

JANE E. LAWTON CONSERVATION LOAN PROGRAM

LOAN AGREEMENT

THIS LOAN AGREEMENT (“Agreement”) is made this ____ day of _____, 20__, by and between **[Borrower]**. (“Borrower”), and the **MARYLAND ENERGY ADMINISTRATION**, an independent agency of the State of Maryland (together with its assigns or successors, “Administration”).

RECITALS

1. The Borrower is indebted to the Administration in the principal amount not to exceed \$_____ plus applicable interest thereon (“Loan”), which will be advanced to the Borrower pursuant to this Agreement. All capitalized terms used and not otherwise defined shall have the meaning assigned and set forth under Section 1.03 of this Agreement.

2. The Loan was made pursuant to the Jane E. Lawton Conservation Loan Program (“Lawton Loan Program”), set forth in Sections 9-20A-01 through 9-20A-10 of the State Government Article, Annotated Code of Maryland (“Act”) and 14.26.01.01 to 14.26.01.18 of the Code of Maryland Regulations (“COMAR”).

3. The Loan proceeds shall be used by the Borrower for the activities described in Exhibit A of this Agreement (collectively, the “Project”).

4. The Loan is evidenced by a secured Note issued in favor of the Administration.

5. The Administration has agreed to make the Loan to the Borrower under the Lawton Loan Program to finance the Project subject to the terms and conditions of the Act, the regulations promulgated thereunder, and pursuant to this Agreement, the Note, and the other Financing Documents on terms and conditions more particularly set forth below.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

1.01. Recitals. The recitals set forth above form an integral and substantive part of the Agreement and are incorporated herein.

1.02. Accounting Terms. All accounting terms not specifically defined in this Agreement shall have the meanings given to them under generally accepted accounting principles consistently applied (“GAAP”).

1.03. All terms defined in the Act or COMAR, or elsewhere previously defined, are incorporated in this Agreement by reference. Capitalized terms used in this Agreement shall have the

following meanings:

“Application” means the Lawton Loan Program application from the Borrower to the Administration dated _____, as amended and supplemented from time to time hereafter.

“Borrower’s Contribution” means the Borrower's contribution (i.e., cash, in-kind, equipment) toward the Project as listed in the Application’s Project budget worksheet.

“Claim” means any action or other claim for liability, loss, expense, or other cost, including fees, costs and expenses of attorneys, consultants, contractors, and experts.

“Closing Checklist” means Exhibit A to the Commitment Letter, as it may be amended.

“Closing Date” means the date the fully executed Agreement is received by MEA, as determined by the official MEA date stamp on the first page of the Agreement.

“Collateral” means the Collateral as defined in the Security Agreement.

“Commitment Letter” means that certain conditional commitment letter dated _____, issued by the Administration in connection with the Loan, as it may be amended.

“County” means any of the 23 counties of the State, and the Mayor and City Council of Baltimore, and any authorized agency or instrumentality of a county or counties.

“Event of Default” means any of the events described in Article IV of this Agreement.

“Draw Schedule” means the anticipated schedule for disbursement set forth in Exhibit D to this Agreement, as Exhibit D may be amended and supplemented from time to time hereafter.

“Eligible Project Costs” means any costs described in Exhibit A to this Agreement. Eligible Project Costs must be approved by the Administration.

“Environmental Requirement” means any current or future Law or other restriction, whether public or private, that in any way pertains to human health, safety or welfare, Hazardous Materials, Hazardous Materials Contamination or the environment (including any Law or restriction dealing with ground, air, water or noise pollution or contamination, and underground or above ground tanks).

“Equipment” has the meaning used and set forth in the Security Agreement.

“Expenses” means all costs and expenses incurred by the Administration (whether before or after an Event of Default), in connection with, or in exercising or enforcing any rights, powers, and remedies provided in, this Agreement or any of the Financing Documents.

“Financing Documents” means all documents executed and delivered in connection with the Loan and the Obligations, including this Agreement, the Note, the Security Agreement, and any other document evidencing or securing the Loan, as any of them may be amended.

“GAAP” means generally accepted accounting principles in the United States of America in effect from time to time.

“Governmental Authority” means the United States, the State, or any of their political subdivisions, agencies, or instrumentalities, including any local authority having jurisdiction over any aspect of the Project or the Financing Documents.

“Hazardous Materials” means any hazardous or toxic substances, wastes or materials, including any substance that contains asbestos, radon, polychlorinated biphenyls, urea formaldehyde, explosives, radioactive materials, or petroleum products, that, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a present or potential hazard or nuisance to human health, safety or welfare or to the environment.

