

SEWER CONSERVATION
COMMERCIAL LOAN AGREEMENT

THIS AGREEMENT by and between the City of Tacoma, Department of Public Works, Sewer Utility Division (hereinafter referred to as "Sewer Utility") and _____ (hereinafter referred to as the "Borrower").

RECITALS

Sewer Utility offers loans to owners of existing commercial facilities to encourage the installation and use of sewer capacity conservation measures in existing commercial buildings.

Sewer Utility staff has identified and recommended installation of sewer conservation measures ("Improvements") at the Borrower's existing commercial building (hereinafter referred to as the "Property").

Borrower intends to install said Improvements at its Property and has requested a loan from Sewer Utility for said installation.

Sewer Utility hereby approves a loan in the amount of _____ Dollars (\$ _____), at an interest rate of _____, for a term not to exceed _____ to provide financing for Borrower's installation in the Property, described on Exhibit A attached, of the Improvements, described on Exhibit B attached. The Property and the Improvements are collectively referred to as the "Project."

The payment and performance of all of Borrower's obligations in connection with the Loan shall be unconditionally guaranteed by _____ ("Guarantors"). The Guarantor will execute this agreement and the Unconditional Guaranty attached as Exhibit E.

PURPOSE

This Agreement sets forth certain terms and conditions in connection with the Loan, including those governing the construction of the Improvements and disbursement of the Loan proceeds. Borrower's compliance with each of the conditions contained in this Agreement are conditions of the Loan.

NOW, THEREFORE, the parties agree as follows:

1. OWNERSHIP AND DESCRIPTION OF PROPERTY.

Borrower represents and warrants that it is either the owner of the Property legally described on Exhibit A or the Lessee thereof and has the approval of the owner to enter into this Agreement as evidenced by Exhibit F hereto.

2. IMPROVEMENTS.

(a) A description of the Improvements to be installed by Borrower is attached as Exhibit B and incorporated in its entirety into this Agreement by this reference.

(b) Borrower is responsible for the design, purchase, and installation of the Improvements. Borrower covenants that the installation of the Improvements shall be consistent with standard engineering and design practices.

(c) Sewer Utility shall not be a party to any agreement for material and labor for the installation of the Improvements which are to be furnished under a separate agreement between Borrower and a third party. All obligations to any third party shall be the sole responsibility of Borrower.

3. NO WARRANTIES.

Borrower understands and agrees that the recommended Improvements are based upon professional engineering judgment and practices, and that the effectiveness of the Improvements is relative to the accuracy of the technical and operational information available. Borrower recognizes that Sewer Utility makes no warranty, either express or implied, representation, or promise with respect to wastewater quality or equipment performance after the installation of the Improvements.

4. COMPLIANCE WITH LOCAL AND STATE LAWS.

Borrower shall comply with all applicable federal, state, and local codes and requirements in the design and installation of the Improvements. Where permits are required, the installation and completion of the Improvements must be approved by the appropriate governmental agencies. Borrower shall maintain compliance documents on file and have them available for review by Sewer Utility if so requested.

5. LOAN DOCUMENTATION.

The Loan will be evidenced by Borrower's Promissory Note, secured by a Deed of Trust and Security Agreement ("Deed of Trust") on the Project.

Borrower shall execute the Promissory Note, Deed of Trust and any documents filed under the Uniform Commercial Code. If Borrower is a Lessee of the Property, the Property's owner shall execute a Subordination Agreement to Sewer Utility's Deed of Trust and shall execute the Deed of Trust.

The Promissory Note, Deed of Trust, this Agreement, and all other related Loan documents are collectively referred to herein as the "Loan Documents."

(a) Promissory Note. The Promissory Note ("Note") evidencing the Loan shall bear interest at a rate of 200 basis points (2%) below the Prime Rate of Interest as published in the Wall Street Journal on the date of signing. After default, it shall bear interest at a rate of 12% per annum. It shall also provide for a late charge of five percent (5%) of any payment not received within ten (10) days after the due date. Payments shall begin on the first day of the second month following the first disbursement of the loan and shall continue on the same day of each succeeding month until paid in full.

