

# Guarantee Facility Agreement

between

\_\_\_\_\_ (Bank)

and

\_\_\_\_\_ (Guarantor)

Dated \_\_\_\_\_, \_\_\_\_\_

**NOTE:** This form Guarantee Facility Agreement has been drafted to support energy efficiency finance transactions funded directly by a commercial bank and indirectly via that bank's leasing company affiliate. References to leases and bank financing of leases can be deleted if they prove irrelevant for the given application.

**NOTE:** This Guarantee Facility Agreement is structured as a “subordinated recovery” guarantee, meaning that, in an event of loss and payment on the guarantee by the Guarantor to the Bank, the Bank will subsequently undertake recovery actions and can apply all recovered monies first to recover its recovery costs and its principal losses before any recovered monies are remitted back to the Guarantor. See Section 4.03(c) of this form Agreement and also Section 2.3 of the Report.

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## **Events of Default**

- Section 6.01. Events of Default.
- Section 6.02. Automatic Termination.
- Section 6.03. Notice of an Event of Default.
- Section 6.04. Saving of Rights.
- Section 6.05. Bank's Right of Termination.
- Section 6.06. Change in Circumstances.

## **ARTICLE VII**

### **Miscellaneous**

- Section 7.01. Notices.
- Section 7.02. Legal Fees.
- Section 7.03. Financial Calculations.
- Section 7.04. Law.
- Section 7.05. Jurisdiction.
- Section 7.06. Successors and Assigns.

## **ANNEX A ENERGY EFFICIENCY CRITERIA**

## **ANNEX B ENVIRONMENTAL REVIEW REQUIREMENTS**

## **ANNEX C**

**A. Sample Calculation Of Transaction Guarantee Liability Limit & Guarantee Fees**  
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**B. Sample Calculation of Guaranteed Loss Amount and Distribution of Recovered Monies Under Section 4.03**

**C. Sample Calculation of Guarantee Fees**

## **SCHEDULE 1 APPRAISAL REPORT FORM**

## **SCHEDULE 2 TRANSACTION GUARANTEE AGREEMENT**

## GUARANTEE FACILITY AGREEMENT

AGREEMENT, dated \_\_\_\_\_, \_\_\_\_\_ between \_\_\_\_\_, a banking corporation organized and existing under the laws of \_\_\_\_\_ (herein called the "Bank"); and \_\_\_\_\_, a \_\_\_\_\_ organization established by \_\_\_\_\_. (herein called "Guarantor").

### WHEREAS:

(A) The Bank is duly empowered under \_\_\_\_\_ law to carry on its banking business in \_\_\_\_\_ [country];

(B) Guarantor has approved the Energy Efficiency Financing Program (the "Program") to support energy efficiency financing activities of qualified financial intermediaries principally by providing partial credit guarantees;

(C) The parties have agreed on the terms and conditions contained herein to establish a guarantee facility pursuant to which GUARANTOR shall partially guarantee the Bank's credit exposure in its lending practices for the purchase of, or leasing practices through a leasing Affiliate of, energy efficiency equipment to eligible parties undertaking energy efficiency projects which are financed by the Bank or leased through a leasing subsidiary of the Bank.

## ARTICLE I

### Definitions and Interpretation

Section 1.01. Definitions Whenever used in this Agreement or in the Schedules or Annexes hereto, unless otherwise specifically provided, the following terms shall have the following meanings:

"Accounting Principles" means internationally generally accepted accounting principles applied on a consistent basis, or if a lease is used pursuant to Bank Financing then the term Accounting Principles will also include "Financing Method of Lease Accounting Principles";

- "Affiliate" means any entity directly or indirectly controlling, controlled by or under common control with, another entity (for purposes of this definition, "control" means the power to direct the management or policies of an entity, directly or indirectly, whether through the ownership of shares or other securities, by contract or otherwise, provided that the direct or indirect ownership of fifty percent (50%) or more of the share capital of a legal entity is deemed to constitute control of that entity, and "controlling" and "controlled" have corresponding meanings);
- "Annual Operations Review" means the annual report of the Bank describing the energy and cost savings achieved in relation to Approved Transactions, and providing other relevant information relating to Approved Transactions, in accordance with any specific obligations assumed by the Bank under Approved Transaction Appraisal Reports;
- "Appraisal Report" means a report, in the form of Schedule 1 attached hereto, on the energy efficiency purposes of a project proposed as an Eligible Transaction, as well as the financial condition and prospects of each Eligible Borrower with whom the Bank is proposing to enter into a Loan Agreement;
- "Approved Transaction" means each Eligible Transaction for which a proposal and Appraisal Report is submitted and which is duly approved by GUARANTOR in accordance with Section 3.03;
- "Auditors" means such firm of independent public accountants as the Bank, from time to time, appoints as auditors of the Bank pursuant to Section 3.04(b);
- "Availability Period" means two (2) years from the date of this Agreement;
- "Bank Financing" means a term loan or other method of financing such as an acquisition by means of an assignment or otherwise, which the Bank proposes to grant to a leasing Affiliate of the Bank which shall include funds to finance an Eligible Transaction through a lease between such leasing Affiliate and an Eligible Lessee and which is approved by GUARANTOR in accordance with Section 3.03;