“Hazardous Materials Contamination” means the present or future contamination of (a) any part of the Project, including soil, ground water, and air, by Hazardous Materials, or (b) any part of any other property (including soil, ground water, and air) or improvement as a result of Hazardous Materials emanating from the Project.

“Hydric Soils” means any soil category upon which building could be prohibited or restricted under any applicable Law, including any restrictions imposed by the Army Corps of Engineers based upon its guidelines concerning soil, vegetation, and effect on the ecosystem.

“Law” means any current or future federal, state and local law, statute, rule, ordinance, regulation, code, decision, interpretation, order, or decree of any court or other Governmental Authority having jurisdiction over any aspect of the Project or the Financing Documents.

“Lien” means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, any liens or claims for liens for materials supplied or for labor or services performed, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

“Material Adverse Change” means any change in the authority, properties, assets, liabilities, or conditions (financial or otherwise) of the Borrower that materially impairs the Borrower’s ability to perform any of its obligations under all of the Financing Documents.

“Obligations” means all duties of payment, performance, and completion owed by the Borrower to the Administration under the Financing Documents and by law, including the obligations to:

(a) Pay all sums of money owed in connection with the Loan and any of the Financing Documents, including (i) all sums of principal, interest, and premium, if any, due or to become due, (ii) all past, present, and future advances under any of the Financing Documents, (iii) any late fees or other charges payable by the Borrower, (iv) all money advanced or expended by the Administration as provided for in any of the Financing Documents, and (v) all Expenses; and

(b) Strictly observe and perform all of the provisions of the Financing Documents,

time being of the essence.

“Project” means any and all activities necessary to enable the Borrower to complete the activities described in Exhibit A to this Agreement, as Exhibit A may be amended.

“Request for Disbursement” means the document in substantially the form of Exhibit B hereto, submitted by the Borrower under this Agreement for disbursement of the Loan (or part thereof) pursuant to and in accordance with Article II hereof.

“Security Agreement” means the Security Agreement dated the date hereof between the Administration and the Borrower.

“State” means the State of Maryland.

ARTICLE II

TERMS OF THE LOAN AND DISBURSEMENT

Section 2.01. The Loan.

Simultaneously with the execution and delivery of the Financing Documents on the Closing Date, and subject to the terms and conditions of all of the Financing Documents, the Administration agrees to make the Loan to the Borrower and the Borrower agrees to accept the Loan under the Lawton Loan Program.

Section 2.02. Repayment and Interest.

All sums advanced under the Loan shall be evidenced by the Note and shall be repaid with interest in accordance with the Note and any attachments thereto, payable in accordance with the schedule listed on Exhibit E to this Agreement, as such Exhibit E may be amended and supplemented from time to time hereafter.

Section 2.03. Disbursements.

(a) **In General.** Subject to the continued compliance by the Borrower with all of the terms of all of the Financing Documents, the continued satisfaction of all conditions precedent to disbursing Loan proceeds under this Agreement, and the continued non-existence of an Event of Default, the Administration shall advance to the Borrower the full amount of the Loan pursuant to a completed Request for Disbursement, the form of which is attached hereto as Exhibit B of this Agreement.

(b) **Disbursement Schedule.** All requests for disbursements shall be made to the Administration at the address specified in Section 5.02 below, or at any other place that the Administration designates. The Borrower shall submit requests for disbursements according to the Draw Schedule set forth in Exhibit D of this Agreement as such Exhibit D may be amended and supplemented from time to time hereafter.

(c) **Disbursements to the Borrower.** All disbursements shall be made directly to the Borrower by check issued by the Comptroller of Maryland. The Administration shall only authorize

the Comptroller of Maryland to disburse Loan proceeds upon presentation to the Administration by the Borrower of invoices, bills, or other satisfactory proof of payments to reimburse the Borrower for payments made for Eligible Project Costs.

(d) Conditions for all Disbursements. The agreement of the Administration to make any disbursements of the Loan is subject to the satisfaction of the following conditions as of the date the disbursement is made:

(i) Receipt of Request for Disbursement. The Administration shall have received a completed Request for Disbursement.

(ii) Representations True. No representation or warranty of the Borrower contained in this Agreement shall be or have become materially incorrect or inaccurate.

(iii) No Defaults. There shall be no Event of Default under the terms of any of the Financing Documents.

(iv) No Adverse Change. There has been no Material Adverse Change.

(e) Availability of Funds and Reduction of Loan. Disbursements of Loan proceeds are subject to the continuing availability of funds for such purpose, the State's fiscal position, the Administration's financial resources, and compliance with all applicable Laws. The Administration may, at any time, assess the State's fiscal position and the Administration's financial resources and reduce the amount of undisbursed Loan funds.

