

# COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

## 1999 Legislative Session

Resolution No. CR-44-1999

Proposed by The Chairman (by request - County Executive)

Introduced by Council Members Bailey and Wilson

Co-Sponsors \_\_\_\_\_

Date of Introduction October 5, 1999

### RESOLUTION

1 A RESOLUTION concerning

2 Financing Under the Maryland Industrial and Commercial Redevelopment Fund Act  
3 For the purpose of approving the project plan submitted by Canada Dry Potomac Corporation  
4 (“Canada Dry”) pursuant to its application dated October 6, 1998, to the Department of Business  
5 and Economic Development of the State of Maryland (“the “Department”) to receive a grant of  
6 funds from the Maryland Industrial and Commercial Redevelopment Fund (“MICRF”) in an  
7 amount not to exceed \$130,000 (the “Grant”).

### RECITALS

8  
9 WHEREAS, the Grant shall be used to finance a portion of Canada Dry’s relocation project  
10 located at the Ardmore/Ardwick Industrial Park in Landover, Maryland. The Ardmore/Ardwick  
11 Industrial Park is located within the Cabin Branch Enterprise Zone in Landover, Maryland. The  
12 Canada Dry project (the “Project”) consists of the following activities to be carried out by  
13 Canada Dry: a) acquisition of 14 acres of land (the “Land”), improved by a 150,000 square foot  
14 building (the “Building”); b) renovation of the Building for warehousing and office space; and c)  
15 acquisition of equipment that will be installed in the Building. The Grant is authorized under the  
16 MICRF statute, as set forth in Sections 5-801 through 5-808 of Article 83A of the Annotated  
17 Code of Maryland, as amended (the “Act”); and

18 WHEREAS, the MICRF Act establishes MICRF for the purpose of making loans and  
19 grants to an applicant to cover part of the eligible project costs of an industrial or commercial  
20 redevelopment project. Proceeds of a loan or grant may be expended directly by the applicant;  
21 loaned or granted by a borrowing political subdivision; or used by a borrowing political  
22 subdivision to guarantee loans to a private entity which has made a firm commitment to carry out

1 part or all of an industrial or commercial redevelopment project; and

2 WHEREAS, the MICRF statute, specifically, Section 5-806 of the Act, requires that the  
3 Project plan, including the terms of the Grant agreement, as revised by the process of  
4 consultation between the applicant and the Department (the “Grant Agreement”) be submitted to  
5 the local governing body in final form for approval by ordinance or resolution; and

6 WHEREAS, the application provides that the total costs of the Project is anticipated to total  
7 \$6,630,000. Financing of the Project will consist of : a) the Grant; b) capital expenditures of  
8 \$6,485,556 by Canada Dry ( “Canada Dry Contribution”); and c) a \$14,444 loan from the Prince  
9 George’s County Economic Development Corporation (the “EDC”) to Canada Dry (“the  
10 “County Loan”). The County Loan will be amortized over a two-year period at an interest rate  
11 of 3% per annum. The proceeds of the Grant and the County Loan will be used for relocation of  
12 water and sewer lines on the Land; and

13 WHEREAS, Section 5 (DD) of Article 25A of the Annotated Code of Maryland, as  
14 amended from time to time, empowers the County to make use of federal and State financial  
15 assistance for commercial or industrial redevelopment projects for the purpose of making grants  
16 or loans, or guaranteeing loans to private entities; now, therefore,

17 SECTION 1. BE IT RESOLVED by the County Council of Prince George’s County,  
18 Maryland, that, pursuant to the MICRF Act, and Sections 5(DD) of Article 25A of the Annotated  
19 Code of Maryland, the County Council and the County Executive and/or other appropriate  
20 officials of the County be and are hereby fully authorized and empowered to approve the Project  
21 plan including the terms of the Grant Agreement, which is attached as Exhibit A.

22 SECTION 2. BE IT FURTHER RESOLVED that the undertaking of the project by  
23 Canada Dry will (a) increase employment and employment opportunities in the project area; (b)  
24 assist in the economic revitalization and physical improvement of the project area and the  
25 County; (c) facilitate the investment of private resources in economic redevelopment; (d)  
26 advance economic development strategies and objectives of the State of Maryland and the  
27 County; and (e) promote the health and welfare of the residents of the State of Maryland and the  
28 County.

29 SECTION 3. BE IT FURTHER RESOLVED that this Resolution shall take effect from the  
30 date of its adoption, and it is the intent hereof that the laws of the State of Maryland shall govern  
31 its construction. Any copy of this resolution duly certified by the Clerk of the County Council or

1 her successor in office shall constitute evidence of the contents and provisions hereof.

Adopted this 26<sup>th</sup> day of October, 1999.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY: \_\_\_\_\_  
M. H. Jim Estepp  
Chairman

ATTEST:

\_\_\_\_\_  
Joyce T. Sweeney  
Clerk of the Council

## GRANT AGREEMENT

**THIS GRANT AGREEMENT** (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, by and between **DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT**, a principal department of the State of Maryland (the "Department"), and **CANADA DRY POTOMAC CORPORATION**, a Virginia corporation (the "Grantee").

### RECITALS

1. Pursuant to the provisions of Sections 5-801 through 5-808 of Article 83A of the Annotated Code of Maryland, as amended, (the "Act") the Industrial and Commercial Redevelopment Fund ("MICRF") was created under the management and supervision of Department.