"Business Day"	means a day on which banks are open for business in the City of New York and, for the purpose of the definition of "Fee Payment Date", are also open in _____;
"Dollar" and the sign "\$"	mean the lawful currency of the United States of America;
"Eligible Borrower"	means a reputable private sector company, joint venture enterprise or other legal entity (each hereinafter referred to as an "entity") organized and existing under the laws of _____ [country], which is engaged in any productive activity provided that: (i) such entity is not an Affiliate of the Bank, except such party that may qualify as an Affiliate of the Bank but which has been agreed upon by GUARANTOR and the Bank to be an Eligible Borrower and (ii) the Bank and its Affiliates do not own, separately or in the aggregate, directly or indirectly, more than ten percent (10%) of the total issued and outstanding share capital of such entity; the term "Eligible Lessee" may be substituted for the term Eligible Borrower if Bank Financing is used for an Eligible Transaction;
"Eligible Transaction"	means each energy efficiency project, for the purpose of financing an Eligible Borrower's investment in goods and services intended to improve energy efficiency in buildings and industrial processes, which meets the energy efficiency criteria set forth in Annex A;
"Equivalent Dollars"	means the equivalent in Dollars of the relevant _____ [currency] amount calculated on the basis of the National Bank mid-point exchange rate prevailing on the date of calculation;
"Event of Loss"	means a Loan Default which is not cured or remedied after any applicable cure or grace period and which, in accordance with the terms of the applicable Loan, results in an Event of Default and loss thereunder; the term "Lease Default" may be substituted for the term Loan Default;
"Events of Default"	means the events specified or referred to in Section 6.01, and "Event of Default" means any one of them;
"Facility"	means the guarantee facility to be made available by GUARANTOR to the Bank or for the benefit of a leasing Affiliate of the Bank, in accordance with Section 3.01;

- "Facility Liability Limit" means the maximum liability for payments that GUARANTOR will assume under all Transaction Guarantees issued pursuant to this Agreement, irrespective of the sum of Transaction Guarantee Liability Limits for all Transaction Guarantees actually issued and outstanding from time to time, such maximum liability amount being expressed in Dollars as provided in Section 3.01;
- "Fee Payment Date" means January 15 and July 15 in any year, provided that if any Fee Payment Date would fall on a day which is not a Business Day, the relevant Fee Payment Date shall be deemed to be the next succeeding Business Day;
- "Fee Period" means each period of six (6) months commencing on January 1 and July 1 in each year; provided that in respect of each Transaction Guarantee, the first Fee Period shall commence on the Transaction Guarantee date and end on the day immediately preceding the first following January 1 or July 1;
- "Fiscal Year" means the accounting year of the Bank commencing each year on January 1 and ending on the following December 31, or such other accounting period of the Bank as the Bank may, with GUARANTOR's consent, from time to time designate as its accounting year;
- ""LOCAL CURRENCY"" mean the lawful currency of the Republic of \_\_\_\_\_;
- "Guarantee Fees" means, unless otherwise agreed by GUARANTOR, one percent (1%) per annum of the Transaction Guarantee Liability Limit outstanding from time to time in respect of each Transaction Guarantee issued under this Agreement, which fees shall be specified in each Transaction Guarantee and shall be calculated in accordance with the sample calculations of Guarantee Fees contained in Annex C;
- "Guarantee Percentage" means the percentage, not exceeding fifty percent (50%), of the principal amount of a Loan, determined in accordance with Accounting Principles, guaranteed by GUARANTOR in respect of each Transaction Guarantee, which percentage will be specified in each Transaction Guarantee;
- "Guaranteed Loss Amount" means the amount due to the Bank under a Transaction Guarantee, being the amount of the Loss multiplied by the Guarantee

Percentage and expressed in Equivalent Dollars based on the \$/LOCAL CURRENCY exchange rate in effect on the date of the Bank's written notice to GUARANTOR of the occurrence of an Event of Loss; provided that such amount may be paid by GUARANTOR, in its discretion, in LOCAL CURRENCY or Dollars; and provided, further, that such amount shall not exceed the Transaction Guarantee Liability Limit then outstanding for that Transaction Guarantee or, when added to any Guaranteed Loss Amounts previously paid by GUARANTOR (net of any Loss recovered and paid to GUARANTOR pursuant to Section 4.03), shall not exceed the Facility Liability Limit; and such Guaranteed Loss Amount in respect of each Transaction Guarantee shall be calculated in the manner and based on the methodology shown in the sample calculations of Guaranteed Loss Amounts contained in Annex C;

"Loan"

means the Bank, as creditor, makes available funds to an Eligible Borrower pursuant to a Loan Agreement for its use or benefit in the implementation of an Approved Transaction, and which, unless GUARANTOR determines otherwise, contains the following principal terms and conditions:

- (i) at the time of the Appraisal Report, the principal amount of the Loan (as calculated by applying Accounting Principles) shall be not less than \_\_\_\_\_ Equivalent Dollars (\$\_\_\_\_\_);
- (ii) repayment in full shall be made within a period of \_\_\_\_ (\_\_) years from the end of the Availability Period; and
- (iii) the term "Lease" may be substituted for Loan if Bank Financing is used for an Eligible Transaction;

"Loan Agreement"

means an agreement entered into between the Bank and an Eligible Borrower providing for a Loan to the Eligible Borrower on the terms and conditions provided for therein; the term "Lease Agreement" may be substituted for the term Loan Agreement if Bank Financing is used for an Eligible Transaction;

"Loan Default"

means the failure of an Eligible Borrower to make any Loan Payment in accordance with the terms of a Loan Agreement, or other material default in performance of a Loan Agreement as

specified thereunder; the term "Lease Default" may be used for the term Loan Default if Bank Financing is used for an Eligible Transaction;

- "Loan Payments" means all amounts payable to the Bank under any Loan Agreement by an Eligible Borrower to the Bank in connection with a Loan; the term "Lease Payments" may be used for the term Loan Payment if Bank Financing is used for an Eligible Transaction;
- "Loan Portfolio" means the Bank's complete portfolio of Loans hereunder; the term "Lease Portfolio" may be substituted for the term Loan Portfolio if Bank Financing is used for an Eligible Transaction;
- "Loss" means the outstanding LOCAL CURRENCY principal balance of a Loan due and owing to the Bank upon an Event of Loss, such amount being expressed in Equivalent Dollars based on the \$/LOCAL CURRENCY exchange rate in effect on the date of the Bank's written notice to GUARANTOR of the occurrence of an Event of Loss;
- "Quarterly Operations Report" means the report of the Bank (in addition to the Annual Operations Review) to be provided to GUARANTOR within forty-five (45) days of the end of each fiscal quarter, describing the results of the Bank's Loans relating to Approved Transactions and the status of its Loan Portfolio, as provided in Section 5.02(a) hereof;
- "Secured Assets" means any assets, equipment, goods or property (including for purposes of this definition any related services) whether movable or immovable, from time to time owned by an Eligible Borrower for the purpose of securing a Loan;
- "Security Documents" means any agreement or agreements, made between the Bank and an Eligible Borrower, providing security for a Loan;
- "Transaction Documents" means the Loan Agreement, Bank Financing documents (if any), Security Documents (if any) and any other contracts, agreements or instruments required to implement an Approved Transaction;
- "Transaction Guarantee" means a non-transferable guarantee issued by GUARANTOR in favor of the Bank in the form of Schedule 2, which guarantee is issued in accordance with Section 3.04 hereof;