(f) Upon each disbursement, the Borrower shall be deemed to have issued each of the representations and warranties contained in Section 3.01 of this Agreement.

(g) In no event shall the Administration be obligated to make any advance under this Agreement if an Event of Default has occurred or if the advance would cause the total principal amount of advances made to exceed the amount of the Loan.

Section 2.04. Conditions Precedent to Disbursement.

The Administration shall not disburse any Loan proceeds until such time as the Administration has received all of the items set forth on the Closing Checklist, in form and substance acceptable to the Administration.

Section 2.05. Final Disbursement.

When the Borrower submits to the Administration the final Request for Disbursement, the Borrower shall submit to the Administration evidence, in form and substance acceptable to the Administration, that the Project is completed.

ARTICLE III
REPRESENTATIONS, WARRANTIES AND COVENANTS
OF THE BORROWER

Section 3.01. Representations and Warranties.

The Borrower represents and warrants as follows:

(a) Organization.

The Borrower:

- (i) Has the power to own its property and to carry on its business as now being conducted;
- (ii) Is duly qualified to operate and is in good standing in the State and in each jurisdiction in which the character of properties owned by it or the transaction of its business makes qualification necessary; and
- (iii) Has delivered a complete copy of its articles of incorporation and bylaws, together with all amendments, to the Administration.

(b) Resolution. A resolution has been duly adopted as an official act of the Borrower's governing body, authorizing the execution and delivery of all of the Financing Documents by the Borrower, and authorizing and directing the person executing the Financing Documents to do so on behalf of the Borrower.

(c) Authority. The Borrower has the full power and authority to enter into this Agreement and consummate the transaction contemplated by the Financing Documents, to borrow the Loan as contemplated hereby, to execute and deliver all of the Financing Documents to which it is a party, and to comply with the terms set forth in all of the Financing Documents, all of which have been duly authorized by all necessary corporate action of the Borrower. No approval of any other person or public authority or regulatory body is required as a condition to the validity of any of the Financing Documents, or, if required, the approval has been obtained.

(d) Validity of Financing Documents. All of the Financing Documents have been properly executed by the Borrower and will:

- (i) Not violate any Laws, or the Borrower's articles of incorporation or by-laws;
- (ii) Not violate, or result in a breach of, any document or agreement binding on the Borrower or affecting its property; or
- (iii) Constitute the valid and legally binding obligations of the Borrower, fully enforceable against the Borrower, in accordance with their terms.

(e) Legal Actions. There is neither a Claim pending or, to the best of the Borrower's knowledge, threatened in any court or before any governmental agency, nor investigation by or before any Governmental Authority, that:

- (i) Questions the validity or enforceability of any of the Financing Documents, or any action taken, or to be taken, under any of them;
- (ii) Is likely to result in a Material Adverse Change; or

(iii) Affects the Project.

(f) Accuracy of Statements. All information contained in any financial statement, report, or other document given by the Borrower or by any other person in connection with the Loan is true and accurate in all respects, and the Borrower and each other person has stated every material fact or any fact necessary to make the information not misleading.

(g) Application. All information in the Application was true and complete in all material respects as of the date of the Application. The Borrower is aware of no event that would require any amendment to the Application in order to make any information in the Application true and complete in all material respects and not misleading in any material respect as of the date of this Agreement, and the Borrower is aware of no event or other fact that should have been, and has not been, reported in the Application as material information.

(h) Financing Document Defaults. There is no Event of Default on the part of the Borrower under any of the Financing Documents.

(i) Compliance with Laws. The Borrower is in compliance with all applicable Laws.

(j) Approvals. The Borrower has obtained, or expects to obtain prior to the commencement of construction of the Project:

- (i) All approvals from and reviews by all Governmental Authorities of the Laws applicable to the Project, and
- (ii) All necessary permits for the Project.

(k) Zoning. The intended use of the Project will not violate any zoning or other Law, or any restrictive covenant or agreement of the Borrower (now in existence or known by the Borrower to be proposed) applicable to the Project or its use, and all requirements for such use have been satisfied.

(l) Environmental Conditions. To the Borrower's knowledge, the Project, including the land, surface water, ground water on which the Project is constructed:

- (i) Is free of any substantial amounts of waste or debris;
- (ii) Is free of any Hazardous Materials and Hazardous Materials Contamination;
- (iii) Has never been used as a manufacturing, storage, or dump site for Hazardous Materials;
- (iv) Is in compliance with all Environmental Requirements; and
- (v) Contains no Hydric Soils.

