shall be subject to payment prior to their maturity as provided herein upon not less than 15 days' notice to the Bank and to the holder or holders of Notes from time to time outstanding and unpaid whose addresses are of record with the Borrower as herein provided, at a price equal to the principal amount thereof plus the interest accrued and unpaid thereon to the date fixed for the prepayment thereof plus as a premium the percentages of said principal amount specified in Schedule I to this Agreement. Any holder of Notes outstanding and unpaid may notify the Borrower in writing at either of its addresses specified in Section 9.03 of this Agreement of such holder's address, and thereafter any notice given by the Borrower pursuant to this Section

<sup>1</sup> See p. 246 of this volume.

5.14 shall be given to such holder at the address specified in such notice or at such other address as such holder shall designate in writing to the Borrower. The giving of notice to the Bank and to the holders of Notes whose addresses are of record with the Borrower as herein provided shall fully discharge the Borrower from any obligation on its part under this Section or the Notes to give such notice to anyone in respect of such Notes.

(b) All the Notes at the time outstanding may be so prepaid at any time. Except as otherwise provided in paragraph (e) of this Section, all the Notes at the time outstanding of any one or more maturities may be so prepaid at any time, provided that, at the date fixed for the prepayment of such Notes, there shall not be outstanding any Notes maturing after the Notes to be prepaid.

(c) Notice of election to prepay having been given as above provided, the Notes to be prepaid (or the portion thereof to be prepaid under paragraph (e) of this Section) shall on the date fixed for prepayment become due and payable at the respective places where such Notes are payable and at the respective prices determined as in paragraph (a) of this Section provided. From and after the date fixed for prepayment (unless the Borrower shall fail to make payment of the prepayment price or prices of such Notes) interest on such Notes shall cease to accrue.

(d) If any Note so to be prepaid shall bear interest at a rate less than the rate of interest on the Loan, the Borrower shall pay to the Bank on the date fixed for prepayment the service charge provided for in Section 5.04 of this Agreement accrued and unpaid to such date on the principal amount of the Loan represented by such Note.

(e) Notwithstanding the provisions of Section 2.05 (b) of the Loan Regulations, prepayment of the Loan and Notes out of the proceeds of insurance in accordance with the Mortgage shall in all cases be made on the principal amount of the Loan outstanding in respect of which Notes have not theretofore been delivered and on all Notes outstanding, regardless of maturity, *pro rata* to their respective principal amounts, and in such event the amount prepaid on any such Note shall be endorsed on such Note. Except as herein expressly provided, the provisions of Section 2.05 (b) of the Loan Regulations and the foregoing provisions of this Section 5.14 shall be applicable in all respects to prepayments under this paragraph (e).

*Section 5.15.* (a) The covenants and agreements on the part of the Borrower contained in Sections 5.07 and 5.14 of Article V, in Article VI and in Sections 7.06, 7.07 and 7.10 of Article VII of this Agreement and in Section 2.04 of the Loan Regulations are for the benefit of the several holders from time to time of the Notes as well as for the benefit of the Bank.

(b) Except as otherwise provided in paragraph (a) of this Section, in Section 5.01 of the Guarantee Agreement and in the Notes, no holder of any Note other than the Bank shall by virtue of being the holder thereof be entitled to any of the rights or benefits conferred, or be subject to any of the conditions or obligations imposed, upon the Bank under this Agreement or the Guarantee Agreement.

*Article I'*

## MORTGAGE

*Section 6.01.* Simultaneously with execution of this Agreement, the Bank and The Chase National Bank of the City of New York (hereinafter called Chase) are entering into a Loan Participation Agreement in respect of the Loan. The Borrower shall, therefore, execute and deliver to the Bank and to Chase as mortgagees, as their respective interests may appear, a chattel mortgage (hereinafter sometimes called the Chattel Mortgage) to secure the payment of the principal of and interest and other charges on the Loan and the Notes, equally and ratably in accordance with the amount of the Loan and the Notes outstanding, without preference, priority or distinction in respect of any part of the Loan or of any of the Notes over any other part of the Loan or any other Notes by reason of the time of execution, delivery or maturity thereof, or otherwise. The Borrower shall from time to time execute and deliver to the Bank and Chase such supplemental chattel mortgages (hereinafter sometimes called Supplemental Chattel Mortgages) as may be required pursuant to this Article or the Chattel Mortgage. Except as the Bank and the Borrower shall otherwise agree, the Chattel Mortgage and each Supplemental Chattel Mortgage shall be executed in accordance with the laws of the respective States of the United States hereinafter specified, shall be substantially in the form of the Chattel Mortgage or the Supplemental Chattel Mortgage, as the case may be, initialed on the date of this Agreement by the authorized representatives of the Bank and the Borrower, with appropriate insertions and variations, and shall subject the property described in Schedule 5 to this Agreement to the lien of the Chattel Mortgage. The Chattel Mortgage, any and all Supplemental Chattel Mortgages and any and all Netherlands security instruments referred to in Section 6.06 of this Agreement, if and when executed, are hereinafter sometimes collectively called the Mortgage.

