

PERSONAL GUARANTY AGREEMENT

THIS PERSONAL GUARANTY AGREEMENT (“Agreement”) is made this ___ day of _____, 2020, to the **MARYLAND ENERGY ADMINISTRATION**, an agency of the State of Maryland (“Administration”), by _____ (“Guarantor”).

RECITALS

1. The Administration has made a loan to [Borrower]. (“Borrower”), in the original principal amount of [Loan Amount] (the “Loan”).

2. The Loan is evidenced by a promissory note in the principal amount of _____, dated the same date as this Agreement, made by Borrower and payable to the Administration (as it may be amended, the “Note”), and is subject to the terms of a Loan Agreement between the Borrower and the Administration dated the same date as this Agreement (as it may be amended, the “Loan Agreement”).

3. The Guarantor controls the Borrower and will financially benefit from the Loan.

4. As a material condition for the Administration to make the Loan, the Administration has required that the Guarantor guarantees payment of the Loan as provided in this Agreement.

NOW, THEREFORE, in order to induce the Administration to make the Loan to the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

1. Guaranty.

(a) The Guarantor hereby absolutely, irrevocably and unconditionally guarantees to the Administration the following obligations (collectively, the “Guarantor’s Obligations”):

(i) The full and punctual payment when due (whether at stated maturity, upon acceleration, or otherwise) of all present and future indebtedness and obligations of the Borrower to the Administration, whether direct or indirect, absolute or contingent, joint or several, including all obligations arising out of the Loan Agreement and the other Financing Documents (as defined below) and the “Obligations” as defined in the Loan Agreement; and

(ii) The due and punctual performance of all of the other terms of the Loan Agreement and the other Financing Documents.

(b) The term “Financing Documents” has the meaning provided in the Loan Agreement.

2. Absolute Guaranty. The guaranty of the Guarantor under this Agreement is a guaranty of payment and not of collection and shall remain in effect until all of the Guarantor's Obligations are indefeasibly paid in full. The Guarantor's Obligations are the primary, direct, and immediate obligations of the Guarantor and shall not be affected by, subject to, or conditioned upon, and may be enforced against the Guarantor irrespective of the occurrence of, any of the following:

(a) Any pursuit, enforcement, or exhaustion of any rights or remedies the Administration may have to collect the Guarantor's Obligations from the Borrower or from any other maker, endorser, surety or guarantor of, or pledgor of collateral for, any part of the Guarantor's Obligations (each other maker, endorser, surety, guarantor or pledgor being an "Obligor" and collectively "Obligors"), or any recourse to or against any collateral or security for any part of the Guarantor's Obligations;

(b) The invalidity, lack of priority, or unenforceability in whole or in part of any the Financing Documents;

(c) Any counterclaim, recoupment, setoff, reduction, or defense based on any claim that the Guarantor may have against the Administration, the Borrower, or any Obligor;

(d) The voluntary or involuntary liquidation, dissolution, termination, merger, sale, or other disposition of the Borrower or any of the Borrower's assets;

(e) Any bankruptcy, reorganization, insolvency, or similar proceedings for the relief of debtors under any federal or state law by or against the Borrower or any Obligor, or any discharge, limitation, modification, or release of liability of the Borrower or any Obligor arising out of any such proceedings;

(f) Any event or matter to which the Guarantor has consented under the terms of this Agreement; and

(g) Any other circumstance that might otherwise constitute a legal or equitable discharge, release, or defense of any Obligor (other than the Guarantor).

3. Consents. Without notice to, or further consent of, the Guarantor, the Guarantor hereby consents that the Administration may at any time:

(a) Renew, extend, accelerate, subordinate, or change any of the terms of the Guarantor's Obligations;

(b) Waive, release, amend, or otherwise deal with any of the provisions of the Financing Documents in any manner satisfactory to the Administration;

(c) Release the Borrower or any of the Obligors;

(d) Waive or delay the exercise of any of its rights and remedies against the Borrower or any of the Obligor or any collateral or security for any part of the Guarantor's Obligations;

(e) Release, substitute, subordinate, add, or fail to maintain, preserve, or perfect any of its liens on, security interests in, or rights to, or otherwise deal in any manner satisfactory to the Administration with any collateral or security for any part of the Guarantor's Obligations;

(f) Apply any payments of the Guarantor's Obligations received from the Borrower, the Guarantor, any Obligor, or any other source to the Guarantor's Obligations in any order and manner determined by the Administration, in its sole and absolute discretion; or

(g) Take or fail to take any other action that may to any extent vary the risk of the Guarantor or otherwise operate as a legal or equitable discharge, release, or defense of the Guarantor under applicable laws.