2. Pursuant to the provisions of the Act and regulations codified in COMAR 24.05.02.01 et seq., the Department is empowered to make grants to political subdivisions to cover part of the eligible project costs of an industrial or commercial redevelopment project in an amount not to exceed 90% of eligible project costs not otherwise funded by federal or private sources.

3. MICRF is not intended to replace other public programs which provide assistance for industrial and commercial redevelopment activities.

4. The Secretary of Business and Economic Development has determined that the proposed Project is consistent with the provisions of the Act and the Regulations and has approved an award of grant funds from MICRF to the Grantee in an amount not to exceed \$130,000 (the "Grant") for the Grantee to distribute and expend according to the requirements and provisions of this Agreement.

5. The Grant proceeds will be used by the Grantee to finance a portion of the following activities to be carried out by the Grantee (the "Project"):

(a) The acquisition of approximately 14 acres of land located in the Ardmore/Ardwick Industrial Park in Prince George's County, Maryland, which is more particularly described on Exhibit A attached hereto (the "Land"), improved by a 150,000 square foot building (the "Facility");

(b) The renovation of the Facility that will be used by the Grantee for warehousing of carbonated beverages and office space; and

(c) The acquisition and installation of equipment into the Facility; and

(d) The relocation of water and sewer lines located on the Land.

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

## **ARTICLE I** **DEFINITIONS**

All accounting terms not specifically defined herein shall have the meanings determined by generally accepted accounting principles, consistently applied. All terms previously defined in this Agreement are incorporated herein by reference. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

"Application" means the Application from the Grantee to the Department, dated October 6, 1998, together with any amendments thereto.

"Condemnation" means any taking of title, of use, or of any other property interest under the exercise of the power of eminent domain, whether temporarily or permanently, by any Governmental Authority or by any person acting under Governmental Authority.

"County" means Prince George's County, Maryland.

"County Loan" means the \$14,444 loan made by the County to the Grantee for the Project, which shall be expended as set forth in the Project Budget.

"County Loan Agreement" means the loan agreement dated \_\_\_\_\_ executed by the Grantee and the County in connection with the County Loan.

"County Loan Documents" means all documents executed and delivered in connection with the County Loan, including the County Loan Agreement and the County Note and any other documents evidencing or securing the County Loan, and any amendments modifications thereto.

"County Note" means the promissory note of even date herewith made by the Grantee payable to the order of the County evidencing the County Loan.

"Default" means any default under Article V of this Agreement.

"Employees" means an employee who: is, or is expected to be, employed by the Grantee at the Facility for at least 1800 hours per year, without a fixed term of employment, receives an employer subsidized health care benefits package, receives

similar other benefits as other employees of the Grantee; and makes an hourly wage of at least 150% of the federal minimum wage. "Employee" shall not include an employee of an entity acquired by the Grantee after the date of this Agreement, if the employee's place of employment immediately prior to the acquisition was in the State.

"Environmental Requirement" means any Law or other agreement or restriction, whether public or private (including, but not limited to, any condition or requirement imposed by any insurer or surety company), now existing or hereafter created, issued or enacted and all amendments thereto, modifications thereof and substitutions therefor, which in any way pertains to human health, safety or welfare, Hazardous Materials, Hazardous Materials Contamination or the environment (including, but not limited to, ground, air, water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, the Resource Conservation and Recovery Act (the Solid Waste Disposal Act), 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; and the Safe Drinking Water Act, 42 U.S.C. §300f et seq.

"Fifth Employee Date" means December 31, 2003.

"Fifth Employee Period" means January 31, 2003 to the Fifth Employee Date.

"First Employee Date" means December 31, 1999.

"Fourth Employee Date" means December 31, 2002.

"Fourth Employee Period" means January 31, 2002 to the Fourth Employee Date.

"Governmental Authority" means the United States, the State, or any of their political subdivisions, agencies, departments, commissions, boards, bureaus or instrumentalities, including any local authority having jurisdiction over any aspect of the Project.

"Grantee Contribution" means the Grantee's provisions of at least \$6,630,000 for the Project to be expended as set forth in the Project Budget.

"Hazardous Materials" means any and all hazardous or toxic substances, wastes or materials which, because of their quantity, concentration, or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard or nuisance to human health, safety or welfare or to the environment when used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled, including, without limitation, any substance, waste or material which is or contains asbestos, radon, polychlorinated biphenyls, urea formaldehyde, explosives, radioactive materials or petroleum products.

"Hazardous Materials Contamination" means the contamination (whether presently existing or occurring after the date of this Agreement) of the Facility, facilities, soil ground water, air or other elements on, in or constituting a part of, the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, ground water, air or other elements on, in or constituting a part of, any other property as a result of Hazardous Materials at any time (whether before or after the date of this Agreement) emanating from the Property.

"Hydric Soils" means any soil category upon which building could be prohibited or restricted under applicable governmental requirements, including, without limitation, those imposed by the Army Corps of Engineers based upon its guidelines as to, among other things, soil, vegetation and effect on the ecosystem.

"Laws" means federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or Governmental Authority having jurisdiction as may be in effect from time to time.

"Plans and Specifications" means the final plans and specifications for the renovation of the Facility, and all amendments and modifications made by a change order.

"Project Budget" means the budget for the Project attached hereto as Exhibit B and made a part hereof.

"Property" means collectively, the Land and the Facility.

"Second Employee Date" means December 31, 2000.

"Second Employee Period" means from January 1, 2000 to the Second Employee Date.

"Secretary" means the Secretary of Business and Economic Development, or a designee.