(m) Lien of Security Agreement. Upon execution of the Security Agreement, the Administration will have a lien and security interest in the equipment listed in Exhibit B to the Security Agreement, which shall be perfected by the filing of the necessary financing statements in the appropriate locations.

Section 3.02. Borrower's Covenants.

The Borrower covenants as follows:

(a) Repayment and Performance. The Borrower shall promptly pay and fully perform all of the Obligations at the times and in the manner provided in the Note and the Financing Documents.

(b) Use of Loan Proceeds. The Borrower shall use the Loan proceeds solely for Eligible Project Costs.

(c) Reporting. The Borrower shall furnish the Administration with:

(i) Such reports as the Administration may reasonably require in order to verify the annual energy savings, or lack thereof, resulting from the Project;

(ii) Current information concerning utilities from which the Borrower purchases services, and utility account numbers, and to advise the Administration of changes in these accounts when they occur, and if they may affect the efficient gathering of billing information necessary to verify energy savings, or the lack thereof, resulting from the Project; and

(iii) Any additional information related to the Project reasonably requested by the Administration.

(d) Utility Cost Monitoring. The Borrower agrees to permit the inspection of Borrower's financial records at least annually to verify payment of utility costs and to compare annual utility costs with budgeted amounts to verify savings, if any, achieved by the Project.

(e) Payment of Contractors. The Borrower will promptly pay all contractors and materialmen the amounts due them in connection with the Project.

(f) Maintenance of the Project and Conduct of Business. The Borrower shall, at its sole cost and expense:

(i) Keep, or cause to be kept, the Project in good condition, working order, and repair; and

(ii) Make, or cause to be made, all replacements to any of the Project so that the Project will always be in good condition and maintained according to equipment specifications consistent with the purposes of the Lawton Loan Program.

(g) Insurance. The Borrower shall maintain insurance during the life of the Loan in accordance with the requirements set forth in Exhibit C to this Agreement.

(h) Notification of Claims. The Borrower shall promptly notify the Administration of any (i) material action or prospective claims or litigation, including tax deficiencies that may be asserted against the Borrower, and (ii) default under the terms of any bond, debenture, note, or other evidence of indebtedness of the Borrower.

(i) Books and Records. The Borrower shall keep and maintain all books, records, audits,

correspondence and any other papers relating to the Project and other documents that may be required under the rules and procedures now or hereafter applicable to loans made by the Administration pursuant to the Act, and as may be reasonably necessary to disclose fully the amount and status of the Loan, the total costs incurred to complete the Project, and the source of all funds expended towards the costs of the Project (collectively, the "Books and Records"). All such books, records and other documents shall be maintained at the offices of the Borrower with authorization hereby given for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Administration. All books, records and other documents shall be maintained until the first to occur of (i) three years after completion of the Project, or (ii) the completion of an audit of the Project by the State.

(j) Access. Any duly authorized representative of the Administration shall, at all reasonable times and with reasonable prior notice, have access to all portions of the Project. At such times the Administration shall have full access to and the right to audit, check, inspect and make abstracts and copies from, Borrower's Books and Records and all other papers relating to the Project.

(k) Press Releases. Without the prior consent of the Administration, Borrower shall not issue any press releases in connection with the Loan, the State, or the Administration.

(l) Further Assurances. At any time, upon request by the Administration, the Borrower, at its sole expense, will make, execute, and deliver, or cause to be made, executed, and delivered, any additional documents that may, in the opinion of the Administration, be necessary or desirable to effectuate, complete, perfect, continue, or preserve the Obligations. Upon any failure by the Borrower to do so, the Administration may make and execute any such documents in the name of the Borrower, and at the sole expense of the Borrower, and the Borrower hereby irrevocably appoints the Administration the agent and attorney-in-fact of the Borrower to do so, this appointment being coupled with an interest. The Administration may, at its option, advance the Expenses incurred in making and executing any such documents and the Borrower shall reimburse the Administration for any sums advanced with interest at a rate equal to 12% per annum. Any such Expenses, together with interest, same shall be part of the Obligations.

(m) Indemnification. The Borrower releases the State and the Administration from, and agrees to protect, indemnify and save each of them harmless against, any Claims and Expenses incurred by, or asserted against, any of them, arising in connection with the Loan, the Project, or the Facility. All money expended by the State or the Administration as a result of such Claims and Expenses, together with interest at a rate equal to 12% per annum from the date of payment, shall constitute an additional indebtedness of the Borrower and shall be immediately due and payable by the Borrower to the State and the Administration. Nothing contained in this Section 3.02(m) or in the Financing Documents shall be construed as a limit on the Obligations. This Section 3.02(m) shall survive termination of this Agreement and repayment of the Loan and Note in full.