"Transaction Guarantee  
Liability Limit"

means the maximum liability for payments that GUARANTOR will assume from time to time under a Transaction Guarantee, expressed in Equivalent Dollars and specified in the Transaction Guarantee, as shown on Schedule 2 hereto; provided that such maximum amount shall never exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_); and

Section 1.02. Interpretation In this Agreement, references to Articles, Sections, Annexes or Schedules shall be construed as references to the specified Articles, Sections, Annexes and Schedules of this Agreement; words denoting the singular include the plural and vice versa; and headings are inserted for convenience of reference only and shall not be used to interpret or limit the specific provisions of this Agreement.

## ARTICLE II

### Representations and Warranties

Section 2.01. Representation and Warranties The Bank hereby represents and warrants to GUARANTOR, and upon GUARANTOR's request will deliver to GUARANTOR an opinion of counsel satisfactory in form and substance to GUARANTOR, as follows:

(a) the Bank is a banking corporation duly incorporated in the Republic of \_\_\_\_\_ and is licensed under the laws of the Republic of \_\_\_\_\_ to carry on banking business in the Republic of \_\_\_\_\_, and has the corporate power to conduct its business as presently conducted and to enter into this Agreement;

(b) this Agreement has been duly authorized and executed by the Bank and constitutes a valid and legally binding obligation of the Bank enforceable in accordance with its terms;

(c) neither the making of this Agreement nor the compliance with its terms by the Bank will conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default or require any consent under any existing indenture, mortgage, charge, agreement or other instrument or arrangement to which the Bank is a party or by which it is bound, or violate any of the terms or provisions of the Bank's Memorandum and Articles of Association or any judgment, decree or order or any statute, rule or regulation applicable to the Bank; and

(d) all governmental and corporate approvals and consents (including exchange control approvals) for the due execution and delivery of, and performance under this Agreement, including

the remittance to GUARANTOR of all moneys payable in respect of this Agreement, have been obtained or arrangements satisfactory to GUARANTOR for obtaining the same have been made.

### **ARTICLE III**

#### **The Facility**

Section 3.01. The Facility and Facility Liability Limit. Subject to the terms and conditions of this Agreement, GUARANTOR agrees to establish the Facility, pursuant to which GUARANTOR will from time to time during the Availability Period issue Transaction Guarantees in favor of the Bank; provided that the Facility Liability Limit is \_\_\_\_\_ Dollars (\$\_\_\_\_\_), including for this purpose the Equivalent Dollar amount of any LOCAL CURRENCY payments made by GUARANTOR under any individual Transaction Guarantee issued in accordance with Section 3.04.

Section 3.02. Proposals for Transaction Guarantees. From time to time during the Availability Period, the Bank shall be entitled to propose in writing the issuance of Transaction Guarantees in respect of Eligible Transactions that (i) the Bank intends to finance with its own funds, or (ii) in respect of Bank financing that the Bank proposes to make to a leasing Affiliate in order to finance an Eligible Transaction. Each such proposal shall be accompanied by an Appraisal Report. If there is a Loan Default after the Bank has submitted a proposal and Appraisal Report but before the Transaction Guarantee is issued in accordance with Section 3.04, the Bank shall forthwith notify GUARANTOR of such Loan Default and withdraw the relevant proposal.

#### Section 3.03. Approval Procedure

(a) Unless GUARANTOR determines otherwise pursuant to Section 3.03(b), for each Eligible Transaction in respect of which a proposal and Appraisal Report is submitted to GUARANTOR, GUARANTOR shall review the relevant information and notify the Bank in writing whether it approves or rejects such proposal within thirty (30) days of proposal submission; provided that GUARANTOR shall have the right to request that the Bank provide additional information, in which case such thirty (30) day period may be extended until such time as GUARANTOR has received and reviewed the same. In the event that such proposal is approved by GUARANTOR, the proposed Eligible Transaction shall be deemed to be an Approved Transaction and, upon receiving GUARANTOR's written notification thereof, the Bank and Eligible Borrowers shall enter into the applicable Loan Agreement and Security Documents, and GUARANTOR shall proceed with issuance of the Transaction Guarantee in accordance with Section 3.04.

(b) Subsequent to the first two Approved Transactions, GUARANTOR in its discretion may notify the Bank that the following procedure shall apply in respect of additional proposals and Appraisal Reports to be submitted for GUARANTOR's approval:

- (i) GUARANTOR shall review the relevant proposal and Appraisal Report and notify the Bank in writing within fifteen (15) Business Days of its receipt of such proposal, whether it approves or rejects such proposal (or, in its discretion, GUARANTOR may request additional information), but if GUARANTOR fails to make such notification, then the proposal shall be deemed to have been approved by GUARANTOR; and
- (ii) in the event that such proposal is approved by GUARANTOR, the proposed Eligible Transaction shall be deemed to be an Approved Transaction and the relevant Transaction Documents and Transaction Guarantee shall be entered into and issued in the same manner as provided under Section 3.03(a).