4. Waivers. The Guarantor hereby waives:

(a) Notice of the execution and delivery of any of the Financing Documents;

(b) Notice of the creation of the Guarantor's Obligations;

(c) Notice of the Administration's acceptance of and reliance on this Agreement;

(d) Presentment and demand for payment of, and notice of non-payment and protest of non-payment of, the Guarantor's Obligations;

(e) Any notice from the Administration of the financial condition of the Borrower, regardless of the Administration's knowledge thereof;

(f) Demand for observance, performance, or enforcement of, or notice of default under, any of the provisions of the Financing Documents, and all other demands and notices otherwise required by law that the Guarantor may lawfully waive, except for any notice expressly provided for in this Agreement;

(g) Any right or claim to cause a marshaling of the assets of the Borrower or any Obligor;

(h) Any rights of the Guarantor to subrogation, recourse, reimbursement, or indemnity against the Borrower, any Obligor, or any collateral for the Guarantor's Obligations and any other rights that may accrue on account of any payments made by the Guarantor to the Administration under this Agreement;

(i) Any defense to the Guarantor's Obligations based on any failure by the Administration to preserve, adequately maintain, or perfect its interest in any collateral for the Guarantor's Obligations provided by the Borrower, or on any act or failure to act by the Administration that constitutes a release of or impairs or affects the value of any collateral; and

(j) Any defense based on the adequacy of the consideration for this Agreement.

5. Representations and Warranties. The Guarantor hereby represents and warrants to the Administration that:

(a) The Guarantor has had an opportunity to examine the Financing Documents existing on the date hereof;

(b) The Guarantor owns all Class A corporate stock of the Borrower and possesses all voting powers for all purposes of the Borrower, and the Loan to the Borrower by the Administration will financially benefit the Guarantor;

(c) The financial statements of the Guarantor previously furnished to the Administration in connection with the application for the Loan fairly present the financial position of the Guarantor as of their date, and no materially adverse change has occurred in the financial position of the Guarantor since that date;

(d) The Guarantor has paid all taxes and assessments required to be paid by the Guarantor, and has filed all tax returns required to be filed by the Guarantor;

(e) There is no statute, agreement, judgment, or court order applicable or binding on the Guarantor that would prohibit, conflict with, or prevent the execution, delivery, and performance of this Agreement by the Guarantor; and

(f) This Agreement constitutes the valid and binding obligations of the Guarantor, enforceable in accordance with its terms.

(g) All information contained in any financial statement, report, or other document given by the Guarantor or the Borrower in connection with the Loan is true and accurate in all respects, and the Guarantor and the Borrower have not omitted to state any material fact or any fact necessary to make the information not misleading.

(h) There is no Default on the part of the Guarantor under this Agreement, and no event has occurred or is continuing that, with notice, or the passage of time, or both, would constitute a Default under this Agreement.

(i) The Guarantor has complied with all laws and orders of any courts or agencies of government.

(j) There is no indebtedness of the Borrower owing to the Guarantor other than accrued salaries, commissions and the like.

6. Covenants.

(a) The Guarantor covenants with the Administration to provide as soon as available, but no later than May 15 of each year:

(i) A copy of the Guarantor's personal financial statements in reasonable detail satisfactory to the Administration;

(ii) A copy of the Guarantor's federal income tax returns filed for the year, with all supporting schedules; and

(iii) Any additional information that the Administration reasonably requests.

In addition, the Guarantor authorizes the Administration to obtain any additional information concerning the Guarantor from any source which the Administration reasonably requires during the term of the Loan, including credit histories and credit scores.

(b) Without the prior written consent of the Administration, the Guarantor shall not enter into any arrangement to sell, transfer, assign, or otherwise dispose of all or any substantial part of the Guarantor's assets.

(c) The Guarantor shall not dispose of any of the Guarantor's interest in the Borrower.

(d) The Guarantor shall comply with all laws, rules, and regulations.

(e) The Guarantor shall subordinate to the repayment of the Loan any right to payments due on advances made to the Borrower.

(f) The Guarantor shall promptly pay all taxes imposed on the Guarantor and the Guarantor's properties prior to the date when any interest or penalty would accrue for non-payment, except for those taxes being contested in good faith by appropriate proceedings by the Guarantor.

(g) The Guarantor shall not convert equity in the Borrower or any Obligor to debt, and shall not permit any other equity holder in either the Borrower or an Obligor to convert equity to debt. The Guarantor will not lend any funds to a Borrower or an Obligor and will not take a security interest or lien in any asset of the Borrower or any Obligor, and the Guarantor agrees that it will not permit any other person or entity to lend funds to, or take a security interest or lien in any asset of, the Borrower or an Obligor.