(n) Non-Discrimination. The Borrower shall not discriminate against any employee or applicant for employment or in hiring of contractors to carry out any portion of the Project on the basis of sex, race, age, color, creed, national origin, or any other characteristics prohibited by applicable law as a basis for discrimination. The Borrower shall direct its contractors to not engage in such discrimination in the hiring of subcontractors to carry out any portion of the Project. The

Borrower certifies that its articles of incorporation and by-laws are consistent with the Governor's Code of Fair Employment Practices.

(o) Expenses. All Expenses incurred by the Administration shall be charged to Borrower's account and shall accrue interest at a rate equal to 12% per annum and shall be part of the Obligations.

(p) Compliance with Laws. The Borrower shall comply with all applicable Laws.

(q) Maintenance of Equipment. The Equipment shall be maintained in operating condition and in good repair and all necessary replacements of and repairs thereto shall be made so that the value and operating energy efficiency of the Equipment shall be maintained and preserved as required and set forth under the Security Agreement.

ARTICLE IV **DEFAULT AND REMEDIES**

Section 4.01. Events of Default.

The occurrence of any one or more of the following events shall constitute an Event of Default under this Agreement:

(a) The Borrower fails to pay the principal amount of the Loan and any applicable interest thereon according to the terms of the Note or any other payment required by any of the Financing Documents, including the Obligations and failure to cure such event within 30 days of written notice to Borrower;

(b) The Borrower ceases to use the Project for the purposes listed on Exhibit A to this Agreement, as contemplated in this Agreement, the Application, and the Commitment Letter for more than 30 days after written notice of default shall have been provided from the Administration to the Borrower;

(c) If, for any cause whatsoever, except for strikes, acts of God, or other causes beyond the reasonable control of the Borrower, the construction of the Project is at any time discontinued for a period of 30 days, or if the Project, as determined by the Administration, has not been completed or is not progressing in accordance with the Application and the certified energy savings contained in the Application;

(d) Any Loan proceeds are used for any purpose other than Eligible Project Costs;

(e) The Borrower breaches any covenant, representation, warranty, or other provision of any of the other Financing Documents, subject to any applicable cure periods;

(f) Any statement made in any certificate, report or opinion (including legal opinions), financial statement, or other document furnished in connection with the Loan was incorrect in any material respect when made;

(g) The Borrower breaches any covenant, representation, warranty, or other provision of this Agreement, which breach is not cured within 30 days from the date the Borrower receives written notice of the breach from the Administration; provided, however that the Borrower shall not receive a 30-day cure period under this subsection for any breach for which there is a specific default set forth in this section;

(h) Any change in any zoning ordinance or any other public restriction is enacted which limits or defines the uses that may be made on any part of the Project, so that the use of the Project would be in violation of the restriction or zoning change and the Project would not be useable for a purpose consistent with the Act (as set forth in the Annotated Code of Maryland State Government Article §9–20A–03) for more than 10 days after written notice of default shall have been provided from the Administration to the Borrower;

(i) Any portion of, or interest in, the Project is sold, leased, subleased, transferred, encumbered, or otherwise conveyed, without the prior written consent of the Administration;

(j) The Borrower fails to comply with any requirement of any Governmental Authority within 30 days after written notice of the requirement is made or within any other time period set by the Governmental Authority; or if any proceeding is commenced or action taken to enforce any remedy for a violation of any requirement of a Governmental Authority or any restrictive covenant affecting any part of the Project;

(k) A default occurs under the terms of any bond, debenture, note, or other evidence of indebtedness of the Borrower and remains uncured beyond any applicable grace or cure period;

(l) Any court of competent jurisdiction makes a final order:

- (i) Adjudicating the Borrower a bankrupt,
- (ii) Appointing a trustee or receiver of a substantial part of the property of the Borrower,
- (iii) Approving a petition for, or affecting an arrangement in, bankruptcy, a reorganization pursuant to federal bankruptcy law, or any other judicial modification or alterations of the rights of the Administration or of other creditors of the Borrower,
- (iv) Assuming custody or sequestering any substantial part of the property of the Borrower, or
- (v) Attaching or garnishing any substantial part of the property of the Borrower;
- (vi) Or if the Borrower:
 - A. Files such petition,
 - B. Takes or consents to any other actions seeking any such judicial order,
 - C. Makes an assignment for the benefit of creditors,
 - D. Fails to pay debts generally as they become due, or
 - E. Makes an admission in writing of inability to pay debts generally as they become due;