"State" means the State of Maryland.

"Taxes" means all taxes, water rents, sewer rents, assessments, utility charges (whether public or private), and other governmental or municipal or public dues, charges, and levies.

"Third Employee Date" means December 31, 2001.

"Third Employee Period" means from January 1, 2001 to the Third Employee Date.

## **ARTICLE II** **TERMS OF THE GRANT AND DISBURSEMENT**

### **Section 2.01. The Grant.**

Subject to the terms and conditions of this Agreement and the Approval Letters, the Department agrees to provide the Grant to the Grantee.

### **Section 2.02. Disbursements.**

(a) In General. Subject to the compliance by the Grantee with all of the terms and conditions of this Agreement, the satisfaction of all conditions precedent to the making of disbursement hereunder, and the non-existence of a Default or any event, circumstance, act or omission which with the giving of notice, the passage of time, or both, would constitute a Default, the Department shall advance to the Grantee the sums requested by the Grantee in a completed Request for Disbursement, the form of which is attached hereto as Exhibit C, up to the amount of the Grant.

(b) Disbursement. The request for disbursement is to be made to the Department at the address specified in Section 6.01, or at any other place that the Department designates.

(c) Disbursement to the Grantee. The disbursement is to be made directly from the Department to the Grantee pursuant to this Agreement by check. The Department shall make disbursement upon presentation by the Grantee of invoices, bills or other satisfactory proof of payments to reimburse the Grantee for payments made for the items set forth on the Project Budget.

(d) Conditions for All Disbursements. The obligation of the Department to make the disbursement of the Grant is subject to the satisfaction of the following conditions as of the date the disbursement is made:



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

(ii) Representation True. No representation or warranty of the Grantee contained herein shall be or have become materially incorrect or inaccurate.

(iii) No Defaults. There shall be no breach, default or event of default under the terms of this Agreement, or any Default hereunder, and no event, circumstance, act, or omission shall exist which with the giving of notice, the passage of time, or both, would constitute a Default under the terms of this Agreement.

(iv) County Resolution. The County shall have passed or enacted a resolution or ordinance as an official act of the County's governing body approving the Project and authorizing the making of the County Loan.

(e) The Grantee's right to receive Grant funds hereunder shall terminate 2 months from the date hereof.

Section 2.03. Conditions Precedent to Disbursement.

Before making the disbursement of Grant funds, the Department shall receive all of the items set forth on the Pre-Closing and Closing Checklist attached hereto as Exhibit E, in form and substance acceptable to the Department.

Section 2.04. Project Completion.

No later than 30 days after the Second Employee Date, the Grantor shall provide the Department with the following items:

(a) A copy of the certificate of use and occupancy for the Facility;

(b) A certification from an authorized official of the Grantee stating that the Project is completed accompanied by a certification of the total costs of the Project in the form attached hereto as Exhibit D.

### **ARTICLE III PROJECT BUDGET AND EMPLOYMENT**

Section 3.01. Project Budget.

The Project Budget sets forth all Project costs. No changes may be made to the Project Budget without the prior approval of the Department.

Section 3.02. Employment Requirements.

(a) The Grantor covenants that by the Second Employee Date, it will employ at least 150 Employees.

(b) The Department's first determination of whether the Grantee has employed the 150 Employees by the Second Employee Date will be determined as of the First Employee Date based on the actual number of Employees employed as of that date. The Department's subsequent determination of whether the Grantee has employed the 150 Employees by the Second Employee Date shall be determined on the Second Employee Date by taking the actual number of Employees employed as June 30 and December 31 during the Second Employee Period and averaging the two numbers.

(c) If the Grantee employs 150 Employees by the Second Employee Date, the Grantor covenants to continue to employ the 150 Employees for three additional years. For example, if the Department determines that the Grantee has hired 150 Employees as of the First Employee Date, the Grantee is required to continue to employ the 150 Employees until the Fourth Employee Date. The Department's determination of whether the Grantee has maintained the 150 Employees for the three year maintenance period shall occur at the end of the three year maintenance period and shall be determined by taking the actual number of Employees at the end of each year of the three year maintenance period and averaging the three numbers.

(d) If the Grantee employs 150 Employees by the Second Employee Date and fails to continue to employ 150 Employees for three additional years as determined by the Department pursuant to subsection (c) above, the Grantee covenants to repay immediately to the Department a portion of the Grant funds in an amount equal to 150 minus the number of Employees determined to have been continuously employed by the Department pursuant to subsection (c) above multiplied by \$867.

### Section 3.03. Employee Reporting Requirement.

(a) No later than January 10, 2000, the Grantee shall submit to the Department (i) a list of the names of all of the Employees employed by the Grantee at the Facility as of the First Employee Date, and (ii) the social security number, the average hours worked, or expected to be worked, for the year, the hourly or annual pay rate, and a general description of available benefits for each listed Employee. An officer of the Grantee shall certify to the Department that (1) the list is true and accurate, (2) the employees listed meet the definition of Employees, and (3) each of the employees listed is employed at the Facility.

(b) No later than January 10, 2001, for the Second Employee Period, the Grantee shall submit to the Department (i) a list of the names of the Employees, and (ii) the social security number, the average hours worked, or expected to be worked, for the year, the hourly or annual pay rate, and a general description of available benefits for each Employee. The report shall list all of the required information as of June 30 and December 31 of the Second Employee Period. An officer of the Grantee shall certify to

the Department that (1) the list is true and accurate, (2) the employees listed meet the definition of Employees, and (3) each of the employees listed is employed at the Facility.

