**NOTE**
**ON-BILL RECOVERY LOAN**

| _____ | _____ | New York |
|---|---|---|
| [Date] | [City] | [State] |

Borrower: _____

Borrower: _____

_____

[Property Address] (the "Property")

1. Borrower's Promise to Pay.

In return for a loan that Borrower has received, Borrower promises to pay to New York State Energy Research and Development Authority (referred to herein as "**Lender**" or "NYSERDA"), a public authority of the State of New York constituting a public benefit corporation with an address of 17 Columbia Circle, Albany, New York 12203-6399, _____ Dollars (U.S. $_____) (this amount is called the "**Principal**"), plus interest as specified below, in the manner set forth below. Borrower understands that the Lender may transfer this Note. The purpose of this Note is to finance certain energy efficiency improvements identified in Borrower's application (Request for Financing) submitted to Lender (the "Project").

2. Interest.

Simple interest will be charged on unpaid Principal until the full amount of Principal has been paid. Borrower will pay interest at a yearly rate of 2.5%.

3. Payments.

Except as otherwise provided in Section 4 of this Note, Borrower will pay the Principal and interest owing under this Note to the Utility (as defined below) in installments (each such installment is referred to in this Note as a "**NYSERDA Loan Installment**"). Borrower will pay the Principal and interest owing under this Note in _____ total monthly installments by making a payment against NYSERDA Loan Installment charges included in the utility bill. Each such monthly installment shall be in the amount of $ _____. If Borrower's utility bill is issued on a bi-monthly or other basis, the number of installments and installment amount shall be adjusted accordingly. In no event, however, will Borrower be billed for more than twelve (12) monthly installments in any calendar year.

Borrower will make all payments under this Note by means of payment of a charge, designated as a NYSERDA Loan Installment, on the utility bill from _____ (the "**Utility**"). Borrower understands that the loan proceeds will be disbursed to Borrower at time of loan closing and that Borrower will have 90 days from the date the loan proceeds are disbursed to complete the Project. Prior to the end of that 90-day period, Borrower and Borrower's contractor(s) must sign a certificate of completion and send it to Lender, or to Lender's loan servicer if so designated by Lender, indicating that the Project has been completed. Borrower understands that failure to do so will result in the full Principal amount becoming due and payable immediately and payable directly to Lender. If, upon inspection, Lender determines that any portion of the Project has not been completely installed, Lender reserves the right to require completion of the work, or, in the alternative, at Lender's discretion, to require immediate repayment directly to Lender of an amount equal to the value of the portion of the Project that was not completed.

The first NYSERDA Loan Installment charge will be included in the utility bill issued by the Utility for the first billing period commencing after the date on which NYSERDA's loan servicer notifies the Utility that the loan funds are fully disbursed and the certificate of completion has been received. A charge in the amount set forth above will appear on each of Borrower's utility bills thereafter and will be due and payable in accordance with the terms of Borrower's utility service.

Borrower will make these payments until Borrower has paid all principal and interest and any other charges described below that Borrower may owe under this Note. Borrower understands that Borrower's utility bill will include charges for electric and/or gas service as well as the charge for this loan and that Borrower's payments to the Utility will be applied first as payment for any amounts then due with respect to Borrower's electric and/or gas services and then as payment for amounts due under this Note, applied by Lender or Lender's loan servicer to interest before Principal. If Borrower makes payment to the Utility for an amount greater than the amount billed for the electric and/or gas service and the NYSERDA Loan Installment charge on the utility bill, the excess will be applied first to subsequently billed electric and gas Utility service charges and the balance, if any, will be applied toward the payment of subsequently billed NYSERDA Loan Installments.