*Section 6.02.* It is understood that except as the Bank shall otherwise agree the Borrower will take title to each of the airplanes described in Schedule 5 to this Agreement in the State of California, United States, where said airplanes will be delivered to the Borrower. Except as the Bank shall otherwise agree, as soon as each one of said airplanes is delivered to the Borrower, the Borrower shall, while such airplane is in the State of California, duly execute and deliver to the Bank and Chase a Chattel Mortgage (after the delivery of the first such airplane) or a Supplemental Chattel Mortgage (after delivery of each of the remaining airplanes) subjecting such airplanes to the lien thereof and/or of the Chattel Mortgage. Promptly thereafter the Borrower shall furnish to the Bank evidence satisfactory to the Bank that the Chattel Mortgage or Supplemental Chattel Mortgage, as the case may be, has been duly recorded or filed in such State of California in accordance with the laws thereof. When thereafter the Borrower shall first bring such airplane into the State of New York, United States, and while the airplane is in such State the Borrower shall in accordance with the laws of the State of New York duly record or file the Chattel Mortgage or Supplemental Chattel Mortgage, as the case may be, bearing an endorsement signed and acknowledged by the Borrower while the airplane is in such State of New York reading substantially as follows :

"The airplane described in Clause First of the within chattel mortgage is now at ....., New York, N. Y. The undersigned, the Company named in said chattel mortgage and the mortgagor thereunder, hereby ratifies and confirms said chattel mortgage which is hereby incorporated herein by reference.

Dated, New York, N. Y., ....., 195..";

and shall furnish to the Bank evidence satisfactory to the Bank that such Chattel Mortgage or Supplemental Chattel Mortgage has been duly recorded or filed in the State of New York in accordance with the laws thereof.

In the case of the substitution of an airplane pursuant to Section (10 (b) or 11 (b) of Article I of the form of Chattel Mortgage initialed by the parties hereto, the foregoing provisions shall be applicable in all respects except that the Supplemental Chattel Mortgage subjecting such substituted airplane to the lien of the Mortgage may be executed under the laws of any State of the United States in which such substituted airplane is located at the time of the execution thereof and shall be duly recorded or filed in such State in accordance with the laws thereof.

*Section 6.03.* Within fifteen days after execution of the Chattel Mortgage and of any Supplemental Chattel Mortgage as provided in Section 6.02 of this Agreement, the Borrower shall furnish to the Bank an opinion or opinions satisfactory to the Bank of counsel acceptable to the Bank that the Chattel Mortgage or Supplemental Chattel Mortgage, as the case may be, has been duly executed and delivered; that it has created a valid chattel mortgage lien under the laws of the State of California, United States, or other State under the laws of which such Supplemental Chattel Mortgage was executed, and constitutes a valid chattel mortgage lien under the laws of the State of New York, United States, enforceable in both such jurisdictions in accordance with its terms; that it has been duly recorded or filed in the State under the laws of which such Chattel Mortgage or Supplemental Chattel Mortgage was executed and under the laws of the State of New York; and that at the date of the Chattel Mortgage or Supplemental Chattel Mortgage and at the date of each such recordation or filing thereof the Borrower had valid title to the airplane or airplanes described in the Chattel Mortgage or Supplemental Chattel Mortgage free of all liens or encumbrances other than the lien of the Mortgage; provided, however, that such opinion need not cover the enforceability of the provisions of any Chattel Mortgage or Supplemental Chattel Mortgage with regard to any airplane which may thereafter be substituted for a mortgaged airplane.