(c) No later than January 10, 2002, for the Third Employee Period, January 10, 2003 for the Fourth Employee Period, and January 10, 2004 for the Fifth Employee Period, the Grantee shall submit to the Department, (i) a list of the names of the Employees, and (ii) the social security number, the average hours worked, or expected to be worked, for the year, the hourly or annual pay rate, and a general description of available benefits for each Employee. Each report shall list all of the required information as of December 31 of each applicable year. An officer of the Grantee shall certify to the Department that (1) the list is true and accurate, (2) the employees listed meet the definition of Employees, and (3) each of the employees listed is employed at the Facility.

(d) Upon the request of the Department, the Grantee covenants to provide the Department with any information and reports that the Department determines, in its reasonable discretion, are needed to confirm or verify the employment information submitted by the Grantee. The Grantee shall permit the Department to inspect the employee records of the Grantee to confirm the employee information submitted by Grantee to the Department.

**ARTICLE IV**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE GRANTEE**

**Section 4.01. Representations and Warranties.**

The Grantee represents and warrants as follows:

(a) **Due Organization.** The Grantee:

(i) Is a corporation duly organized and validly existing under the laws of the State of Virginia;

(ii) Is in good standing and qualified to do business in the State of Maryland;

(iii) Has the corporate power to own its property and to carry on its business as now being conducted;

(iv) Is duly qualified to do business and is in good standing in the State and in each jurisdiction in which the character of properties owned by it or the transaction of its business makes such qualification necessary; and

(v) Has delivered a true and complete copy of its articles of incorporation and by-laws, together with all amendments, to the Department.

(b) **Due Authorization.** The Grantee has the full corporate power and authority to enter into this Agreement, to accept the Grant as contemplated hereby, to execute and deliver this Agreement, and to perform and comply with the terms, conditions, and agreements set forth herein, all of which have been duly authorized by all proper and necessary corporate action of the Grantee. No consent or approval of any other person or public authority or regulatory body is required as a condition to the validity of this Agreement, or, if required, the same has been obtained.

(c) **Validity of Agreements.** This Agreement has been properly executed by the Grantee and will:

(i) Not violate any provision of law, any order of any court or agency of government, or any provision of the Grantee's articles of incorporation or by-laws;

(ii) Not violate any provision, or result in a breach, of any existing mortgage, deed of trust, indenture, contract, or agreement binding on the Grantee or affecting its property; or

(iii) Constitute the valid and legal binding obligations of the Grantee, and is fully enforceable against the Grantee, in accordance with its terms.

(d) No Litigation. There is no controversy or litigation of any nature now pending or, to the best of the Grantee's knowledge, threatened in any court or before any governmental agency which:

(i) Questions the validity or enforceability of this Agreement, or any action taken or to be taken under it;

(ii) Is likely to result in any material adverse change in the authorities, properties, assets, liabilities, or conditions (financial or otherwise) of the Grantee which would materially and substantially impair the Grantee's ability to perform any of the obligations imposed upon the Grantee by this Agreement; or

(iii) Affects the Property or the Project.

(e) Approvals. The Grantee has obtained or expects to obtain prior to the commencement of construction of the Project:

(i) All approvals from and reviews by all Governmental Authorities of the Laws applicable to the Project, the Property, and the Plan and Specifications; and

(ii) All necessary building permits for the Project.

(f) Plans and Specifications. The Plans and Specifications are satisfactory to the Grantee and meet all Laws.

(g) Prior Construction. All construction performed on the Project, if any, before the effective date of this Agreement has been performed according to the Plans and Specifications.

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

(i) Compliance with Laws. The Grantee has complied, and will continue to comply, with all Laws.

(j) State Drug Policy. The Grantee is in compliance with the State's policy concerning drug and alcohol free workplaces, as set forth in COMAR 01.01.1989.18 and 21.11.08, and shall remain in compliance throughout the term of this Agreement.

(k) Use of Proceeds. The Grantee intends that the proceeds of the Loan will be used solely for the items set forth in the Project Budget.

(l) Utilities. All utility services necessary for the operation of the Facility are available, including water supply of sufficient quantity and pressure, storm and sanitary sewer facilities of adequate capacities, gas, electric and telephone facilities.

(m) Roads. All roads necessary for the full utilization of the Property and the Project for its intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the Grantee or the appropriate governmental authority or have been dedicated to public use and accepted by such governmental authority or will be acquired or dedicated within a period of time satisfactory to the Department, and all necessary steps have been taken by the Grantee and such governmental authority to assure the complete construction and installation thereof in accordance with law and all applicable governmental or quasi-governmental requirements.

(n) Zoning. The use of the Property and the Project for its intended use will not violate any zoning or other ordinance, regulation or law, restrictive covenant or agreement of the Grantee (either now in existence or known by the Grantee to be proposed) applicable to the Property or its use, and all requirements for such use have been satisfied.

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

(p) Taxes. All Taxes imposed upon the Grantee and its properties, operations, and income have been paid and discharged prior to the date when any interest or penalty would accrue for the nonpayment thereof, except for those Taxes being contested in good faith and by appropriate proceedings by the Grantee.

(q) Environmental Conditions. The Property, including the land, surface water, ground water and the Facility:

(i) Is free of any substantial amounts of waste or debris;

(ii) Is free of any Hazardous Materials and Hazardous Materials

Contamination;

(iii) Has never been used as a manufacturing, storage, or dump site for Hazardous Materials;

(iv) Is in compliance with all Environmental Requirements; and

(v) Contains no Hydric Soils on any portion of the Property and any appurtenant facilities have been or will be constructed.