7. Default. The occurrence of any of the following events shall constitute a default under the terms of this Agreement (collectively or individually, a “Default”):

(a) The failure of the Guarantor promptly to pay and perform any part of the Guarantor’s Obligations;

(b) Any representation or warranty made in this Agreement or any financial statement or other information furnished by the Guarantor in connection with the Loan proves to have been false or misleading in any material respect on the date made or furnished;

(c) The failure of the Guarantor to comply with any covenant set forth in this Agreement;

(d) The occurrence of a default under the terms of the Loan Agreement, Security Agreement, or any other Financing Document, which is not cured within any applicable grace or cure period;

(e) Any court of competent jurisdiction makes a final order (i) adjudicating the Guarantor a bankrupt, (ii) appointing a trustee or receiver over a substantial part of the property of the Guarantor, (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 Guarantor, (iv) assuming custody or sequestering any substantial part of the property of the Guarantor, or (v) attaching or garnishing any substantial part of the property of the Guarantor; or if the Guarantor (A) files such petition, or (B) takes or consents to any other actions seeking any such judicial order, or (C) makes an assignment for the benefit of creditors, or (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;

(f) If the Guarantor becomes a “Disabled Person” as defined the Estates and Trusts Article of the Annotated Code of Maryland; or

(g) The death of the Guarantor.

8. Rights and Remedies.

(a) Upon the occurrence of any Default:

(i) An amount equal to the total of the Guarantor’s Obligations (whether matured or unmatured and regardless of whether any portion of the Guarantor’s Obligations are then due and payable by the Borrower or any Obligor) shall immediately be due and payable by the Guarantor to the Administration without further action by, or notice from, the Administration unless expressly provided for in this Agreement;

(ii) The Administration may exercise any of its rights and remedies under this Agreement or law to enforce and collect the Guarantor's Obligations. All rights and remedies shall be cumulative and enforceable alternatively, successively, or concurrently.

(iii) The Guarantor shall pay to the Administration on demand the amount of any costs and expenses, including court costs and attorneys' fees and expenses paid or incurred by or on behalf of the Administration in exercising any of its rights and remedies, together with interest thereon from the date due until paid in full at the rate of **12%** per annum.

(b) Each Default shall give rise to a separate cause of action, and separate actions may be brought under this Agreement as each cause of action arises. No failure or delay by the Administration to require strict performance by the Guarantor of the Guarantor's Obligations or to exercise any of its powers, rights, or remedies under this Agreement or applicable laws shall operate as a waiver thereof or preclude the Administration at any later time from demanding strict performance thereof or exercising any such powers, rights or remedies. No conduct, custom, or course of dealing shall be effective to waive, amend, or release this Agreement. No modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by the Administration, and any waiver shall be effective only in the specific instance and for the specific purpose for which it is given.

9. CONFESSION OF JUDGMENT. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT AS PROVIDED IN THIS AGREEMENT, THE GUARANTOR 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 GUARANTOR IN THE ENTIRE AMOUNT OWED OF THE NOTE, INCLUDING THE ADMINISTRATION'S ATTORNEYS/COLLECTION FEES, MINUS CREDIT FOR PAYMENTS, PLUS COSTS. THE GUARANTOR AGREES THAT VENUE SHALL BE PROPER IN ANY COUNTY (INCLUDING BALTIMORE CITY) OF THE STATE OF MARYLAND. THE GUARANTOR WAIVES THE BENEFIT OF ANY AND EVERY STATUTE, ORDINANCE, OR RULE OF COURT WHICH MAY BE LAWFULLY WAIVED CONFERRING UPON THE GUARANTOR 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.

10. Notices.

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

If to the Administration:

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

If to the Guarantor:

[Guarantor]
[Guarantor's Address]
[City, State]
[Email]

(b) The Administration and the Guarantor may change the address specified in (a) above by sending written notice to the other parties.

11. Consent to Jurisdiction. The Guarantor irrevocably:

(a) Consents to the jurisdiction and venue of any state or federal court sitting in the State of Maryland over any action related to this Agreement or any of the Financing Documents;

(b) Waives, to the fullest extent permitted by law, any objection that the Guarantor may have to the venue of any action, or that any action has been brought in an inconvenient forum; and

(c) Consents to the service of process in any action by the mailing of copies of the process to the Guarantor by certified or registered mail at the Guarantor's address set forth for the purpose of giving notice.

12. Waiver of Jury Trial. The Guarantor waives any right they may have to a trial by jury in any action, proceeding, or litigation directly or indirectly arising out of, under and in connection with the Guarantor's Obligations, the Loan or this Agreement.

13. Continuing Agreement.

(a) This Agreement shall continue in effect and shall bind the Guarantor regardless of how long before or after the date of this Agreement any of the Guarantor's Obligations are incurred, and all representations, warranties, covenants, consents, waivers, and agreements of the Guarantor herein shall survive the date of this Agreement and

shall continue in full force and effect until all Guarantor's Obligations have been indefeasibly paid in full.