4. Payments Directly to Lender for Periods Without Utility Billing.

If the Utility does not issue Borrower a utility bill because of either a voluntary or involuntary termination or suspension of service (such as if Borrower closes an account and no person has opened a successor utility account for the premises or Borrower's account is terminated by the Utility for non-payment or Borrower elects to temporarily suspend service without closing the account), Borrower will receive a loan statement bill directly from the Lender or the Lender's loan servicer for the Principal and interest due for each NYSERDA Loan Installment. The first such statement bill shall be issued by the Lender or the Lender's loan servicer no sooner than thirty (30) days following such termination or suspension of service. Borrower understands and agrees that if, pursuant to this Section 4, the Lender or the Lender's loan servicer is to issue a loan statement bill, Lender or the Lender's loan servicer shall, prior to the issuance of any such billing statement, cause to be completed a search of the real property records to confirm the identity of the owner of the Property. If such search confirms that Borrower is the owner, such billing statement shall be sent to the Borrower. If, however, such search determines that the owner of the Property is someone other than the Borrower, such billing statement shall be sent to the person or entity identified by such search as being the owner. The bill will be payable on the 15th day of each month for each such NYSERDA Loan Installment, and the bill will be sent to the Borrower 30 days prior to each such due date. Any amount billed by the Lender or the Lender's loan servicer not paid by the due date shall be subject to a late payment charge calculated as 1.5 percent of the unpaid Principal and interest. If Borrower re-establishes utility service with the Utility, the Utility will resume billing of the NYSERDA Loan Installment charge through the Borrower's utility bill and the Lender or the Lender's loan servicer will discontinue direct billing. In addition, if arrears in on-bill recovery charges at the time of account closure or meter transfer are expressly assumed by a subsequent purchaser of the Property (as provided in Section 13(b) of this Note), the Lender or the Lender's loan servicer shall directly bill such subsequent purchaser for the payment of such arrears. If arrears in NYSERDA Loan Installment charges at the time of account closure or utility meter transfer are not paid to the Utility or assumed by a subsequent purchaser of the Property, the Lender or the Lender's loan servicer shall directly bill Borrower for such arrears. Borrower also understands and agrees that Lender or Lender's loan servicer shall, prior to the issuance of any such billing statement, cause to be completed a search of the real property records to confirm the identity of the owner

5. Borrower's Right to Prepay.

Borrower has the right to make payments of Principal at any time before they are due. An early payment of Principal only is known as a "**Prepayment**." When Borrower makes a Prepayment, Borrower will notify the Lender in writing that Borrower is doing so. Borrower may not designate a payment as a Prepayment if Borrower has not made all the payments due under the Note or if Borrower has any charges from the Utility outstanding for electric or gas service. Borrower may not make a Prepayment by making an additional payment on the utility bill. In order to make a full or partial Prepayment, Borrower must contact the Lender by telephone at 1-866-697-3732, by email at nyserdaloan@nyserda.org, or by mail at the address noted in Section 8 of this document. The Lender or the Lender's loan servicer will confirm Borrower's eligibility for Prepayment and provide Borrower with Prepayment instructions.

Borrower may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Lender will use any partial Prepayments to reduce the amount of Principal that Borrower owes under this Note. However, the Lender may apply a Prepayment to any billed and unpaid Principal, interest, or fees due on this Note before applying a Prepayment to reduce the Principal amount of the Note. If Borrower makes a partial Prepayment, there will be no changes in the amount of the NYSERDA Loan Installment but the number of remaining NYSERDA Loan Installments and/or the amount of the final payment will be reduced. If Borrower makes a full Prepayment of the Note, the Lender or the Lender's loan servicer shall provide Borrower with a loan payoff amount comprised of the Principal that is owed under this Note, plus any billed and unpaid interest or fees, plus any billed and unpaid late charges. Borrower will make any full or partial Prepayment directly to the Lender's loan servicer using instructions provided.

6. Loan Charges.

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to Borrower by the Lender or the Lender's loan servicer. The Lender may choose to make this refund by reducing the Principal owed under this Note or by making a direct payment to Borrower. If a refund reduces Principal, the reduction will be treated as a Prepayment.

7. Borrower's Failure to Pay as Required.

(a) Late Payment Charge for Overdue Payments. If Borrower does not make a payment in accordance with a bill from the Lender or the Lender's loan servicer, Borrower will be subject to a late payment charge of 1.5% of any amount billed directly to Borrower by the Lender or the Lender's loan servicer if not paid by the due date. However, no similar charge will be due with respect to any NYSERDA Loan Installment billed by the Utility. Borrower will pay this late charge promptly but only once on each late payment. Borrower may also be subject to a collection fee charge by the Utility as authorized by the Public Service Commission

(b) Deferred Payment Agreement. Borrower understands that if Borrower does not make payments in accordance with the requirements of the bill from the Utility and is eligible for a Deferred Payment Agreement under the rules and regulations of the Public Service Commission, the Utility will provide an opportunity for Borrower to enter into a Deferred Payment Agreement, as required by such rules and regulations and in accordance with the usual practice of the Utility.