(r) Grantee's Financial Statements. The Grantee's financial statements, copies of which have been furnished to the Department, were prepared in accordance with generally accepted accounting principles consistently applied and are complete and correct and fairly and accurately present the financial condition of the Grantee as of their date and the results of its operations for the period then ended. There has been no material adverse change in the financial condition of the Grantee or the results of its operations since the date of such financial statements.

(s) Accuracy of Statements. All information contained in any financial statement, application, schedule, report, certificate, opinion, or any other document given by the Grantee or by any other person in connection with the Grant is true and accurate in all respects, and the Grantee and each other person has not omitted to state any material fact or any fact necessary to make the information not misleading.

Section 4.02. Grantee's Covenants.

The Grantee covenants as follows:

(a) Use of Grant Proceeds. The Grantee will use the Grant proceeds for the Project, as set forth in the Project Budget.

(b) Completion. The Grantee will:

(i) Complete the Project by the Completion Date;

(ii) Complete the Project according to the Plans and Specifications; and

(iii) Satisfy all applicable Laws for operation of the Project and the Property by the Completion Date.

(c) State Drug Policy. The Grantee certifies and covenants that it will comply with the State's policy concerning drug and alcohol free workplaces, as set forth in COMAR 01.01.1989.18 and 21.11.08, for the term of this Agreement. Specifically, the

Grantee shall:

(i) Make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from its workplace during the term of this Agreement;

(ii) Prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in its workplace;

(iii) Prohibit its employees from working under the influence of alcohol or drugs;

(iv) Not hire or assign to work on an activity funded in whole or part with State funds, anyone whom either knows, or in the exercise of due diligence should know, currently abuses alcohol or drugs and is not actively engaged in a bona fide rehabilitation program;

(v) Promptly inform the appropriate law enforcement agency of every drug related crime that occurs in its workplace if they or their employee has observed the violation or otherwise has reliable information that a violation has occurred; and

(vi) Notify employees that drugs and alcohol abuse are banned in the workplace, impose sanctions on employees who abuse drugs and alcohol in the work place, and institute steps to maintain a drug and alcohol free workplace.

(d) Maintenance of the Project. The Grantee shall, at the Grantee's expense:

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

(ii) Make all needed and proper replacements to the Property and the Project so that the Property and the Project will at all times be in good condition, fit and proper for the purposes for which they were originally erected or installed;

(iii) Not permit any waste of the Property;

(iv) Observe and comply with all Laws;

(v) Operate the Project in the manner in which similar projects are operated by persons operating a first-class business of a similar nature;

(vi) Keep and maintain all portions of the Property and the sidewalks, curbs and passageways adjoining the same in a clean and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstructions;



(vii) Procure any and all necessary permits, certificates, licenses, or other authorizations required for the Property's use as set forth in the Application, and observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions which are now applicable to the Property or which may be applicable in the future; and

(viii) Not use or occupy the Project and the Property in any manner which would cause structural injury to the Property or which would cause the value or the usefulness of the Property or any part thereof to diminish (ordinary wear and tear for its business excepted), or which would constitute a public or private nuisance, or waste.

(e) Insurance.

(i) The Grantee shall obtain and maintain for the term of this Agreement, except as provided below, the following insurance coverages:

(1) During any period of construction on the Project and the Property, builder's all-risk insurance of the type customarily carried in the case of similar construction for the full replacement cost of work in place and materials stored at or upon the Project and the Property;

(2) General public liability and property damage coverage in amounts usually carried by similar operations against claims for bodily injury, death, or damage to property occurring on the Project and the Property;

(3) "All risk" coverage in amounts necessary to prevent the application of any co-insurance provisions up to the full replacement value of the Project and the Property but in no event less than the aggregate amount of the Loan outstanding from time to time;

(4) Workers' compensation and liability insurance for all contractors involved in the Project or employees employed at the Facility;

(5) If the Property is, or is later found to be, in an area that has been identified by the Federal Insurance Administration as having special flood hazards, and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, flood insurance policy satisfactory to the Department. In the event that the Property is not in an area having special flood hazards, the Grantee shall deliver to the Department on or prior to the initial disbursement of the Grant funds and thereafter upon request, a certificate or letter issued by its insurance company stating that the Property is not in such a flood hazard area; and

(6) Any other insurance on the Project and the Property, in amounts and against risks as is customarily maintained by similar businesses operating in the same vicinity.

(ii) All insurance policies shall be with responsible companies acceptable to the Department.

(iii) Each insurance policy shall bear an endorsement that it shall not be canceled, terminated, endorsed, or amended without thirty (30) days written notice to the Department.

(iv) Upon request, the Grantee shall file with the Department a detailed list of the insurance then in effect covering the Project and the Property, stating the names of the insurance companies, the amounts and rates of insurance, dates of the expiration thereof and the properties and risks covered thereby; and, within 30 days after notice from the Department, obtain any additional insurance requested by the Department.

(v) The Grantee shall give the Department prompt notice of any loss covered by the builder's all-risk or the all-risk insurance required under this Agreement.

(f) Notification of Claims. The Grantee will promptly notify the Department of any action or prospective claims or litigation, including tax deficiencies, which may be asserted against the Grantee, and any prospective change of zoning or other action affecting the Property or the Project.