(b) Deed of Trust. Borrower shall execute and deliver to Sewer Utility, a Deed of Trust and Security Agreement ("Deed of Trust"), which shall constitute a lien securing the obligations of Borrower in connection with the Loan on Borrower's fee simple title in the Project,

and all tangible and intangible personal property used in connection with the Project. If Borrower is a Lessee of the Property, the Property's owner shall execute the Deed of Trust.

(c) Guaranties. If the obligations of Borrower under the Loan Documents are to be unconditionally guaranteed, the Guarantor will execute this Agreement and the form of Guaranty. Each Guaranty shall be an unconditional, joint and several guaranty of full payment of all amounts owing under the Loan and any subsequent modifications thereof.

(d) Form of Documentation. The Note, Deed of Trust, Loan Agreement, Guaranties and the property owner's approval to enter into this agreement and subordinate its interest to the Deed of Trust and all other documents and instruments to be executed in connection with the Loan ("Loan Documents") shall be in form and substance satisfactory to Sewer Utility, and shall contain such provisions in addition to those specified in this agreement as Sewer Utility may require.

6. FINANCIAL ARRANGEMENTS.

The loan amount is _____ Dollars (\$ _____). This amount has been established by Sewer Utility as the total estimated Improvement costs based on the bid(s) submitted to Sewer Utility by Borrower. The loan amounts for each Improvement are identified on Exhibit B.

Borrower agrees to submit invoices documenting the actual Improvement costs to Sewer Utility for approval.

If invoices are submitted and the actual Improvement costs or the scope of Improvements are substantially higher than the estimated Improvement costs, Sewer Utility may, at their discretion, increase the amount of the loan to cover the additional costs. The loan will only be increased if the Borrower qualified for the increased amount.

If the loan closing has already taken place and the loan needs to be increased, the Borrower will be responsible for any expenses necessary to re-file the loan documents.

Any decrease in the actual Improvement costs from the estimated Improvement costs shall reduce the loan amount. The reduction shall be the difference between the loan amount and the actual Improvement costs.

Should Borrower fail to install any or a part of the Improvements described in Exhibit B, Borrower will notify Sewer Utility in writing stating the reasons. Any adjustment to the scheduled loan repayment amounts, as set forth in the Promissory Note, shall be at the discretion of Sewer Utility.

7. CONDITIONS TO LOAN CLOSING & LOAN FUND DISBURSEMENTS.

Prior to and as a condition to Loan Closing and Loan Fund Disbursement, each of the following conditions must be satisfied:

(a) Loan Documents. The Loan Documents shall have been executed by the appropriate persons and delivered to Sewer Utility.

(b) Title Insurance. An ALTA title insurance policy (form 1970) with extended coverage in the amount of _____ Dollars (\$ _____) shall be delivered to Sewer Utility insuring Sewer Utility as the holder of the Deed of Trust with a priority acceptable to Sewer Utility. Such policy shall be issued by a title company acceptable to Sewer Utility, and shall contain such endorsements as Sewer Utility may reasonably require. Any title exceptions shall be subject to Sewer Utility's approval. Sewer Utility shall have the right, at Borrower's expense, to have such title policy updated before each disbursement. Without limiting the foregoing, the policy shall insure that the Property is free of the possibility of any prior mechanics' or material men's liens.

(c) Property Hazard Insurance. Original paid up fire and extended coverage insurance policy of a company and in form and amount acceptable to Sewer Utility, containing Form No. 438 BFU standard mortgagee clause, or its equivalent, in Sewer Utility's favor shall be delivered to Sewer Utility.

(d) Flood Insurance. Sewer Utility shall be provided with satisfactory evidence of flood insurance if the Property is located in a designated flood hazard area where federally subsidized insurance is available.

(e) Additional Funds. Borrower shall provide proof that it has funds in addition to the Loan, which are sufficient to complete the Improvements free and clear of any liens or encumbrances.

(f) No Adverse Change. At the date of closing of the Loan, and prior to loan fund disbursements, the financial condition and credit of Borrower and all information relating to and the condition of the Project shall be as represented to Sewer Utility without any material adverse changes.