(m) A permanent or preliminary injunction is issued that lasts for more than 90 days, that prohibits the Borrower from using the Project as set forth in the Application and the Commitment Letter for more than 10 days after written notice of default shall have been provided from the Administration to the Borrower;

- (n) Without the prior written consent of the Administration, the Borrower:
 - (i) Sells or transfers all or substantially all of its business assets,
 - (ii) Begins any proceeding to dissolve or liquidate,
 - (iii) Changes the form of business entity through which it presently conducts its business, or
 - (iv) Merges or consolidates;
- (o) Without the prior written consent of the Administration, the Borrower is dissolved by operation of law or in any other manner;
- (p) The Administration makes a good faith determination that a Material Adverse Change has occurred;
- (q) The Administration makes a good faith determination that the prospect of payment of any of the Obligations is impaired for any reason; or
- (r) An Event of Default occurs under the terms of any of the other Financing Documents.

Section 4.02. Remedies.

(a) Upon the occurrence of an Event of Default, the Administration may, without notice or demand, exercise in any jurisdiction in which enforcement hereof is sought, the following rights and remedies in addition to the rights and remedies available to the Administration under the other Financing Documents, the Maryland Uniform Commercial Code, or any other applicable law:

- (i) Require the immediate repayment of the entire outstanding principal indebtedness, together with all accrued interest, under the Note and any Obligations, without presentment, demand, protest, or notice, all of which the Borrower expressly waives;

- (ii) At any time proceed to protect and enforce all rights and remedies available to the Administration under this Agreement or by Law, by any other proceedings, whether for specific performance of any agreement contained in this Agreement, damages, or other relief;

- (iii) Take possession of the Collateral, and enter any of the Borrower's Facilities and remove the Collateral without any liability to the Administration, the Borrower hereby waiving any and all rights to prior notice and to judicial hearing concerning repossession of the Collateral, and require the Borrower, at the Borrower's expense, to assemble and deliver the Collateral to any place designated by the Administration.

- (iv) Operate, manage, and control the Collateral (including use of the Collateral and any other property or assets of the Borrower in order to continue or complete performance of the Borrower's obligations under any contracts of the Borrower), or permit any of the Collateral to remain idle, and collect all rents and revenues therefrom and sell or otherwise dispose of any of the Collateral upon any terms and conditions as the Administration may determine, and purchase or acquire any of the Collateral at any such sale or other disposition, all to the extent permitted by applicable law.

- (v) Enforce the Borrower's rights against any account borrower or other parties

obligated on the Collateral.

(vi) Suspend or terminate the Borrower's authority to receive any undisbursed Loan proceeds at any time by notice to the Borrower; and

(vii) Apply as a prepayment of the outstanding principal and interest of the Loan, any undisbursed proceeds of the Loan in the possession of Administration.

(b) All remedies provided for in this Agreement or by Law are cumulative and are in addition to any other rights and remedies available to the Administration under any Law. The exercise of any right or remedy by the Administration shall not constitute a cure or waiver of any default by the Borrower, nor invalidate any act done pursuant to any notice of default, nor prejudice the Administration in the exercise of those rights.

(c) The failure of the Administration to insist upon performance of any term of this Agreement shall not constitute a waiver of any term of this Agreement. No act of the Administration shall be construed as an election to proceed under any one provision in this Agreement to the exclusion of any other provision. If the Administration suspends or terminates this Agreement, the rights and remedies available to the Administration shall survive the suspension or termination.

Section 4.03. Setoff.

The Administration may set off against and apply any funds of the Borrower on deposit with, or under the control of, the State to the payment of the Obligations, without notice and without resort to any judicial proceeding.

ARTICLE V **MISCELLANEOUS**

Section 5.01. Waiver of Notice. The Borrower hereby waives notice of non-payment of the Loan, demand, presentment, protest and notice thereof with respect to any of the instruments, notice of acceptance thereof, notice of disbursements or advances made, Collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein.

Section 5.02. Notices.

(a) All communications between the parties made pursuant to this Agreement shall be in writing.

(b) Any communication shall (a) when mailed, be effective three business days after it is deposited in the mails, (b) when mailed for next day delivery by a reputable overnight courier service, be effective one business day after mailing, and (c) when sent by fax, be effective when it is faxed and receipt of the communication is confirmed. Communications shall be delivered to the office of the addressee, as follows:

- (i) Communications to the Administration shall be mailed to:

Maryland Energy Administration
1800 Washington Blvd., Suite 755,
Baltimore, MD 21230
Attention: Lawton Loan Program Manager
FAX Number: (410) 537-4096

- (ii) Communications to the Borrower shall be mailed to:

- (c) The Borrower and the Administration may change their notice addresses by sending written notice to the other party.