Section 3.04. Issuance of Transaction Guarantees

(a) GUARANTOR shall issue a Transaction Guarantee in relation to an Approved Transaction, in the form of Schedule 2, within fifteen (15) Business Days of the fulfillment by the Bank of the following conditions in a manner satisfactory to GUARANTOR:

- (i) the relevant Transaction Documents, including the Loan Agreement, the Bank Financing documents (if any) and any Security Documents (if applicable), in conformity with any form, and containing any information, required by this Agreement or contained in the Appraisal Report, shall have been duly executed, stamped and, if required, registered, and shall have become fully effective, and duplicate originals or certified copies thereof shall have been furnished to GUARANTOR;
- (ii) all relevant corporate and governmental consents, licenses and approvals required for, or in relation to, the execution or performance of the Loan, the Bank Financing documents (if any) and any Security Documents (if any) or other Transaction Documents, shall have been obtained and satisfactory evidence thereof shall have been provided to GUARANTOR;
- (iii) the Secured Assets shall have been insured with financially sound and reputable insurers acceptable to GUARANTOR against loss or damage, in such manner and to the same extent as shall be generally accepted as customary in regard to assets and businesses of like character and shall have

the name of the Bank and/or GUARANTOR endorsed as a loss payee on all such insurance policies; and

- (iv) legal counsel, acceptable to GUARANTOR, shall have issued a satisfactory legal opinion on the legality, validity, binding nature and enforceability of the Transaction Documents.

(b) In addition to the above requirements, prior to issuance of the first Transaction Guarantee, the Bank shall have confirmed that it has appointed independent Auditors who are in good standing in the Republic of \_\_\_\_\_ and who are acceptable to GUARANTOR.

(c) Each Transaction Guarantee shall be effective from the date of its issue, and may not be sold, assigned or otherwise transferred without the prior written consent of GUARANTOR. The maximum term of a Transaction Guarantee shall be \_\_\_\_\_ (\_\_) years, provided that GUARANTOR shall not be obligated to make any payment under any Transaction Guarantee after \_\_\_\_\_ (\_\_) years from the date of this Agreement.

(d) Each Transaction Guarantee shall specify the Guarantee Percentage, Transaction Guarantee Liability Limit and Guarantee Fee Schedule, as shown in Schedule 2, detailing the following:

- (i) summary terms of the Loan, including its term, principal amount and principal repayment dates, interest rate and interest payment dates, identity of the Eligible Borrower, and listing of Transaction Documents; and
- (ii) calculations showing the Transaction Guarantee Liability Limit (in LOCAL CURRENCY and Equivalent Dollars on the date of the Loan) that will be applicable for each Loan repayment period during the term of the Transaction Guarantee, assuming timely principal payments under the Loan Agreement.

#### Section 3.05. Guarantee Fees.

(a) In consideration of GUARANTOR issuing a Transaction Guarantee, the Bank agrees to pay the Guarantee Fees due in respect of each Fee Period applicable to each such Transaction Guarantee. The amount of the Guarantee Fees that will become due during the term of each Transaction Guarantee will be set forth in a separate schedule to the Transaction Guarantee, in the form of the Guarantee Fees Schedule included within Schedule 2 attached hereto.

(b) Unless otherwise agreed by GUARANTOR, Guarantee Fees in respect of all Transaction Guarantees issued and outstanding from time to time during any Fee Period shall be

paid in Dollars semi-annually in arrears on each Fee Payment Date and shall be paid in immediately available funds to GUARANTOR's account(s) in such bank or banks in the City of New York as GUARANTOR shall from time to time designate. GUARANTOR shall use its best efforts to invoice the Bank, following the close of each Fee Period and prior to the applicable Fee Payment Date, for Guarantee Fees payable on such Fee Payment Date, but no late invoice or failure to invoice by GUARANTOR shall relieve the Bank of its obligation to pay all Guarantee Fees when due and in the manner provided herein.

(c) The Bank shall pay or cause to be paid all present and future taxes, duties, fees and other charges of whatsoever nature (if any) now or at any time hereafter levied or imposed by the Government of the Republic of \_\_\_\_\_ or by any department, agency, political subdivision or taxing or other authority thereof in connection with the payment of the Guarantee Fees, or any other amount payable by the Bank to GUARANTOR hereunder, and all payments of Guarantee Fees or any other amount payable to GUARANTOR hereunder shall be made without deduction for or on account of any such taxes, duties, fees or other charges.

(d) The Bank shall notify GUARANTOR by telex or facsimile of the Dollar amount of the Guarantee Fees paid by the Bank to GUARANTOR on each Fee Payment Date.

Section 3.06. Late Payment of Fees. If the Bank fails to make payment of the Guarantee Fees due on or before any applicable Fee Payment Date, then, without prejudice to any other rights available to GUARANTOR, the Bank shall pay in Dollars, by way of liquidated damages, in respect of the amount of such Guarantee Fees due and unpaid, a charge at the rate of twelve percent (12%) per annum, calculated from the date any such amount became due until the date of actual payment (as well after as before judgment), and such charge shall be payable on the next succeeding Fee Payment Date unless paid beforehand.

## ARTICLE IV

### **Facility and Transaction Guarantees Administration and Payments**

Section 4.01. Loans Not in Default. Except with the prior written consent of GUARANTOR, it is agreed that with respect to each Loan as to which no Loan Default has occurred, the Bank shall:

(a) monitor Eligible Borrower activities and submit Quarterly Operations Reports and other information to GUARANTOR, as provided in Article V, on the status of each Loan, including payments made and the energy and cost savings achieved as a result of the Approved Transaction;

(b) monitor and maintain records of the Security Documents, and Secured Assets covered thereby, for each Loan and ensure that the security interest(s) created thereby remain(s) effective for so long as GUARANTOR is not discharged and released from its obligations under the relevant Transaction Guarantee;

(c) advise GUARANTOR promptly of the possible inability of an Eligible Borrower, in the opinion of the Bank, to perform its obligations under the relevant Transaction Documents in relation to an Approved Transaction, and of any bankruptcy, liquidation, receivership, winding-up or similar proceeding known to the Bank, after reasonable inquiry and investigation, to have been initiated or threatened against any Eligible Borrower.

Section 4.02. Loans in Default.