(g) Financial Statements. If requested, Sewer Utility shall be provided with a copy of Borrower's and any guarantors' most recent financial statements, showing no material adverse change from those previously submitted to Sewer Utility.

(h) Permits, Lawful Use, and Environmental Compliance. All permits required to commence and complete construction of the Improvements have been issued and copies shall be available to Sewer Utility on request.

(i) Plans and Specifications. A complete set of final Plans and Specifications for the Improvements shall have been approved by all governmental authorities having jurisdiction.

(j) Documents. On or before the expiration date of this commitment, Borrower shall provide Sewer Utility with such additional documents regarding Borrower and the Project as Sewer Utility may require.

If Sewer Utility disburses funds without requiring each of the foregoing, such shall not be deemed waived, and Sewer Utility may require compliance with each of the foregoing conditions before further Loan proceeds are to be disbursed.

8. LOAN FUND DISBURSEMENT.

(a) Disbursements will be made within thirty (30) days upon satisfaction of the following conditions:

- (1) Sewer Utility's receipt of the Improvement's cost, and

(2) Sewer Utility shall have determined to its satisfaction that construction of the Improvements is in accordance with standard engineering practices, which meet the performance criteria identified in Exhibit B, and is in compliance with all applicable building ordinances, rules and regulations.

(b) All sums disbursed by Sewer Utility shall be used only for the Improvements and only in accordance with Borrower's draw request. No sums shall be disbursed to Borrower for any other purpose.

9. PROPRIETARY INFORMATION.

Subject to the requirements of Chapter 42.17 RCW (Public Disclosure Law), Sewer Utility shall keep confidential any information noted as proprietary by Borrower. Except for any proprietary information, Sewer Utility shall have the right to publicly disseminate information relating to the installation of the Improvements.

10. FOLLOW-UP VISITS.

Borrower shall allow Sewer Utility, or its authorized representatives, access to the Project for performance and program evaluation purposes for the term of the loan. Borrower shall have a representative available with reasonable advance notice to review the Improvement's performance and program participation.

12. INDEMNIFICATION CLAUSE.

The Borrower assumes the risk of all damages, loss, costs and expenses and agrees to the fullest extent allowed by law to indemnify and hold harmless the City of Tacoma, its officers and employees from and against any and all liability which may occur or be sustained by Sewer Utility on account of any claim or action made or brought against Sewer Utility for the death or bodily injury to all persons (including employees, agents and subcontractors of Borrower) or destruction of property resulting from or in connection with the act or omission of the Borrower or its employees in connection with performance of this agreement, excepting only liability occasioned by the negligence or willful misconduct of Sewer Utility or its employees acting within the scope of their employment to the extent that such liability is fixed by a court of competent jurisdiction. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor for Sewer Utility. In this regard, the Borrower acknowledges that it may be waiving immunity under Title 51 R.C.W., Industrial Insurance Law, and also acknowledges that this provision has been mutually negotiated.

13. TERMINATION CLAUSE.

If no payment has been made by Sewer Utility, the Borrower may terminate this Agreement by providing written notice to Sewer Utility specifying the reason for termination. Sewer Utility may terminate this Agreement upon 30 days written notification to the Borrower. If the Borrower has incurred valid obligations for the installation of the Improvements prior to receipt of notice of termination, a loan disbursement for these valid obligations incurred will be made. If a portion of the loan has been disbursed for any of the Improvements, the repayment of the loan, if not yet in effect, will commence on the first day of the month following the month the

Agreement is terminated. In all cases, any adjustment to the scheduled loan repayment amounts, as set forth in the Promissory Note, shall be at the sole discretion of Sewer Utility. This Agreement shall be deemed modified to reflect the adjustment to the Improvements and the loan amount.

14. BORROWER WARRANTIES.

Borrower makes the following representations and warranties to Sewer Utility, which representations and warranties shall be true as of the date of any advance made to Borrower with the same effect as though such representations and warranties were made on and as of that date:

(a) Authority. The execution and delivery of this Agreement and each of the documents referenced in this Agreement, which are to be or have been executed by Borrower, together with the performance of this Agreement in accordance with its terms, are duly authorized and are not in contravention of law or of any agreement or undertaking to which Borrower is a party or by which it is bound.