(c) Notice of Termination. Borrower understands that failure to make payments as required under this Note and under the terms of any Deferred Payment Agreement may result in disconnection of Borrower's electric and/or gas service. In the event that Borrower does not make such required payments, the Utility may serve a Notice of Termination in accordance with the usual practice of the Utility. If Borrower's electric or gas service is disconnected and then subsequently restored, Borrower understands that Borrower will continue to be billed for Principal and interest under this Note, and for any arrears or late payments that are due. In addition, if Borrower's electric or gas service is disconnected and then subsequently restored, Borrower understands that Borrower will be billed for a reconnection charge by the Utility. If the electric or gas service is disconnected and not restored, Borrower will continue to be responsible to the Lender for all amounts then owing under this Note. Borrower also understand that if Borrower does not pay all amounts then owing under this Note, the Lender, in addition to any other legal rights and remedies that the Lender may have, may also commence a lawsuit against Borrower to recover payment of those amounts. If the electric and/or gas service is terminated with unpaid NYSERDA Loan Installment charges and Borrower re-establishes service with the Utility within 45 days of termination at another property address or meter, the Utility shall add the unpaid installment balance to Borrower's billing for such address; otherwise, the balance shall be transferred to NYSERDA for its collection. Borrower may also be subject to a re-connection fee charge by the Utility as authorized by the Public Service Commission.

(d) Acceleration of Payment of Amounts Owed under Note. In addition to the matters set out in paragraph (c) above, Borrower also understands that if the Property covered by the Declaration (as defined in Section 10 of this Note) is damaged by fire or other casualty, or is taken by condemnation, and the electric and/or gas service is terminated and not restored, then in addition to any other legal rights and remedies that the Lender may have, the Lender may also require the immediate payment in full of the entire unpaid principal amount of this Note, together with all billed and unbilled accrued, unpaid interest and all other amounts due to the Lender under this Note and commence a lawsuit against me to recover payment of those amounts.

(e) Dishonored Checks. If Borrower's payment to the Utility is returned due to insufficient funds, Borrower may be charged a fee by the Utility as authorized by the Public Service Commission.

8. Giving of Notices.

Any notices to be provided by the Utility under this Note shall be provided in accordance with the usual practice of the Utility. Unless applicable law requires a different method, any notice that must be given to Borrower by the Lender under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the Property Address above or at a different address if Borrower gives the Lender a notice of a different address.

Any notice that must be given to the Lender under this Note will be given by delivering it or by mailing it by first class mail to the Lender at the following address or at a different address if Borrower is given a notice of that different address:

NYSERDA
Attn.: Office of the Treasurer
17 Columbia Circle
Albany, New York 12203

9. Waivers.

Borrower and any other person who have obligations under this Note waive the rights of Presentment and Notice of Dishonor. "**Presentment**" means the right to require the Lender to demand payment of amounts due. "**Notice of Dishonor**" means the right to require the Lender to give notice to other persons that amounts due have not been paid.

10. Declaration.

In addition to the protections given to the Lender under this Note, Borrower consents to the recording of a declaration with respect to the property (the "**Declaration**"), dated the same date as this Note, to provide notice to others of the obligations set forth herein. The Declaration does not constitute a mortgage, lien or security interest on the property of any kind whatsoever.

11. Borrowers.

Any persons signing as "Borrower" understand and agree that, while payments under this Note are made by means of a NYSERDA Loan Installment charge on the Utility's bill as provided in Section 3 of this Note, the Utility's bill will only be issued to the person or entity named on the utility account. That person or entity may, or may not, be all of the Borrowers under this Note. Any two (2) or more persons signing as "Borrower" shall be jointly and severally liable for the payment of this Note, including, but not limited to, the collection of any arrears that may be due and owing after any termination of electric and/or gas utility service or the closure of the utility account. The term "jointly and severally" means that each person is personally obligated to keep all of the promises made in this Note, including the promise to pay. It also means that the Lender may enforce its rights under this Note against each person individually or against any or all persons together. The word "Borrower" as used in this Note means each person, and all persons, signing as Borrower under this Note

12. Eligibility for Loan.

Borrower represents to the Lender that Borrower owns, leases or manages the Property and that Borrower holds the primary meter account responsibility regarding electric and/or gas utility service for the Property.