(a) Within five (5) Business Days of any Loan Default having occurred, the Bank shall give GUARANTOR written notice of such Loan Default together with relevant details of the action that the Bank is taking to cure such Loan Default or exercise its rights and remedies against the Eligible Borrower, including initiation of legal proceedings under the Security Documents and other Transaction Documents.

(b) Unless the Loan Default has been remedied by the Eligible Borrower during any cure period or grace period provided for in the Loan or GUARANTOR shall otherwise agree in writing, the Bank shall:

- (i) accelerate the repayment of such Loan and demand the immediate repayment in full of the balance of all principal, interest and other moneys owing to the Bank under the applicable Loan within two (2) Business Days of the occurrence of an Event of Loss; and
- (ii) as soon as legally permitted following the occurrence of an Event of Loss, institute legal proceedings to foreclose the Secured Assets created by the Security Documents as well as institute such other legal proceedings as GUARANTOR may reasonably request.

Failure of the Bank to institute such legal proceedings, or to make such demand and to issue such acceleration notice, shall entitle GUARANTOR to terminate the relevant Transaction Guarantee by issuing a written notice of such termination to the Bank, whereupon GUARANTOR shall be discharged and released from all its obligations under such Transaction Guarantee; provided that GUARANTOR shall not be entitled to terminate such Transaction Guarantee pursuant to this subsection solely by reason of the Bank's failure to institute legal proceedings in any specific case where it is estimated by the Bank's counsel, after consultation with GUARANTOR's counsel, that legal and related expenses reasonably likely to be incurred by the Bank in the prosecution of such legal proceedings will exceed thirty percent (30%) of the Loss amount then being claimed by the

Bank. Notwithstanding the termination of such Transaction Guarantee, GUARANTOR shall be entitled to Guarantee Fees for the period between the end of the last Fee Period for which Guarantee Fees have been paid and the date of GUARANTOR's notice of termination.

(c) The Bank shall bear all legal and related expenses incurred in the prosecution of such legal proceedings up to thirty percent (30%) of the Loss amount or such other amount as has been agreed with GUARANTOR.

Section 4.03. Loss and Recovery Payments. (a) Upon the occurrence of an Event of Loss under a Loan, the Bank shall have the right to demand in writing GUARANTOR's payment of the applicable Transaction Guarantee. Within ninety (90) days of receipt of such demand and provided the Event of Loss is continuing, GUARANTOR shall pay the Guaranteed Loss Amount in immediately available funds at such bank and in such place as the Bank shall designate.

(b) Immediately upon payment by GUARANTOR of the Guaranteed Loss Amount, GUARANTOR shall be discharged and released from all its obligations to the Bank under the applicable Transaction Guarantee and shall be entitled to subrogation to the extent of such payment; and the Bank shall, upon GUARANTOR's demand, execute a written assignment in favor of GUARANTOR of the Bank's rights to payments, damages and security under the Loan Agreement and any Security Documents, to the extent of the Guaranteed Loss Amount (i.e., in the proportion that the Guaranteed Loss Amount bears to the total Loss) and subject to adjustment (if any) pursuant to subsection (c) hereinbelow. After GUARANTOR's payment of the Guaranteed Loss Amount, the following provisions shall be applicable to the recovery of the Loss:

- (i) the Bank, at its cost (subject to Section 4.02(c)), shall take such actions as it shall deem fit in accordance with its obligations herein to recover the Loss; and
- (ii) in the event of GUARANTOR proposing to commence or to continue to prosecute legal proceedings to recover the Loss, including at GUARANTOR's cost in the event the Bank's obligation to bear legal and related expenses under Section 4.02(c) has been satisfied, GUARANTOR shall consult with the Bank and the Bank shall thereupon on behalf of GUARANTOR commence and/or continue to prosecute such legal action.

(c) Notwithstanding the payment by GUARANTOR of the Guaranteed Loss Amount, the Bank acknowledges its continuing obligation to take all reasonable and necessary action (subject to Section 4.02(c)) in an expeditious manner to recover the Loss from the Eligible Borrower in default, including the realization of any Secured Assets. If, either before or after GUARANTOR's payment of the Guaranteed Loss Amount, the Bank recovers any moneys either from the Eligible Borrower in default or its insurers or other third parties, or receives any

foreclosure proceeds from any Secured Asset, all such moneys so recovered shall be applied and distributed in the following manner:

- (i) first, to reimburse the Bank for all legal and other out-of-pocket expenses actually incurred in recovering the Loss, whether such expenses are incurred prior or subsequent to GUARANTOR paying the Guaranteed Loss Amount;
- (ii) second, to the Bank to the extent of its unrecovered Loss;
- (iii) third, to GUARANTOR to the extent of Guaranteed Loss Amounts actually paid by GUARANTOR; and
- (iv) fourth, the balance, if any, shall be paid to the Bank.

Section 4.04. Limitation on Right to Vary the Terms of an Eligible Loan. Unless GUARANTOR shall otherwise agree in writing, the Bank shall not:

(a) grant any extension of time for payment beyond that expressly provided for in the applicable Loan Agreement or reschedule or otherwise alter or waive any obligation of any Eligible Borrower in respect of a payment owed to the Bank under a Loan Agreement, except in cases of prepayment or acceleration of maturities specifically permitted by the Loan Agreement;

(b) grant any concession to an Eligible Borrower in exercise of any of the powers or authorities or discretions vested in the Bank pursuant to the provisions of the relevant Loan Agreement or otherwise;

(c) reduce, release or otherwise alter or change any Secured Assets created for the benefit of the Bank or GUARANTOR in relation to a Loan subject to a Transaction Guarantee, or amend or waive the provisions of any Security Document creating or providing for any such Secured Asset; or

(d) without prejudice to the preceding paragraphs of this Section, once a Transaction Document has been signed, amend the same in such manner as would substantially depart from its original terms.