*Section 6.04.* Except as the Bank shall otherwise agree, the Borrower shall report to the Bank at intervals of six months any substantial replacements of and additions or improvements to any of the airplanes subject to the lien of the Mortgage during the previous six months. Such report shall describe in reasonable detail such replacement, addition or improvement and the major items, if any, replaced.

*Section 6.05.* In order that the rights and remedies of the Bank and Chase under the Mortgage may be established, maintained, confirmed, and protected, the Borrower shall

record and re-record, register and re-register or file and re-file the Mortgage in all such jurisdictions and offices as the Bank may from time to time reasonably request.

*Section 6.06.* (a) If at any time (i) chattel mortgages or similar security instruments covering aircraft can be validly created and registered, recorded or filed under the laws of the Guarantor ; or (ii) the Guarantor ratifies the 1948 Geneva Convention on International Recognition of Rights in Aircraft ; the Borrower shall, at any time at the request of the Bank, take all action and execute all instruments which may be necessary to give a valid lien under the laws of the Guarantor or under such Convention, or both, as the case may be, to the Bank and Chase upon the property which at such time is subject to or is required to be subjected to the lien of the Chattel Mortgage and Supplemental Chattel Mortgages, if any, and affording protection to the Bank and Chase which will be, to the extent permitted under Netherlands law, as nearly equivalent as possible to the security of the Chattel Mortgage and Supplemental Chattel Mortgages at the time outstanding. Any and all such instruments executed under the law of the Guarantor are herein sometimes called Netherlands security instruments.

(b) Within a reasonable time after execution of any Netherlands security instrument as provided in this Section, the Borrower shall furnish to the Bank an opinion or opinions satisfactory to the Bank of counsel acceptable to the Bank that such Netherlands security instrument has been duly executed and delivered ; that it has created a valid lien under the laws of the Guarantor in accordance with its terms ; that it has been validly registered, recorded or filed ; and that at the date of the instrument and at the date of its registration, recordation or filing the property subject to the lien of the Netherlands security instrument was free of all liens or encumbrances other than the lien of the Mortgage.

(e) Upon receipt of evidence satisfactory to the Bank that Netherlands security instruments creating a valid lien pursuant to the provisions of subsection (a) (i) and (ii) of this Section have been duly executed and registered, recorded or filed, the Bank will at the request of the Borrower and at the expense of the Borrower execute, and will cause Chase to execute, to the Borrower, its successors and assigns proper releases and discharges of the Chattel Mortgage and Supplemental Chattel Mortgages, if any, previously executed in respect of the property subject to the lien of the Mortgage ; provided, however, that such release and discharge shall be executed only if in the reasonable opinion of the Bank the position of the Bank and Chase in the United States will continue to be as well protected as previously.

#### *Article VII*

##### PARTICULAR COVENANTS

*Section 7.01.* The Borrower shall carry out the Project with due diligence and efficiency.

*Section 7.02.* (a) The Borrower shall maintain records adequate to reflect in accordance with consistently maintained sound accounting practices the financial condition and operations of the Borrower.

(b) The Borrower shall enable the Bank's representatives to inspect any and all airplanes and equipment included in the Project and to examine any relevant records and documents.

(c) The Borrower shall furnish to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan, the use of the airplanes and equipment included in the Project and the operations and financial condition of the Borrower.

*Section 7.03.* (a) The Bank and the Borrower shall co-operate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan.

(b) The Bank and the Borrower shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Borrower shall promptly inform the Bank of any condition known to it, or which reasonably should have been known to it, that shall interfere with, or threaten to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

*Section 7.04.* If the Borrower shall propose to incur any debt, the Borrower shall inform the Bank of such proposal, and, before the proposed action is taken, shall afford the Bank all opportunity which is reasonably practicable in the circumstances to exchange views with the Borrower with respect thereto; provided, however, that the foregoing provisions shall not apply to: (i) the incurring of additional debt through utilization, in accordance with the terms of any credit established on or prior to the date of this Agreement, of any unused amounts available under such credit; or (ii) the incurring in the ordinary course of the Borrower's business of debt maturing by its terms not more than one year after the date on which it is incurred; or (iii) the incurring in the ordinary course of the Borrower's business of debt in an amount not in excess of \$250,000 or the equivalent thereof in other currencies in any one transaction.