13. Notice Required in Connection with a Sale of the Property.

Unless fully satisfied prior to sale or transfer of the Property, (a) the NYSERDA loan installment charges for any services provided at the Property shall survive any changes in ownership, tenancy or utility meter account responsibility with respect to the Property, and (b) arrears in on-bill recovery charges at the time of account closure or meter transfer shall remain Borrower's responsibility, unless such arrears in on-bill recovery charges are expressly assumed by a subsequent purchaser of the Property. Prior to any sale of the Property while any amount is outstanding under this Note, Borrower agrees to deliver to any prospective purchaser or purchaser's agent (i) the written notice required by Section 242 of the Real Property Law as summarized in the Notice to Borrower delivered by Lender to Borrower on the date of this Note, and (ii) written notice that if the Utility does not issue a utility bill, such purchaser will receive a loan statement bill directly from the Lender or the Lender's loan servicer for the principal and interest due for each such NYSERDA Loan Installment. In addition, prior to acceptance of any offer for the sale of the Property while any amount is outstanding under this Note, Borrower agrees to deliver to any prospective purchaser or purchaser's agent written notice of the eligibility requirements as provided in Section 12 of this Note.

14. Notice to Tenants.

If Borrower rents the Property to a tenant who will hold the primary utility meter account responsibility and assume responsibility for payment of the electric bill, if the NYSERDA Loan Installment charge is on the electric bill, or the gas bill, if the NYSERDA Loan Installment charge is on the gas bill, Borrower agrees to provide written notice of the existence of the charge to the prospective tenant prior to entering into any lease with that tenant. Borrower understands that, if service by the Utility to any such tenant is terminated, voluntarily or involuntarily or suspended, Borrower will receive a loan statement bill directly from the Lender or the Lender's loan servicer for the principal and interest due for each such NYSERDA Loan Installment pursuant to, and which Borrower shall pay as provided in Section 4 of this Note.

15. Collection and Sharing of Information.

By accepting these loan responsibilities, Borrower hereby authorizes the Utility to provide to Lender, upon Lender's request, information on Borrower's energy usage. Borrower also agrees to authorize other utilities and other retail energy suppliers to provide to Lender, upon Lender's request, information on other sources of energy used in the Property. All information collected by Lender will be kept confidential and will be used exclusively for the purposes of evaluating the cost-effectiveness of the on-bill recovery program on an on-going basis. Borrower also authorizes Lender and the Utility and their employees, contractors and agents to share such information concerning the electric and/or gas bill and the charges under this Note as is necessary to implement the provisions of this Note.

16. Sale of Note; Change in Loan Servicer.

This Note, or an interest in this Note may be sold one or more times. Borrower might not receive any prior notice of these sales. There may be a change of the loan servicer as a result of the sale of this Note. There also may be one or more changes of the loan servicer unrelated to a sale of this Note. Borrower will be given written notice of any change of the loan servicer. The notice will state the name and address of the new loan servicer, and also provide the address to which Borrower should make payments if the NYSERDA Loan Installment charges are not billed on the utility bill.

17. Governing Law.

This Note and the Declaration will be governed by the laws of the State of New York. The fact that any part of this Note cannot be enforced will not affect the rest of this Note. Any change to this Note or the Declaration must be in writing and signed by the Lender and Borrower. Except as otherwise specified in this Note, Borrower's rights and responsibilities with respect to payment of the on-bill NYSERDA Loan Installment charges will be governed by the provisions of Article 2 of the New York Public Service Law.

18. Guaranties.

If Borrower is an Entity Borrower, as hereafter defined, payment and performance by Borrower of this Note is unconditionally guaranteed by _____ under a guaranty of payment set forth below.

19. Authorization.

If Borrower is a corporation, partnership, limited liability company, trust, unincorporated association or other entity (an "Entity Borrower"), Borrower hereby certifies that the execution and delivery of this Note and the performance of the obligations under this Note have been duly and lawfully authorized by all entity action and that this Note constitutes a legal and valid obligation, enforceable against Borrower in accordance with its terms. All references in this Note to "person" or "persons" shall mean, in addition to a natural person or persons, any corporation, partnership, limited liability company, trust, unincorporated association or other entity.

BORROWER AGREES TO THE TERMS SET OUT IN THIS NOTE. BORROWER HAS RECEIVED A COPY OF THIS DOCUMENT ON TODAY'S DATE.