Section 4.05. Suspension and Cancellation. Notwithstanding any other provision of this Agreement (including Sections 3.06 and 6.01) or of any Transaction Guarantee, GUARANTOR may by notice to the Bank suspend or cancel the right of the Bank to request the issue of new Transaction Guarantees if the Bank is in default in the payment of any Guarantee Fees owing to GUARANTOR hereunder, and upon the giving of such notice, the Bank's right to request the issue of a new Transaction Guarantee shall be suspended or cancelled as GUARANTOR in its

discretion determines. The exercise by GUARANTOR of the right of suspension shall not preclude GUARANTOR from exercising its right of cancellation either for the same or any other reason and shall not limit any other provision of this Agreement including Sections 3.06 and 6.01 hereof.

## ARTICLE V

### Particular Covenants

Section 5.01. Particular Covenants of the Bank. For as long as any Transaction Guarantee is outstanding, or any amount is owed to any party under this Agreement, the Bank shall:

- (a) at all times exercise due diligence in granting, supervising and collecting each Loan, in accordance with sound financial and loan industry standards and practices;
- (b) monitor and collect information, and cause Eligible Borrowers to monitor and collect information, concerning the energy savings of Approved Transactions and such other types of information as are required to be provided to GUARANTOR in accordance with Section 5.02;
- (c) exercise the same care in the administration and enforcement of rights under or in relation to each Loan Agreement as it exercises with respect to any other loans which are entirely for its own account;
- (d) in the event of an Eligible Borrower Default under a Loan Agreement, or in the event of any expropriation or other force majeure or catastrophic event affecting Secured Assets secured under any Security Documents or an Eligible Borrower's ability to perform its Loan obligations, claim all amounts due to the Bank and take all necessary action to preserve its rights in relation to the Secured Assets;
- (e) keep GUARANTOR fully informed of any developments of which the Bank shall become aware from time to time which could, in the opinion of the Bank, materially and adversely affect the carrying out of the arrangements contemplated by this Agreement, and permit representatives of GUARANTOR to have access to the Bank's records related to Approved Transactions;
- (f) promptly notify GUARANTOR of any change of its Auditors or change in its Memorandum and Articles of Association which, in the opinion of the Bank, would in any manner be inconsistent with the provisions of this Agreement; and

(g) keep GUARANTOR informed as requested, but in any event on a monthly basis, of the current status of legal proceedings initiated to recover a Loss or which are otherwise taken against Eligible Borrowers who are in default under the Loan Agreements.

Section 5.02. Further Reporting Requirements. In addition to the reporting and information requirements established in Section 5.01, the Bank shall provide the following to GUARANTOR:

(a) as soon as available, but, in any event, within forty-five (45) days after the end of each quarter of each Fiscal Year, a Quarterly Operations Report which shall include the following information:

- (i) two (2) copies of the Bank's complete financial statements for such quarter applying the Accounting Principles, in form satisfactory to GUARANTOR and, if requested by GUARANTOR, certified by an authorized representative of the Bank;
- (ii) significant details of each Loan entered into, including any changes to or supplementary information not included within the Appraisal Report regarding the identity, type of industry, location and amount of financial and other assets of each Eligible Borrower, the industry classification of all Secured Assets, and the term of each such Loan Agreement;
- (iii) a breakdown of the Bank's outstanding Loan Portfolio detailing: total number of Loans outstanding (by industry); total outstanding Loan Payments, specifying their applicable currencies and fixed or floating rates; all arrearages covering 1-30 days, 31-60 days, 61-90 days, 91-180 days, and over 180 days; the Bank's total financial exposure, by size and currency, to each single Eligible Borrower; all repayments of principal and payments of interest, fees and any other amounts by each Eligible Borrower; and any liens (excluding tax and other statutory liens discharged by the date of such Report) created in respect of Loan Payments;
- (iv) a statement of all financial transactions between the Bank and any leasing Affiliates relating to each Bank Financing; and
- (v) a detailed description of the use or proposed use by the Bank of other development or concessional financing, whether relating to Eligible Transactions or other Bank energy efficiency financing activities, provided that the Bank shall not be required to disclose proprietary or confidential information;

(b) as soon as available, but, in any event, within forty-five (45) days after the end of each Fiscal Year, the Annual Operations Review; and

(c) at any time, upon written request by GUARANTOR, all information within the Bank's possession relating to any Loan or proposed Loan.

## ARTICLE VI

### Events of Default

Section 6.01. Events of Default. If one or more of the following Events of Default shall have happened and be continuing, then GUARANTOR, by notice to the Bank, may terminate the Facility and shall not be obligated to issue new or additional Transaction Guarantees:

(a) the Bank has sold, assigned or otherwise transferred a Transaction Guarantee without the prior written consent of GUARANTOR, or default shall have occurred in the payment of any Guarantee Fees; provided that in any such case, notwithstanding the foregoing, GUARANTOR shall be entitled to immediately terminate the Transaction Guarantee(s) thereby affected, without any further notice and without any presentment, demand or protest of any kind, all of which are hereby expressly waived by the Bank;

(b) default shall have occurred in the performance of any obligation of the Bank under this Agreement (other than any obligation for the payment of Guarantee Fees), including failure to pursue remedies for the recovery of a Loss as provided herein, and any such default shall have continued for a period of thirty (30) days after notice thereof shall have been given to the Bank by GUARANTOR;

(c) any representation or warranty confirmed or made by the Bank in connection with the execution and delivery of this Agreement or the issuance of Transaction Guarantees, or in connection with any request for a Guaranteed Loss Payment under any Transaction Guarantee, shall be found to have been incorrect in any material respect; and

(d) any government or governmental authority shall have nationalized or otherwise taken over all or any substantial part of the Bank's share capital, or shall have assumed custody or control of the business or operations of the Bank or of its share capital, or shall have taken any action for the dissolution or disestablishment of the Bank or any action that would prevent the Bank or its officers from carrying on its business or operations or a substantial part thereof.

Section 6.02. Automatic Termination.