(b) Financial Condition. Borrower's financial position and the financial position of any guarantors as heretofore reported to Sewer Utility, are accurate and dependable and there has not been, and so long as any indebtedness referred to in this Agreement or any indebtedness of Borrower to Sewer Utility may be outstanding, there will not be any substantial unfavorable change in such financial position as would, in the reasonable judgment of Sewer Utility, adversely affect the ability of Borrower or any guarantors to repay any such indebtedness.

(c) Litigation. There is no litigation pending or to the knowledge of Borrower threatened against it that has not previously been disclosed to and acknowledged by Sewer Utility, and Borrower is not in default with respect to any order, writ, injunction, decree, or demand of any court or administrative body of any governmental unit having jurisdiction of the Borrower or of Borrower's properties or operations.

(d) Independent Evaluation. Borrower acknowledges that it has independently evaluated the economic viability of the Project and the reliability and skills of its contractor, and all other persons involved in the Project, and that Borrower has and will rely solely on its own independent data, evaluations and business judgment regarding the project, and not that of Sewer Utility.

(e) Other Warranties. All other representations and warranties of Borrower in the other Loan Documents are true and correct.

15. NO THIRD PARTY BENEFICIARY.

No provision of this Agreement is made or shall be construed for the benefit of any third party. Inspection by Sewer Utility of construction of the Improvements is for the purpose of protecting the security of Sewer Utility, and such inspection is not to be construed as a representation that there will be strict compliance on the part of any contractors or subcontractors with the plans and specifications, or that construction will be free from faulty material or workmanship.

16. UNAUTHORIZED LIENS AND ENCUMBRANCES.

(a) Restriction. No materials, equipment, fixtures, or any other part of the Improvements or apparatus to be used in connection therewith on the Project shall be purchased or installed under conditional sales agreements or other arrangements wherein the right is reserved or may accrue to anyone to remove or repossess any such items. Borrower will keep the Project free from liens and claims of all kinds, whether or not superior to Sewer Utility's Deed of Trust, except for the items approved at the time of closing.

17. DEFAULT.

(a) Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default.

(1) The failure by Borrower to perform any covenant, agreement, or obligation under this Agreement if not cured within the time allowed. If no cure period is otherwise specified for such default, the cure period shall be within thirty (30) days after Sewer Utility's delivery of written demand to Borrower, or if such cure cannot in Sewer Utility's opinion be completed within such thirty (30) day period, failure by Borrower to commence the required cure within such thirty (30) day period, and thereafter to continue the cure with diligence and to complete the cure within ninety (90) days after Sewer Utility's delivery of such written demand. "Delivery" shall be accomplished as described in Section 12 of this Agreement.

(2) If the Borrower removes or fails to properly maintain or use equipment installed as specified in Attachment B to the Commercial Loan Agreement, or if the Borrower ceases to be a customer of Sewer Utility, the whole of the principal sum remaining shall become immediately due and collectible. In case suit or action is instituted to collect the loan pursuant to this Agreement, or any portion thereof, the Borrower promises to pay such additional sum as the Court may adjudge reasonable for attorney's fees and court costs in said suit or action.

(b) Remedies. Upon the occurrence of an Event of Default, Sewer Utility may, at its option, declare the Loan to be immediately due and payable and pursue any one or more of the remedies set forth in this Agreement concurrently or successively in addition to all remedies conferred on it by law or under the terms of any Loan Document. Without limiting the generality of the foregoing, Sewer Utility may hold, use, and disburse any proceeds of the Loan to pay (i) any and all costs, charges and expenses (including interest) whatsoever and howsoever incurred in connection with the Loan; (ii) the cost of construction and completion of the Improvements; (iii) any obligation of Borrower to Sewer Utility relating to the Project; and (iv) any person furnishing labor, materials, or services for or in connection with the construction of the Improvements or the holder of any unauthorized lien or encumbrance on the Project. Upon the occurrence and during the continuation of an Event of Default, or any event or condition which with notice or the passage of time or both would be an Event of Default, Sewer Utility shall not be required to make any disbursements hereunder. Any breach or default under this contract shall give rise to Sewer Utility's right to terminate water service to the property in question and to continue said service termination until the default or breach is corrected or the loan amount is paid in full. This right to terminate service is in addition to any other rights Sewer Utility may have and may be utilized without waiver of any other remedy available to Sewer Utility.