BORROWERS – SEE NOTICE IN SECTION 11 ABOVE BEFORE SIGNING.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

- Borrower

- Borrower

_____
[Insert Name of entity Borrower above]

By:

Name:_____

Title:_____

*[Sign Original Only]*

STATE OF NEW YORK )
COUNTY OF _____ ) ss.:

On the _____ day of _____, in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK )
COUNTY OF _____ ) ss.:

On the _____ day of _____, in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**GUARANTY OF PAYMENT**

The undersigned ("**Guarantor**"), for good and valuable consideration, the receipt and sufficiency of which Guarantor hereby acknowledges, does hereby unconditionally guarantee the punctual payment to New York State Energy Research and Development Authority *("***Lender***")*, when due, whether at a stated maturity, by acceleration or otherwise, of each

and all of the principal, interest and other amounts due and payable by _____ ("**Borrower**") to Lender under that certain Note, dated _____ (the "**Note**"), without any limitation as to amount, strictly in accordance with all the terms and provisions of the Note and subject to all rights of Lender arising from or relating to the Note. Guarantor agrees to reimburse Lender on demand for all Lender's expenses and costs of any kind or nature, including without limitation legal fees and disbursements incurred by Lender in attempting to enforce this Guaranty, including but not limited to costs of bankruptcy or other legal proceedings or appeal. The duty, liability and obligation of Guarantor pursuant to this Guaranty shall not be diminished, altered, terminated or changed in any respect, notwithstanding any law, regulation, decree, action, proceeding, equitable doctrine or other circumstance that would or might otherwise diminish, alter, terminate, void or change the liability or obligation of Borrower, any other guarantor, entity or person to pay any or all of the Note. Any payments required to be made pursuant to this Guaranty shall be made in United States dollars in immediately available funds at such place and time as shall be designated by Lender.

This Guaranty is a continuing agreement and shall be construed at all times to be a guaranty of payment and not a guaranty of collection. Lender, in its sole discretion and without notice to or further assent from Guarantor at any time or from time to time, and without diminishing, altering, terminating or changing in any respect the liability and obligation of Guarantor pursuant to this Guaranty, may: (a) increase or decrease the amount of, extend, change, or amend the time, manner, place, amount or terms of payment of any or all of the Note or any other terms or provisions set forth in the Note, including those relating to any guarantor; (b) waive, fail to exercise or delay in exercising any right or remedy granted to Lender by any agreement or by law with respect to Borrower, the Note or any guarantor; (c) release, agree not to sue, settle or compromise with Borrower, any guarantor or any other entity or person who is otherwise obligated to pay any or all of the Note; (d) apply any payments or proceeds relating to the Note in such manner as it deems appropriate; or (e) act or refuse to act in any other manner which might constitute a legal or equitable discharge or defense of a guarantor.

If this Guaranty is executed by two or more persons or entities, they shall be jointly and severally liable, and all provisions of this Guaranty shall apply to each and all of them. The termination of this Guaranty as to one or more of such persons or entities shall not terminate this Guaranty as to any remaining persons or entities. This Guaranty shall be binding upon the heirs, executors, trustees, transferees, administrators, assigns and successors of Guarantor and shall inure to the benefit of and be enforceable by Lender, its successors, transferees and assigns. This Guaranty is a primary obligation. Guarantor's obligations hereunder are separate and independent of Borrower's, and a separate action may be brought against Guarantor whether or not action is brought or joined against or with Borrower or any other party. In the event any payment or recovery is received by Lender with respect to the Note during the time that this Guaranty is effective and such payment or recovery is subsequently invalidated, declared fraudulent or preferential or otherwise set aside under the terms of any federal or state law or equitable doctrine, then the liability of Guarantor shall be reinstated and Guarantor shall be responsible for the amount of such payment or recovery to Lender under the terms of this Guaranty together with any and all interest and other charges related thereto and related to any proceeding seeking to set aside or invalidate such payment or recovery, including attorneys' fees, notwithstanding the fact that this Guaranty was terminated voluntarily or by law at the time that the payment or recovery was set aside or invalidated as described above.

This Guaranty shall be governed by and interpreted and enforced in accordance with the internal law of the State of New York, without regard to principles of conflict of laws. Guarantor waives any right to trial by jury in any action with respect to this Guaranty.

Date: _____

(Signature of Guarantor)

Date: _____

(Signature of Guarantor)

STATE OF NEW YORK )
COUNTY OF _____ ) ss.:

On the _____ day of _____, in the year 20___, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK )
COUNTY OF _____ ) ss.:

On the _____ day of _____, in the year 20___, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public