(a) Notwithstanding any other provision of this Agreement, if the Bank shall have become voluntarily or involuntarily dissolved, or become bankrupt or insolvent (however such bankruptcy or insolvency may be evidenced), the unutilized portion of the Facility shall be terminated and GUARANTOR shall be entitled to immediately terminate all Transaction Guarantees previously issued, without any further notice and without any presentment, demand or protest of any kind, all of which are hereby expressly waived by the Bank, but such termination shall not affect or release GUARANTOR from its obligation to pay a Guaranteed Loss Amount then due and owing.

(b) Notwithstanding any other provision of this Agreement, should the Bank not have proposed, within one (1) year from the date of this Agreement, Eligible Transactions for which the Transaction Guarantee Liability Limits in the aggregate reach a level of fifty percent (50%) of the Facility Liability Limit, GUARANTOR in its sole discretion shall have the right to reduce or terminate the unutilized portion of the Facility, but such reduction or termination shall not affect or release GUARANTOR from its obligations under any Transaction Guarantee previously issued.

Section 6.03. Notice of an Event of Default. If any Event of Default shall have happened, the Bank shall immediately give GUARANTOR notice thereof specifying the nature of such Event of Default and any steps the Bank is taking to remedy the same.

Section 6.04. Saving of Rights. No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to GUARANTOR upon any Event of Default under this Agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein; nor shall the action of GUARANTOR in respect of any such Event of Default, or any acquiescence by it therein, affect or impair any right, power or remedy of GUARANTOR in respect of any other Event of Default.

Section 6.05. Bank's Right of Termination. Notwithstanding anything herein contained, the Bank shall be entitled to terminate this Agreement on the last Business Day of any calendar month, upon giving to GUARANTOR not less than thirty (30) days' prior notice in writing, subject to the payment by the Bank of all Guarantee Fees and other amounts, if any, due to GUARANTOR under this Agreement up to and including the date of termination. Upon such termination, the Facility shall be immediately terminated and GUARANTOR shall be discharged and released from its obligations under all Transaction Guarantees that it has issued prior to the notice of termination, but such termination shall not affect or release GUARANTOR from its obligation to pay a Guaranteed Loss Amount then due and owing as a result of an Event of Loss having occurred prior to such date of termination.

Section 6.06. Change in Circumstances. Where (a) the introduction or variation of any moratorium, law, order, regulation or official directive or any change in the interpretation or application thereof, or (b) the failure to procure and obtain any necessary governmental approval or consent, makes it unlawful or impractical without breaching such moratorium, law, order,

regulation or official directive (i) for any party to continue with the Facility, or (ii) for the Bank to make any payment to GUARANTOR, or (iii) for the Bank to comply with and discharge any of its obligations hereunder, or (iv) in the event that the Republic of \_\_\_\_\_ shall cease to be a signatory to the Articles of Agreement under which GUARANTOR or the World Bank is established, or any Hungarian court or other judicial or administrative tribunal or governmental body fails to recognize or enforce GUARANTOR's, the World Bank's, or GEF's rights and immunities under their respective Articles of Agreement, charter or similar organizational documents, or if the Republic of \_\_\_\_\_ ceases to be a member of GEF, the Facility shall immediately be suspended and any party shall forthwith notify the other parties in writing immediately upon it becoming aware of such event. Upon the receipt of such notice, the parties shall forthwith negotiate in good faith with a view to agreeing upon terms for making the Facility available on a basis which is not unlawful or for enabling the Bank to comply with and discharge its obligations hereunder without breaching any such moratorium, law, order, regulation or official directive, provided that if no such agreement is reached within a period of thirty (30) days after the giving of such notice or within the period (if any) permitted by law, then:

- (i) the Facility shall be terminated automatically, and
- (ii) GUARANTOR shall no longer be under any obligation to issue any further Transaction Guarantees.

**ARTICLE VII**

**Miscellaneous**

Section 7.01. Notices. Any notice or request required or permitted to be given or made under this Agreement to GUARANTOR or the Bank shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail, telex or facsimile to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

For the Bank:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile: \_\_\_\_\_

For GUARANTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile: \_\_\_\_\_

Section 7.02. Legal Fees. Each party shall bear the fees and expenses of its respective counsel incurred in connection with the preparation, execution, delivery, and registration of this Agreement.

Section 7.03. Financial Calculations. All financial calculations to be made under, or for the purposes of, this Agreement shall be made in accordance with the Accounting Principles consistently applied and, except as otherwise required to conform to any provision of this Agreement, shall be calculated from the then most recently issued financial statements which the Bank is obligated to furnish to GUARANTOR from time to time, as provided in this Agreement.

Section 7.04. Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America.

Section 7.05. Jurisdiction.

(a) Each of the parties hereto irrevocably agrees that the courts of the State of New York or of the United States of America for the Southern District of New York shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement, and for such purposes irrevocably submits to the jurisdiction of such courts.

(b) The Bank irrevocably waives any objection which it may have now or hereafter to the courts referred to in subsection (a) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement, and agrees not to claim that any such court is not a convenient or appropriate forum.

Section 7.06. Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except that no party shall assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other parties.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names as of the date first above written.

BANK

\_\_\_\_\_  
By:

GUARANTOR

\_\_\_\_\_  
By:

ENERGY EFFICIENCY CRITERIA

Eligible Transactions shall be investments for projects and equipment aimed at improving energy efficiency (EE) in buildings, industrial processes and public amenities and facilities. Eligible Transactions shall achieve demonstrable energy savings and reductions in emissions of greenhouse gases and project sponsors/participants must offer a viable method to monitor and verify the same. Investments must be for new projects, not refinancing of existing projects or any outstanding obligations of any borrower of the Bank, and for projects using proven technology which are developed with competent energy audit/feasibility studies and include energy savings monitoring plans. Eligible Transactions where energy efficiency is not the sole or primary motivation shall be eligible provided the level of Program support is justified by the EE benefits. The Eligible Borrower must be a private sector entity as defined in the Guarantee Facility Agreement.