18. GENERAL PROVISIONS.

(a) Expenses. Whether or not the Loan is closed, Borrower shall reimburse Sewer Utility on demand for the following fees and charges incurred by Sewer Utility in connection with the Loan: title insurance charges, appraisal and credit investigation charges, recording fees, and Loan set-up fees, if any.

(b) Disputes. In the event of any claim or dispute arising out of this commitment, the party that substantially prevails shall be awarded, in addition to all other relief, all legal fees and other costs and expenses incurred in connection with such claim or dispute; including reasonable attorney's fees, costs and expenses incurred in any appeal and post-judgment proceedings. The venue for any judicial proceedings in connection with this commitment shall be Superior Court for Pierce County, Washington.

(c) Authorized Representative. Borrower hereby appoints _____ ("Authorized Representative") for purposes of dealing with Sewer Utility on behalf of Borrower in respect of any and all matters in connection with this Agreement, the other Loan Documents, and the Loan. The Authorized Representative shall have the power, in his discretion, to give and receive all notices, monies, approvals, and other documents and instruments, and to take any other action on behalf of Borrower. All actions by the Authorized Representative shall be final and binding on Borrower. Sewer Utility may rely on the authority given to the Authorized Representative until actual receipt by Sewer Utility of a duly authorized resolution substituting a different person as the Authorized Representative. No more than one person shall serve as Authorized Representative at any given time.

(d) Nonwaiver. No failure of Sewer Utility to enforce its rights, remedies, or options in the Event of Default shall be deemed to be a waiver of any of its rights, remedies, or options hereunder or at law, and it may at any time that such default exists or continues to exist, enforce any or all of its rights, remedies, and options arising by reason of such default.

(e) Notice. Any notice or demand that either party desires to give to the other shall be in writing and either delivered personally or by first class mail addressed as follows:

TO SEWER UTILITY:

City of Tacoma
Department of Public Works
Sewer Utility Operations Division
2201 Portland Avenue
Tacoma, Washington 98421-2711

TO BORROWER:

Either party may change its address by notifying the other in writing of the change. Any notice or demand delivered by mail shall be deemed delivered three (3) days after the postmark thereof.

(f) Governing Law. This Agreement shall be construed under and governed by the laws of the State of Washington.

(g) Entire Agreement; Modification. This Agreement and the Loan Documents constitute the entire agreement of the parties and supersede all prior agreements or understandings. No modification or amendment of this Agreement or the Loan Documents shall be effective unless set forth in writing and signed by Sewer Utility and Borrower. Borrower accepts this commitment subject to Borrower's approval of Loan documents.

19. ACCEPTANCE & LOAN CLOSING DATES.

(a) Acceptance. This agreement shall not be binding unless signed by the Borrower and returned to Sewer Utility on or before 4:30 p.m. on _____, 19____.

(b) Loan Closing. This agreement shall expire and terminate if the Loan does not close on or before _____, 19____. If all conditions for closing have been met by the Loan Closing Date except the building permit, the Loan Closing Date shall be extended.

20. INSTALLATION & EXPIRATION DATES.

Improvements Installation. The Improvements are to be completed on or before _____, 19____.

Unless extended by Sewer Utility in writing, this Agreement shall expire on the ____ day of _____, 19____. An extension of this Agreement shall be granted if installation has been completed prior to this expiration date and an inspection is pending.

"SEWER UTILITY"

CITY OF TACOMA
DEPARTMENT OF PUBLIC WORKS
SEWER UTILITY OPERATIONS DIVISION

By _____

Title _____

Date _____

The terms and conditions of the foregoing agreement are hereby accepted and approved subject to Borrower's approval of loan documents.

"BORROWER"

By _____

Title _____

Date _____

EXHIBIT A

LEGAL DESCRIPTION:

Situate in the County of Pierce, State of Washington.

EXHIBIT B

**Sewer Conservation Measures
(Improvements)**

Total Cost: \$

Total Loan Amount: \$