(g) Access. Any duly authorized representative of the Department shall, at all reasonable times, have access to all portions of the Project and Property.

(h) Books and Records. The Grantee shall keep and maintain any books, records, and other documents that may be required under any regulations, rules and procedures now or hereafter applicable to loans made by the Department under the Act, and as may be reasonably necessary to reflect and disclose fully the amount and disposition of the Grant, the total cost of the activities paid for, in whole or in part, with the proceeds of the Grant, and the amount and nature of all investments related to such activities which are supplied or to be supplied by other sources. All books, records and other documents shall be maintained at the offices of Grantee for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Department. All books, records and other documents shall be maintained until the first to occur of (i) three years after completion of the Project or (ii) the completion of an audit of the Project by the State.

(i) Hazardous Materials. The Grantee shall not place, manufacture or store, or permit to be placed, manufactured or stored, on the Property any Hazardous Materials or, if Hazardous Materials are placed, manufactured, or stored on the Property, such Hazardous Materials shall be placed, manufactured, stored, removed, treated, or disposed of in compliance with all Environmental Requirements. The Grantee agrees to (i) give written notice to the Department immediately upon acquiring knowledge of the presence of any Hazardous Materials on the Property or of any Hazardous Materials Contamination, with a full description thereof and (ii) comply promptly with all Environmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide the Department with satisfactory evidence of compliance. The Grantee hereby agrees to indemnify and hold the State and the Department harmless from and against any claim which may now or hereafter be asserted against the State or the Department as a result of the presence of any Hazardous Materials on the Property or Hazardous Materials Contamination, and from and against all losses, expenses and charges whatsoever, including attorneys' fees resulting therefrom. The provisions of this Section 4.02(i) shall survive termination of this Agreement.

(j) Taxes. The Grantee shall pay promptly in full and discharge before delinquency and before any penalty for non-payment attaches thereto, all Taxes and any prior liens for Taxes which are or may be levied, imposed, or assessed upon the Property or any part thereof or upon the rents, issues, income, or profits thereof, whether any or all of the aforementioned are levied directly or indirectly or as excise taxes or as income taxes.

(k) Financial Information. The Grantee shall furnish to the Department:

(i) As soon as available, but in no event more than 120 calendar days after the close of each of the Grantee's fiscal years, a copy of the Grantee's annual financial statements in reasonable detail satisfactory to the Department, prepared in

accordance with generally accepted accounting principles and examined and certified by an independent, certified public accountant, which financial statements shall include a consolidated and consolidating balance sheet as of the end of such fiscal year, and a consolidated and consolidating statement of earnings and surplus for such fiscal year; and

(ii) Any additional information, reports or statements as the Department may from time to time reasonably request.

(l) Condemnation. Immediately upon obtaining knowledge of the commencement or threatened commencement of any Condemnation, the Grantee shall immediately notify the Department in writing, describing in detail the nature and extent of the proposed Condemnation.

(m) Grantee Contribution. The Grantee covenants to expend the Grantee Contribution by the Second Employee Date.

(n) Indemnification. The Grantee releases the State and the Department from, agrees that the State and the Department shall not have any liability for, and agrees to protect, indemnify and save harmless the State and the Department from and against, any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, the State and the Department, as a result of or in connection with the Project and the Property. All money expended by the Department as a result of such liabilities, suits, actions, claims, demands, losses, expenses or costs, together with interest at the rate of 15 percent per annum from the date of such payment, shall constitute an indebtedness of the Grantee and shall be immediately and without notice due and payable by the Grantee to the Department. This Section 4.02(n) shall survive the termination of this Agreement.

(o) Compliance With Laws. The Grantee will comply with all Laws.

(p) Good Standing. The Grantee shall maintain its existence as a Virginia corporation and its good standing and qualification to do business in the State.

(q) The Grantee shall not use any Grant proceeds to make contributions:

(i) To any person who holds, or is a candidate for, elected office;

(ii) To any political party, organization, or action committee; or

(iii) In connection with any political campaign or referendum.

**ARTICLE V**  
**DEFAULT AND REMEDIES**

**Section 5.01. Defaults.**

A Default shall have occurred if:

- (a) The Grantee ceases to use the Property for the warehousing of carbonated beverages and office space; or
- (b) The Grantee uses the Property for any purpose inconsistent with the purposes of the Act; or
- (c) Any Grant proceeds are used for any purpose other than as authorized in the appropriate provisions contained in this Agreement; or
- (d) The Grantee breaches any covenant, agreement, provision, representation, or warranty made in this Agreement; or
- (e) Any representation or warranty made in any statement or representation made in any certificate, report or opinion (including legal opinions), financial statement or other instrument furnished in connection with this Agreement (including Requests for Disbursement submitted under Article II hereof), proves to be incorrect in any material respect; or
- (f) Any change in any zoning ordinance or any other public restriction is enacted, limiting or defining the uses which may be made on the Property or any part thereof, such that the use of the Property would be in violation of such restriction or zoning change; or
- (g) The Grantee fails to comply with any requirement of any Governmental Authority within 30 days after written notice of the requirement is given to the Grantee; or if any proceeding is commenced or action taken to enforce any remedy for a violation of any requirement of a Governmental Authority or any restrictive covenant affecting the Property or any part thereof; or
- (h) The Project is not completed, as determined in the sole discretion of the Department, by the Second Employee Date; or
- (i) Either a permanent injunction or a preliminary injunction is issued which lasts for more than ninety (90) days, which prohibits the Grantee from using the Project and the Property for warehousing of carbonated beverages or office space; or

(j) Unless the written consent of the Department is previously obtained, the Grantee (i) sells or transfers all or substantially all of its business assets, (ii) commences any proceeding to dissolve or liquidate, (iii) changes the form of business entity through which the Grantee presently conducts its business, or (iv) merges or consolidates; or

(k) Without the Department's prior express written consent, the Grantee is dissolved by operation of law, or in any other manner, voluntarily or otherwise; or

(m) The Grantee is in default under the terms of the County Loan; or

(n) The Grantee prepays the County Loan.