Section 5.03. Assignment or Transfer.

No benefit or burden imposed on the Borrower under this Agreement may be assigned or transferred without the prior written consent of the Administration. The Administration may sell, assign or transfer all of its rights under this Agreement or the Financing Documents including the Note to any other State agency or Governmental Authority provide Borrower is given notice as soon as practicable.

Section 5.04. Successors.

This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties and their successors and permitted assigns, subject to Section 5.03.

Section 5.05. Severability.

The invalidity of any part of this Agreement shall not affect the validity of the remaining provisions of this Agreement.

Section 5.06. Entire Agreement.

This Agreement and the Financing Documents constitute the entire agreement between the Borrower and the Administration and supersedes all prior oral and written agreements, representations, and negotiations between the parties concerning the Loan and the Obligations.

Section 5.07. Amendment of Agreement.

This Agreement or any of the other Financing Documents may be amended with the approval

of the Administration only in writing executed by both the Administration and the Borrower.

Section 5.08. Headings.

The headings used in this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 5.09. Disclaimer of Relationships.

The Borrower acknowledges that the obligation of the Administration is limited to making the Loan on the terms set forth in this Agreement. Nothing in this Agreement, and no act of the Administration or the Borrower, shall be deemed to create any relationship of a third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Borrower and the Administration. In addition, by inspecting any part of the Project or by accepting or approving any action of the Borrower under any of the Financing Documents, the Administration shall not be considered to warrant the condition, legality, or sufficiency of any part of the Project or any action taken or not taken by the Borrower.

Section 5.10. Governing Law.

This Agreement and all of the other Financing Documents shall be governed by the laws of the State of Maryland. Any judicial proceeding by the Borrower against the Administration involving, directly or indirectly, any matter or claim in any way arising out of, related to or connected with this or any related agreement, shall be brought only in a state or federal court located in Baltimore City, Maryland.

Section 5.11. Term of Agreement.

Except as otherwise provided in this Agreement, unless sooner terminated by the mutual consent of the Borrower and the Administration, this Agreement shall remain in full force and effect until the Loan and the Obligations, together with interest and all other Expenses and sums due and owing in connection with this Agreement, the Obligations or the Loan, have been paid in full to the satisfaction of the Administration.

Section 5.12. Illegality.

If performance of any obligation under any of the Financing Documents would require the performing party to violate the Law, then the performance shall be reduced to the level permitted by Law, and if (1) any provision of this Agreement, other than provisions requiring the Borrower to pay interest, principal, principal and interest, or any other of the Obligations, operates, or would operate, to invalidate any part of this Agreement, then such provision only shall be void as though not set forth in this Agreement, and the remainder of this Agreement shall remain in full force and effect, (2) any provision of this Agreement requires the Borrower to pay interest, principal, principal and interest, or any other of the Obligations is held to be invalid, then at the option of the Administration, the entire unpaid sum under the Loan, with all unpaid interest accrued thereon, and all other unpaid Obligations shall immediately become due and payable.

Section 5.13. CONFESSION OF JUDGMENT.

UPON THE OCCURRENCE OF AN EVENT OF DEFAULT AS PROVIDED IN THIS AGREEMENT, THE BORROWER AUTHORIZES ANY ATTORNEY ADMITTED TO PRACTICE BEFORE ANY COURT OF RECORD IN THE UNITED STATES ON BEHALF OF THE ADMINISTRATION TO CONFESS JUDGMENT AGAINST THE BORROWER IN THE ENTIRE AMOUNT OWED OF THE NOTE, INCLUDING THE ADMINISTRATION'S ATTORNEYS/COLLECTION FEES, MINUS CREDIT FOR PAYMENTS, PLUS COSTS. THE BORROWER AGREES THAT VENUE SHALL BE PROPER IN ANY COUNTY (INCLUDING BALTIMORE CITY) OF THE STATE OF MARYLAND. THE BORROWER WAIVES THE BENEFIT OF ANY AND EVERY STATUTE, ORDINANCE, OR RULE OF COURT WHICH MAY BE LAWFULLY WAIVED CONFERRING UPON THE BORROWER ANY RIGHT OR PRIVILEGE OF EXEMPTION, APPEAL, STAY OF EXECUTION, INQUISITION, OR DISCOVERY IN AID OF ENFORCEMENT, OR OTHER RELIEF FROM THE ENFORCEMENT OR IMMEDIATE ENFORCEMENT OF A JUDGMENT OR RELATED PROCEEDINGS ON A JUDGMENT.