*Section 7.05.* Except as the Bank shall otherwise agree, the Borrower shall not incur any additional debt except pursuant to this Agreement if on the date such debt is proposed to be incurred the aggregate indebtedness of the Borrower, including such proposed debt, would exceed 75 % of the Borrower's net worth. For purposes of this Section:

(a) the term "debt" shall be deemed to mean all indebtedness of the Borrower (including loans or credits contracted for but not yet drawn down and including undischarged commitments for the purchase of flight equipment to the extent not covered by the Loan) except non-interest bearing debt incurred in the ordinary course of business (other than commitments for the purchase of airplanes) maturing by its terms not more than one year after the date on which it is incurred;

(b) the term "net worth" shall be deemed to mean the aggregate of:

- (i) the book value of share capital actually paid in,
- (ii) capital reserves determined in accordance with sound accounting practice, and
- (iii) surplus determined in accordance with sound accounting practice;

(c) the equivalent in currency of the Guarantor of amounts in any other currency shall be determined on the basis of the official selling rate of De Nederlandsche Bank N.V.,

for such other currency on the date on which the Borrower makes its proposal to incur such additional debt.

If the Borrower proves to the reasonable satisfaction of the Bank :

- (i) that the proceeds of any funds proposed to be borrowed (other than pursuant to this Agreement) will be applied to the payment of any debt previously incurred ; or
- (ii) that the proceeds of debt previously incurred (other than pursuant to this Agreement) will be available to discharge any commitment for the purchase of flight equipment ;

the amount of such funds or of such commitment shall be excluded for the purpose of the limitations imposed by this section.

*Section 7.06.* The Borrower shall pay or cause to be paid all taxes or fees, if any, imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery, registration, recordation or filing of the Loan Agreement, Guarantee Agreement, Mortgage or the Notes, or the payment of principal, interest or other charges thereunder ; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon, payments under any Note to a holder thereof other than the Bank when such Note is beneficially owned by an individual or corporate resident of the Guarantor.

*Section 7.07.* The Borrower shall pay or cause to be paid all taxes and fees, if any, imposed under the laws of the United States or laws in effect in its territories on or in connection with the execution, issue, delivery, registration, recordation or filing of the Loan Agreement, Guarantee Agreement, Mortgage or the Notes.

*Section 7.08.* (a) The Borrower shall at all times maintain its existence and right to carry on operations and shall, except as the Bank shall otherwise agree, use its best efforts to maintain and renew all rights, powers, privileges and franchises owned or exercised by it and necessary or useful in the operation of its business.

(b) The Borrower shall maintain its equipment and property, and from time to time make necessary renewals and repairs thereof, all in accordance with sound maintenance or engineering standards.

(c) The Borrower shall not, without the consent of the Bank, sell or otherwise dispose of all or substantially all of its property and assets or all or substantially all the property included in the Project, unless the Borrower shall first redeem and pay, or make adequate provision satisfactory to the Bank for redemption and payment of, all of the Loan and the Notes which shall then be outstanding and unpaid.

*Section 7.09.* The Borrower shall maintain insurance in respect of its aircraft fleet with insurers satisfactory to the Bank and/or, by means of its own funds set aside pursuant to arrangements satisfactory to the Bank. Such insurance shall be in such form, in such currencies, in such amounts and against such risks as are satisfactory to the Bank.

*Section 7.10.* The Borrower shall indemnify and protect the mortgagees, the Bank and the holders of the Notes from time to time outstanding against all claims arising out of or in connection with the use and operation of the property subject to the lien of the Mortgage.

#### *Article VIII*

##### REMEDIES OF THE BANK

*Section 8.01.* An Event of Default shall be deemed to have occurred :

- (i) If any event specified in paragraph (a) of Section 5.02 of the Loan Regulations shall occur and shall continue for a period of thirty days ; or
- (ii) If any event specified in paragraph (b) of Section 5.02 of the Loan Regulations shall occur and shall continue for a period of five days ; or
- (iii) If any event specified in paragraph (c) of Section 5.02 of the Loan Regulations shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Bank to the Borrower ; or
- (iv) If any event specified in Section 8.02 of this Agreement shall occur and be continuing.