Section 5.02 Remedies.

(a) Upon the occurrence of any Default, the Department may:

(i) At any time or from time to time proceed to protect and enforce all rights and remedies available to the Department under this Agreement by suit or by any other appropriate proceedings, whether for specific performance of any covenant or agreement contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable law or regulations; and

(ii) Suspend the Grantee's authority to receive any undisbursed Grant funds at any time by notice to the Grantee. If a Default is not cured within 15 days after the Department sends written notice of such Default to the Grantee, the Department may continue such suspension or by delivery of notice terminate this Agreement. If termination occurs, the Grantee's authority to receive Grant funds shall terminate as of the date of the notice of termination and the Grantee shall have no right, title or interest in or to any remaining Grant funds; and

(iii) Notwithstanding any other remedy available to the Department, at law or in equity, demand repayment of all of the Grant funds disbursed pursuant to this Agreement.

(c) All remedies provided for in this Agreement are cumulative and shall be in addition to any and all other rights and remedies available to the Department at law or in equity. The exercise of any right or remedy by the Department shall not in any way constitute a cure or waiver of any default by the Grantee, nor invalidate any act done pursuant to any notice of Default, nor prejudice the Department in the exercise of those rights.

(d) The failure of the Department to insist upon performance of any term of this

Agreement shall not be deemed to be a waiver of any term of this Agreement. No act of the Department shall be construed as an election to proceed under any one provision in this Agreement to the exclusion of any other provision.

(e) If the Department suspends or terminates this Agreement, the rights and remedies available to the Department shall survive such suspension or termination.

## **ARTICLE VI** **MISCELLANEOUS**

### **Section 6.01. Notices.**

(a) All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Agreement shall be in writing.

(b) Any such communication shall be deemed effective for all purposes as of the date the communication is mailed, postage prepaid, by registered or certified mail, return receipt requested, to be delivered only to the office of the addressee, addressed as follows:

(i) Communications to the Department shall be mailed to:

Director, Community Financing Group  
Department of Business and Economic Development  
217 East Redwood Street, 22nd Floor  
Baltimore, Maryland 21202

With a copy to the Counsel to the Department, on the 11th Floor at the same address.

(ii) Communications to Grantee shall be mailed to:

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

(c) The Grantee and the Department may each change their respective addresses specified in (b) above by sending written notice to the other party.

### **Section 6.02. Assignment.**

No right, benefit, or advantage inuring to the Grantee under this Agreement and

no burden imposed on the Grantee hereunder may be assigned without the prior written consent of the Department.



Section 6.03. Successors Bound.

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

Section 6.04. Severability.

The invalidity of any article, section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, subsections, clauses or provisions hereof.

Section 6.05. Entire Agreement.

This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements, representations, and negotiations between the parties hereto with respect to the Grant.

Section 6.06. Amendment of this Agreement.

This Agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the Department and the Grantee.

Section 6.07. Headings; Section References.

The headings of each Section of this Agreement are for convenience only, and do not constitute a part of this Agreement. All references in this Agreement to particular sections refer to sections of this Agreement, unless otherwise noted.

Section 6.08. Disclaimer of Relationships.

The Grantee acknowledges that the obligation of the Department is limited to providing the Grant in the manner and on the terms set forth in this Agreement. Nothing in this Agreement, nor any act of either the Department or of the Grantee, shall be deemed or construed by either of them, or by third persons, to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or of any association or relationship whatsoever involving the Grantee and the Department.

Section 6.09. Governing Law.

This Agreement shall be governed by and construed according to the laws of the State.

Section 6.10. Term of This Agreement.

Unless sooner terminated by the mutual consent of the Grantee and the Department, this Agreement shall terminate upon final settlement to the complete satisfaction of the Department of all issues arising out of this Agreement.

Section 6.11. Illegality.

If fulfillment of any provision hereof or any transaction related hereto, at the time performance of such provisions shall be due shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained, operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be void as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

Section 6.12. WAIVER OF JURY TRIAL.

**THE GRANTEE HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT, UNDER AND IN CONNECTION WITH THE GRANT, OR THIS AGREEMENT.**

**[SIGNATURES APPEAR ON THE NEXT PAGE]**

**IN WITNESS WHEREOF**, the Grantee and the Department have caused this Agreement to be executed, sealed and delivered as of the day and year first above written.

**WITNESS:** **DEPARTMENT OF BUSINESS AND  
ECONOMIC DEVELOPMENT**

\_\_\_\_\_  
Name: \_\_\_\_\_ By: \_\_\_\_\_  
Title: \_\_\_\_\_ David S. Iannucci  
Deputy Secretary

**WITNESS:** **CANADA DRY  
POTOMAC COPORATION**

\_\_\_\_\_  
Name: \_\_\_\_\_ By: \_\_\_\_\_  
Title: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Assistant Attorney General

**STATE OF MARYLAND, CITY/COUNTY OF \_\_\_\_\_, TO WIT:**

**I HEREBY CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, before me, a Notary Public of the State of Maryland, in and for the State and City/County aforesaid, personally appeared David S. Iannucci, who acknowledged himself to be the Deputy Secretary of Business and Economic Development of the State of Maryland, a principal department of the State of Maryland, known or satisfactorily proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the foregoing Agreement on behalf of the Department of Business and Economic Development for the purposes therein contained as the duly authorized Deputy Secretary of Business and Economic Development of the State of Maryland.