**APPRAISAL REPORT FORM**

Proposals for Transaction Guarantees shall be accompanied by an Appraisal Report which describes in detail the proposed Eligible Transaction, energy efficiency ("EE") purposes and characteristics of the Eligible Transaction, proposed terms of the Loan Agreement and other Transaction Documents, and of the proposed Transaction Guarantee, including, without limitation, the following information:

1. Identity of and background information on:
  - (a) Proposed Eligible Borrower, including its legal status, principal place(s) of doing business, principal business(es), affiliated companies and entities;
  - (b) Proposed Transaction Guarantee beneficiary [Bank or leasing Affiliate of the Bank]; and
  - (c) All other key parties to the Eligible Transaction, as applicable, including project engineers, project construction and/or operations/maintenance contractor(s), vendor(s) and manufacturer(s) of primary project equipment, constituting the Secured Assets.
  
2. Summary of the EE technical features and engineering feasibility including:
  - (a) Description of and specifications for all Secured Assets [and other project equipment], including their end-use applications and useful life; and
  - (b) Estimated energy savings, in energy units.
  
3. Transaction economics including:
  - (a) Complete capital costs breakdown, including construction period interest;
  - (b) Operating costs; and
  - (c) Estimated energy cost savings.

4. A Closing Documents Checklist and copies, as applicable, of all draft Transaction Documents, including Bank Financing and Security Documents (if any).
5. Credit information on the Eligible Borrower, and all other transaction payor(s) or guarantor(s), accompanied by the Bank's credit analysis of the Eligible Transaction.
6. The Bank's financing terms, including the proposed principal amount of the Loan and of any Bank Financing, and all applicable advance payments, interest rates, terms, repayment schedules and security arrangements, and any other proposed financing sources.
7. The Bank's request for the proposed Transaction Guarantee[, including identity of the beneficiary [if other than the Bank], the proposed Guarantee Percentage and Transaction Guarantee Liability Limit Schedule].
8. Transaction emissions savings estimates and plan for monitoring emissions reductions.
9. Other information as requested by GUARANTOR.

**GUARANTOR TRANSACTION GUARANTEE AGREEMENT**

This TRANSACTION GUARANTEE, dated \_\_\_\_\_, \_\_\_\_\_ (herein called the "Guarantee") between \_\_\_\_\_, a banking corporation organized and existing under the laws of the Republic of \_\_\_\_\_ (herein called the "Bank"), and \_\_\_\_\_, a \_\_\_\_\_ organization established by \_\_\_\_\_. (herein called "Guarantor").

**WHEREAS:**

(A) The Bank is duly empowered under \_\_\_\_\_ law to carry on its banking business in \_\_\_\_\_;

(B) The parties have agreed on the terms and conditions contained herein to establish a guarantee facility pursuant to which GUARANTOR shall partially guarantee the Bank's credit exposure in its lending practices for the purchase of, or leasing practices through a leasing subsidiary, energy efficiency equipment to eligible parties undertaking energy efficiency projects which are financed by the Bank or leased through a leasing Affiliate of the Bank; and

(C) The Bank has entered into a written agreement (the "Loan Agreement") with \_\_\_\_\_, an Eligible Borrower, as set forth in Annex 1 hereto, in order to provide a loan in the amount of \_\_\_\_\_ (\_\_\_\_\_) (the "Loan"), which has been approved by GUARANTOR as an Eligible Transaction and which is deemed to be incorporated in this Guarantee.

**ARTICLE I**

Section 1.01. *Definitions.* Terms used in this Guarantee, unless otherwise defined herein, shall have the meaning ascribed to such terms in the Guarantee Facility Agreement, which is deemed to be incorporated in this Guarantee.

**ARTICLE II**

Section 2.01. *Guarantee Payments.*

(a) If and whenever, as a result of a Loan Default, an Event of Loss occurs under the Loan Agreement, the Bank shall have the right to demand in writing GUARANTOR's payment of the Guaranteed Loss Amount in accordance with the terms and conditions of the Guarantee Facility Agreement.

(b) Subject to the terms and conditions of the Guarantee Facility Agreement, GUARANTOR hereby guarantees the payment of the Guaranteed Loss Amount to the Bank (the "beneficiary"), in the event of a Loan Default and Event of Loss; provided that such guarantee obligation and right to receive payment shall be personal to the beneficiary and shall not be sold, assigned or otherwise transferred except with the prior written consent of GUARANTOR.

(c) Immediately upon payment by GUARANTOR of the Guaranteed Loss Amount in accordance with the terms and conditions of the Guarantee Facility Agreement, GUARANTOR shall be discharged and released from all its obligations to the Bank under this Guarantee.

Section 2.02. Transaction Guarantee Liability Limit. (a) The Transaction Guarantee Liability Limit under this Guarantee shall be \_\_\_\_\_ Equivalent Dollars (\$\_\_\_\_\_), calculated and adjusted from time to time for Loan principal payments as shown in the calculation attached as Annex 2 hereto; provided that GUARANTOR shall be under no obligation for any payment under this Guarantee to the extent such payment, when aggregated with all other payments made under all other Transaction Guarantees issued under the Facility, will exceed the Facility Liability Limit.

(b) In the event of a partial prepayment of Loan principal, the Bank shall provide GUARANTOR with a revised Loan Payment schedule and a recalculated Annex 2, which revised Annex 2 will be operative for this Transaction Guarantee Agreement upon its acceptance by GUARANTOR.

Section 2.03. Guarantee Percentage. The Guarantee Percentage under this Guarantee shall be \_\_\_\_\_ per cent (\_\_\_%).

Section 2.04. Term. Subject to Sections 3.04(a), 6.01(a), 6.02(a) and 6.05 of the Guarantee Facility Agreement, this Guarantee shall be a continuing guarantee and shall remain in full force and effect until all of the principal amount of the Loan shall have been fully paid. Accordingly, the obligations of GUARANTOR hereunder shall not be discharged except by performance and then only to the extent of such performance.

### ARTICLE III

Section 3.01. *Notices.* Any notice or request required or permitted to be given or made hereunder shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, airmail, or facsimile to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

For the Bank:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

For GUARANTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

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

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_