If an Event of Default shall happen and be continuing, then at any subsequent time during the continuance thereof, the Bank, at its option, may declare the principal of the Loan and of all the Notes then outstanding to be due and payable immediately, and upon such declaration such principal shall become due and payable immediately, anything in this Loan Agreement, the Guarantee Agreement, the Mortgage or the Notes to the contrary notwithstanding.

*Section 8.02.* The following are specified as additional events for the purposes of Section 5.02 (h) of the Loan Regulations :

(a) If the Guarantor or any governmental authority shall take any action for the dissolution or disestablishment of the Borrower or for the suspension of all or substantially all of its operations ; or

(b) If by action of the Guarantor or of any governmental authority, the ownership, possession or control of all or substantially all of the properties which are included in the Project shall be taken from the Borrower ; or

(c) If the Borrower shall make an assignment for the benefit of creditors, or by any action indicate its approval of, consent to, or acquiescence in, the appointment of a receiver for the Borrower, or if a receiver shall be appointed for the Borrower and shall not be discharged within 30 days ; or if the Borrower shall be adjudicated a bankrupt, or if any proceedings shall be commenced by the Borrower relating to the Borrower under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, conservation, receivership or liquidation law or statute of any jurisdiction ; or if any such proceedings shall be instituted against the Borrower and shall remain undismissed for 30 days, or if the Borrower shall by any action indicate its approval of, consent to, or acquiescence in, any such proceeding ; or

(d) If an Event of Default as defined in the Mortgage shall be existing.

## Article IX

## MISCELLANEOUS

*Section 9.01.* The Closing Date shall be September 1, 1953.

*Section 9.02.* A date sixty days after the date of this Loan Agreement is hereby specified for the purposes of Section 9.04 of the Loan Regulations.

*Section 9.03.* The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Borrower : Koninklijke Luchtvaart Maatschappij N.V., Badhuisweg 260, The Hague, The Netherlands, or KLM Royal Dutch Airlines, 572 Fifth Avenue, New York 19, New York, United States of America.

For the Bank : International Bank for Reconstruction and Development, 1818 H Street, N. W., Washington 25, D. C., United States of America.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

International Bank for Reconstruction and Development :

By R. L. GARNER  
Vice President

Koninklijke Luchtvaart Maatschappij N.V. :

By E. R. DE VRIES  
Authorized Representative

## SCHEDULE 1

## AMORTIZATION SCHEDULE

<i>Date Payment Due</i>	<i>Payment of Principal</i>	<i>Principal Amount Outstanding After Each Payment</i>	<i>Date Payment Due</i>	<i>Payment of Principal</i>	<i>Principal Amount Outstanding After Each Payment</i>
July 1, 1953 . . .	\$ —	\$ 7,000,000	July 1, 1956 . . .	\$700,000	\$2,800,000
January 1, 1954 . . .	700,000	6,300,000	January 1, 1957 . . .	700,000	2,100,000
July 1, 1954 . . .	700,000	5,600,000	July 1, 1957 . . .	700,000	1,400,000
January 1, 1955 . . .	700,000	4,900,000	January 1, 1958 . . .	700,000	700,000
July 1, 1955 . . .	700,000	4,200,000	July 1, 1958 . . .	700,000	—
January 1, 1956 . . .	700,000	3,500,000			

## PREMIUMS ON PREPAYMENT

The following percentages are specified as the premiums payable on repayment in advance of maturity of any part of the principal amount of the Loan pursuant to Section 2.05 (b) of the Loan Regulations or Section 5.14 (e) of this Agreement or on any prepayment of any Note or portion thereof prior to its maturity pursuant to Section 5.14 of this Agreement :

<i>Time of Prepayment or Redemption</i>	<i>Premium</i>
Not more than six months before maturity . . . . .	½ of 1 %
More than six months but not more than two years and six months before maturity . . . . .	¾ of 1 %
More than two years and six months but not more than four years and six months before maturity . . . . .	1 %
More than four years and six months before maturity . . . . .	1½ %

## SCHEDULE 2

## DESCRIPTION OF THE PROJECT

The Borrower will carry out a two-year program of additions to and replacements of its fleet of aircraft, involving expenditures of approximately \$33,500,000. A total of 23 new aircraft will be purchased and placed in operation. The number and types of aircraft to be procured are as follows :

<i>Number</i>	<i>Description</i>
7	Douglas DC-6B
9	Lockheed Constellation 1049C
1	Douglas DC-6A Liftmaster
6	Convair # 340

The program will include the purchase of adequate spare parts for proper maintenance and efficient operation of the new aircraft. Spare parts having an aggregate value equal to approximately 25 % of the cost of the airplanes included in the Project will be purchased.