(b) If no longer in effect, this Agreement shall be reinstated if at any time: (i) any part of a payment of the Guarantor's Obligations is rescinded or must be returned by the Administration upon the insolvency, bankruptcy, receivership, dissolution, liquidation or reorganization of the Borrower, the Guarantor, or any Obligor, or as a result of the appointment of a receiver, trustee, or similar officer for the Borrower, the Guarantor, or any Obligor or any substantial part of their property, all as though the payment had not been made and regardless of whether the payment is returned to the party who originally made it or to some other party.

(c) Upon payment by the Guarantor to the Administration of any part of the Guarantor's Obligations, any present or future right of the Guarantor against the Borrower or any Obligor with respect to such payment arising by way of subrogation, reimbursement, indemnity, or otherwise shall be subordinate to the prior indefeasible payment in full of the Guarantor's Obligations.

14. Certain Debts.

(a) The Guarantor will not accept any loans, dividend payments, other disbursements, or unreasonable salary (as determined by the Administration) from the Borrower. In addition, the Guarantor will not authorize any loan, dividend payment, other disbursement, or unreasonable salary to be paid by the Borrower to any other equity holder in the Borrower or to any relative of any equity holder in the Borrower, including the Guarantor.

(b) The Guarantor hereby subordinates the payment of principal, interest, and any other amounts due on any current or future indebtedness owed by the Borrower to the Guarantor (the "Company Debt") to the prior payment in full of the Guarantor's Obligations and agree that all of the right and interest of the Guarantor in the Company Debt shall at all times be subordinate to the right and interest of the Administration in the Guarantor's Obligations.

(c) The Guarantor will not demand or accept, and the Borrower will not offer or make, directly or indirectly, by setoff, redemption, or otherwise, any payment on any part of the Company Debt until the full amount of the Guarantor's Obligations has been received by the Administration in cash.

(d) Any payment of Company Debt received by the Guarantor that is prohibited under this Agreement shall be held by the Guarantor in trust for the Administration. If the Guarantor fails to endorse any such payment where necessary or appropriate, the Guarantor hereby irrevocably appoints the Administration as attorney-in-fact for the Guarantor, with full power to make any such endorsement and with full power of substitution.

(e) Until the full amount of the Guarantor's Obligations has been received in cash by the Administration, the Guarantor shall not, without the prior written consent of the Administration, (i) accelerate the maturity of any of the Company Debt, (ii) exercise any

rights or remedies or take any action to collect or enforce any of the Company Debt, (iii) join with any other creditors of the Borrower in filing any petition commencing any action described in Section 7(e) against or in respect of the Borrower, (iv) sell, assign, transfer, or otherwise dispose of any part of the Company Debt, (v) accept any collateral or security for the Company Debt, (vi) amend or modify any instrument or agreement evidencing, creating, or executed in connection with any part of the Company Debt, or (vii) create additional Company Debt.

(f) The Guarantor shall maintain proper books and records concerning the Company Debt and shall permit the Administration to inspect and photocopy those books and records or any instrument evidencing or creating any of the Company Debt.

15. Miscellaneous.

(a) All amounts payable by the Guarantor under this Agreement to the Administration shall be paid in immediately available funds in a manner acceptable to the Administration at the Administration's address set forth in Section 10 above, or to any other place that the Administration or other holder of this Agreement may designate.

(b) The Administration may, without notice to, or consent of, any Guarantor, transfer any part of the Guarantor's Obligations, and this Agreement will inure to the benefit of the Administration's transferee; provided, that the Administration shall continue to have the unimpaired right to enforce this Agreement as to that part of the Guarantor's Obligations the Administration has not transferred. In connection with any transfer or the grant by the Administration of any participation in any part of the Guarantor's Obligations, the Administration may divulge to any potential or actual transferee or participant any information or documents furnished in connection with this Agreement.

(c) The invalidity, illegality, or unenforceability of any provision of this Agreement shall not affect the validity, legality, or enforceability of any other provisions of this Agreement, all of which shall remain effective.

(d) This Agreement and the rights and obligations of the parties under it shall be construed and interpreted in accordance with the laws of the State of Maryland.

(e) Time is of the essence in connection with the Guarantor's Obligations.

(f) Section headings in this Agreement are included for convenience of reference only, and do not affect the meaning of any of the provisions of this Agreement.

(g) This Agreement shall be binding upon the Guarantor and the Guarantor's heirs, personal representatives, successors, and assigns, and shall inure to the benefit of the Administration and its successors and assigns.

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty Agreement under seal as of the date first written above.

WITNESS:

GUARANTOR:

By: _____ (SEAL)
Name: _____

STATE OF MARYLAND, CITY/COUNTY OF _____, to wit:

I HEREBY CERTIFY, that on this ___ day of _____, 2020, before me, the subscriber, a Notary Public of the State and City/County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to this document, and acknowledged that he/she executed this document for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal as of the day and year set forth above.

Notary Public

My Commission expires: _____