Section 5.14. Expenses.

The Borrower shall pay all Expenses in connection with the execution, recordation, and delivery and any subsequent modification of any of the Financing Documents.

Section 5.15. Time of Essence.

Time is of the essence in this Agreement.

Section 5.16. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one document.

Section 5.17. Application of Payments.

The Administration shall have the continuing and exclusive right to apply or reverse and re-apply any and all proceeds of collateral to any portion of the Obligations. To the extent that Borrower makes a payment or the Administration receives any payment or proceeds of the collateral for the Borrower's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by the Administration.

Section 5.18. No Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to create or confer upon any Person, other than the parties to this Agreement and their respective successors and assigns, any rights

or remedies under or by reason of this Agreement or to constitute such Person a third party beneficiary of this Agreement.

Section 5.19. Right to Cure.

If Borrower fails to perform in a timely fashion any Obligations contained in this Agreement or any of the other Financing Documents, the Administration may perform any of such Obligations and may, at its option, advance the Expenses incurred in performing such Obligations. Any such Expenses shall be charged to Borrower's account and shall accrue interest at a rate equal to 12% per annum and shall be part of the Obligations.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Borrower under notary and the Administration have caused this Agreement to be executed and delivered under seal as of the dates below written.

WITNESS: **[Borrower]**

Print Name: _____ By: _____ (SEAL)
Print Name: _____
Title: _____

STATE OF MARYLAND, _____ OF _____, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, _____, before me, a Notary Public in the State of Maryland, personally appeared _____, who acknowledged himself to be the Vice _____ of _____, known or satisfactorily proven to me to be the person whose name is subscribed to this document, and acknowledged that he executed it on behalf of _____, as its duly authorized signatory.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission expires: _____

WITNESS: **MARYLAND ENERGY ADMINISTRATION**

Print Name: _____ By: _____ (SEAL)
Print Name: _____

Date: _____

EXHIBIT A

DESCRIPTION OF THE PROJECT AND ELIGIBLE PROJECT COSTS

[Borrower] has proposed the following project that is approved for funding under this loan agreement

- _____

Eligible Project Costs are limited to the purchase, installation and commissioning of energy-efficiency and conservation projects described in this Exhibit and in the Application

[Borrower] will contribute cash worth \$_____ to the completion of this project

EXHIBIT B

REQUEST FOR DISBURSEMENT

1. Project Name: _____
2. Borrower: _____
3. Request Number (Number Consecutively): _____
4. Description of Activities and Costs

Activity	Actual Cost (& Contract # if applicable)	Amount Requested from Administration in this Request	Cumulative Amount Requested from Administration to date
Total:			

Instructions:

- 1) Cost figures must be supported by adequate documentation (invoices, bills, vouchers, etc.).
- 2) The Administration will not honor requests for disbursement which exceed the lesser of the amount the Administration is to pay for a particular activity in the project budget previously accepted by the Administration or the actual cost of the work performed.
- 3) In addition to the completed Description of Activities and Costs, the Borrower must write a letter (with all invoices as attachments) to the Administration *with each request* containing the following information:
 - Loan number (i.e., JELLP #...)
 - Amount of disbursement requested
 - Name of the responsible project manager and primary contact
 - Any update to the mailing address
 - Federal Tax Identification Number for the borrower
 - Brief narrative description of the work completed with the funding being requested for disbursement
 - Itemization of each individual invoice, including the business name of the contractor or vendor, number of pages, payment due, and amount of disbursement request being used toward the payment

EXHIBIT C

INSURANCE REQUIREMENTS

1. Comprehensive general liability insurance for both Borrower and Contractor(s) in the form and for amounts acceptable to Administration; Borrower's policy to name Administration as an additional insured.
2. Fire and hazard insurance in the form and for the amounts acceptable to Administration, naming Administration as an additional insured and loss payee.
3. Worker's compensation insurance, broad form, all states coverage, covering all persons engaged in work on the Project, and upon completion of the Project, covering employees of the Borrower.

Borrower shall ensure the Administration receives at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.

EXHIBIT D

DRAW SCHEDULE FOR PROJECT

(to be completed by Borrower and approved by Administration prior to Closing)

_____ % Completion \$ _____.

_____ % Completion \$ _____.

\$ _____

EXHIBIT E
AMORTIZATION SCHEDULE

	Repayment Schedule			
Loan				
Rate	2.0%			
Payment				
Periods				
Period	Payment	Interest	Principal	Balance
1				
2				
3				
4				
5				
6				
	Annual Savings			
	Annual Payments			