The necessary changes in and additions to maintenance facilities will be provided.

## SCHEDULE 3

MODIFICATION OF LOAN REGULATIONS No. 4<sup>1</sup>

For the purposes of this Agreement the provisions of Loan Regulations No. 4 of the Bank, dated December 6, 1950, shall be deemed to be modified as follows :

<sup>1</sup> See p. 216 of this volume.

(a) The second sentence of Section 2.02 shall be deemed to read as follows :

“Such commitment charge shall accrue from the Effective Date or from April 15, 1952, whichever shall be the earlier, or from such other date as may be agreed upon between the Bank and the Borrower, to the respective dates on which amounts shall be withdrawn by the Borrower from the Loan Account as provided in Article IV of the Loan Agreement and in Article IV of these Regulations or shall be cancelled pursuant to Article V of these Regulations.”

(b) Section 2.05 (b) shall be deemed to read as follows :

“(b) The Borrower shall have the right, upon not less than 15 days' prior notice to the Bank, to repay in advance of maturity all or any part of the principal amount of the Loan for which Bonds have not been delivered pursuant to Article V of the Loan Agreement upon payment of all accrued charges for interest on such principal amount and payment of the premium specified in said amortization schedule. Except as the Bank and the Borrower shall otherwise agree, any such repayment shall be applied to the several maturities of such part of the principal amount of the Loan in inverse order of maturity.”

(c) In Section 2.05 (c) the reference to Section 6.16 shall be deemed to be a reference to Section 5.14 of Article V of the Loan Agreement.

(d) Section 3.01 shall be deemed to read as follows :

“The Bank shall be under no obligation to permit the proceeds of the Loan to be withdrawn in any currency except dollars.”

(e) Section 3.02 shall be deemed to read as follows :

“Section 3.02. *Currency in Which Principal, Interest and Other Charges Are Payable.* The principal of, and interest and other charges on, the Loan shall be payable in dollars.”

(f) Sections 3.03, 3.04 and 3.05 shall be deemed to be deleted.

(g) Section 4.01 and the last sentence of Section 4.02 shall be deemed to be deleted.

(h) In Section 5.02 (b) the words “redemption price of” shall be deemed to be amended to read “prepayment premium on”.

(i) In Section 5.05 the reference to Article VI shall be deemed to be a reference to Article V of the Loan Agreement.

(j) Article VI shall be deemed to be deleted.

(k) The following proviso shall be deemed to be added at the end of Section 7.04 (a) :

“ ; provided, however, that the provisions of this Section 7.04 shall not, except with the consent of the Bank, be applicable to the Mortgage or any provisions thereof or any rights or remedies of the Bank as mortgagee thereunder.”

(l) In Section 9.05 the words “on the redemption of all Bonds called for redemption” shall be deemed to be amended to read : “on the prepayment of all Bonds called for prepayment.”

(m) Subparagraph 10 of Section 10.01 shall be deemed to read as follows :

“10. The term ‘Notes’ means notes executed and delivered by the Borrower pursuant to Article V of the Loan Agreement ; and such term includes any such notes issued in exchange for, or on transfer of, Notes as herein defined.”

(n) A new subparagraph shall be deemed to be added after subparagraph 20 of Section 10.01, reading as follows :

“21. The term ‘Mortgage’ shall have the meaning set forth in Section 6.01 of the Loan Agreement.”

(o) Schedule 1, Schedule 2 and Schedule 3 shall be deemed to be deleted.

(p) Wherever used in the Loan Regulations, the term “Bonds” shall be deemed to mean “Notes”.

#### SCHEDULE 4-A

##### FORM OF NOTE

§ ..... Date : .....

KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V., a corporation organized and existing under the laws of the Kingdom of the Netherlands (hereinafter called the Company), for value received, hereby promises to pay on the ..... day of ..... to or on the order of ..... at ..... New York, New York, the principal sum of ..... Dollars (\$ .....), in such coin or currency of the United States of America as at the time of payment is legal tender for public and private debts and to pay interest thereon from the date hereof at said ..... in like coin or currency at the rate of ..... % per annum, payable semi-annually on January 1 and July 1 in each year, until the principal hereof becomes due and payable, and on any overdue principal at the same rate per annum.

This note is one of the notes (hereinafter called the Notes) issued or to be issued under a Loan Agreement dated ....., 1952, between the Company and International Bank for Reconstruction and Development (hereinafter called the International Bank) providing for a loan (hereinafter called the Loan) in the aggregate principal amount of \$7,000,000 and guaranteed by Kingdom of the Netherlands in accordance with the terms of a Guarantee Agreement dated ..... between Kingdom of the Netherlands and the International Bank. No reference herein to said agreements shall impair the obligation of the Company, 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. The Notes and the portion of the Loan, if any, not evidenced by Notes are or will be equally and ratably secured by a chattel mortgage, supplemental chattel mortgages and/or other security instruments executed and delivered and/or to be executed and delivered by the Company to the International Bank and The Chase National Bank of the City of New York, all as provided in said Loan Agreement.

In certain events specified in said Loan Agreement the principal of all the Notes then outstanding may be declared to be due and payable immediately as provided in said Loan Agreement. This Note is subject to prepayment in whole or in part upon the terms and in the manner provided in the Loan Agreement.

The principal of the Notes, the interest accruing thereon and the premium, if any, on the prepayment thereof shall be paid without deduction for and free from any taxes, imposts, levies or duties of any nature now or at any time hereafter imposed by Kingdom of the Netherlands or by any taxing authority thereof or therein and shall be paid free from all restrictions of Kingdom of the Netherlands, its political subdivisions or its agencies ; provided, however, that the provisions of this paragraph shall not apply to the taxation of payments made under the provisions of any Note to a holder thereof other than the Bank when such Note is beneficially owned by an individual or corporate resident of Kingdom of the Netherlands.

Koninklijke Luchtvaart Maatschappij N.V. :

By .....

#### SCHEDULE 4-B

##### FORM OF GUARANTEE

The Kingdom of the Netherlands, for value received, as a primary obligor and not as surety merely, hereby absolutely and unconditionally guarantees, and pledges its full faith and credit for, the punctual payment of the principal of the within Note and the prepayment premium and the interest thereon.

Kingdom of the Netherlands :

By .....

Authorized Representative

Dated :

#### SCHEDULE 5

##### PROPERTY TO BE SUBJECTED TO LIEN OF THE MORTGAGE

Five model 1049C airplanes of the Lockheed Constellation type, having factory numbers and Netherlands registration marks as follows :

<i>Factory No.</i>	<i>Registration Mark</i>
4501 . . . . .	PH-TFP
4502 . . . . .	PH-TFR
4503 . . . . .	PH-TFS
4504 . . . . .	PH-TFT
4505 . . . . .	PH-TFU

One Douglas airplane model DC-6A-1135 having factory number 44,076 and Netherlands registration mark PH-TGA. All such airplanes shall include such airplane engines, propeller assemblies, appliances, communications equipment, instruments, accessories, parts and equipment as may from time to time be installed therein or appurtenant thereto.

*Letter, dated 20 March 1952, from the Government of the Kingdom of the Netherlands to the Bank concerning sovereign immunity*

NETHERLANDS EMBASSY  
WASHINGTON 9, D. C.

March 20, 1952

FA/604

International Bank for Reconstruction  
and Development  
1818 H Street, N. W.  
Washington 25, D. C.

Dear Sirs :

In response to your inquiry, I am instructed by my Government to advise you as follows :

1. Koninklijke Luchtvaart Maatschappij N.V. (K.L.M.) is a corporation organized under Netherlands law and is subject to suit in The Netherlands and abroad pursuant to the same rules as apply to any other corporation organized under Netherlands law.
2. K.L.M. is a juridical person separate and distinct from its shareholders and none of its shareholders (including the Kingdom of the Netherlands) can claim ownership to any part of the property and assets of K.L.M.
3. Regardless of the extent to which the Kingdom of the Netherlands now owns or may own in the future stock of K.L.M., K.L.M. is not entitled to sovereign immunity and accordingly the Kingdom of the Netherlands will not assert any sovereign immunity in respect of K.L.M. or any of its property.

Very truly yours,

Dr. J. H. VAN ROIJEN  
Netherlands Ambassador