**AS WITNESS** my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**STATE OF MARYLAND, CITY/COUNTY OF \_\_\_\_\_, TO WIT:**

**I HEREBY CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, before me, a Notary Public in and for the State of Maryland, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of the \_\_\_\_\_, known or satisfactorily proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that she/he executed the foregoing Agreement on behalf of the \_\_\_\_\_ as for the purposes therein contained as its duly authorized \_\_\_\_\_.

**AS WITNESS** my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**GRANT AGREEMENT**

**EXHIBIT A**

**PROPERTY DESCRIPTION**

**GRANT AGREEMENT****EXHIBIT B****PROJECT BUDGET**

ITEM	GRANT	GRANTEE CONTRIBUTION	COUNTY LOAN	TOTAL
1. Land Acquisition - Include R/W and Easements				
2. Working Capital				
3. Design Cost				
4. Construction				
5. Machinery				
6. Relocation				
7. Clearance and Demolition				
8. Streets				
9. Site Improvements				
10. Water				
11. Sewage				
12. Storm Drainage				
13. Reconstruction/ Building				
14. Construction/ Building				
15. Parking Facility				
16. Professional Services (identify)				
17. Fees (list)				
18. Real Estate Taxes, Construction Int.				
19. Relocation of Water and Sewer Lines				
Total Costs				

**EXHIBIT C****REQUEST FOR DISBURSEMENT**

1. Project Name: No.: \_\_\_\_\_
2. Grantee: \_\_\_\_\_
3. Request No.: One (1)
4. Period Covered: From \_\_\_\_ - \_\_\_\_ - \_\_\_\_ to \_\_\_\_ - \_\_\_\_ - \_\_\_\_
- 5.

Activity	Actual Cost (& Contract # if applicable)	Amount Requested from Department in this Request	Cumulative Amount Requested from Department to date
a. Land Acquisition Right of Way			
b. Relocation			
c. Clearance and Demolition			
d. Streets			
e. Site Improvements			
f. Water			
g. Sewage			
h. Storm Drainage			
i. Reconstruction/ Building			
j. Construction/ Building			
k. Parking Facility			
l. Professional Services (identify)			
m. Fees (list)			
n. Real Estate Taxes, Construction Int.			
o. Relocation of Water and Sewer Lines			

p. Other (list)			
Total:			

**INSTRUCTIONS:**

(1) For each activity, list in the first column the actual cost for each contract for the respective activity, e.g., Contract 7A, Sewage Pump Station, \$5,000, anticipated from the Department, \$2,500; in the second column list the amount being requested from EDOP for that activity.

(2) Cost figures must be supported by adequate documentation (invoices, bills, vouchers, etc.).

**CERTIFICATION:**

We certify that the attached request is for work actually performed in connection with the Project as approved by the Department; that this request is not for previously requested funds, and that an inspection has been made and the undersigned have found it to be satisfactory, and have accepted the work performed, for which payment is requested.

We further certify that, for disbursement, the conditions to be satisfied prior to the disbursement of Grant funds as set forth in the Grant Agreement between the Grantee and the Department (the "Agreement") have been met.

We further certify that no default exists under the Agreement.

We further certify that the representations and warranties made by the Grantee in the Agreement remain true and correct, as of the date of this disbursement request.

**WITNESS:**

**CANADA DRY POTOMAC  
CORPORATION**

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_(SEAL)  
Name: \_\_\_\_\_



Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT D**

Maryland Industrial and Commercial Redevelopment Fund ("MICRF")  
 Final Report and Certification of Completion Costs  
 (the "Final Report")

1. Project Name: \_\_\_\_\_
2. Grantee: \_\_\_\_\_
3. Period Covered: From \_\_\_/ \_\_\_/ \_\_\_ through \_\_\_/ \_\_\_/ \_\_\_
4. Activity

	<u>Costs Paid By MICRF Grant</u>	<u>Costs Paid By Other Sources*</u>
a. Land Acquisition	_____	_____
b. Clearing, grading	_____	_____
c. Roads	_____	_____
d. Site Improvements	_____	_____
e. Water	_____	_____
f. Sewer	_____	_____
g. Storm drainage	_____	_____
h. Parking facilities	_____	_____
i. Building construction		
1. Foundation	_____	_____
2. Walls		
a. Exterior	_____	_____
b. Interior	_____	_____
3. Insulation	_____	_____
4. Roof	_____	_____
5. Drywall or plaster	_____	_____
6. Carpentry	_____	_____
7. Air conditioning	_____	_____
8. Heating	_____	_____
9. Electrical	_____	_____
10. Plumbing	_____	_____
11. Carpet	_____	_____
12. Sprinkler System	_____	_____
13. Doors	_____	_____
14. Windows	_____	_____
15. Other, please list	_____	_____
j. Architectural and Engineering	_____	_____
k. Appraisal	_____	_____
l. Other, please list	_____	_____

TOTAL

\*(Please specify in parenthesis the entity which paid each particular cost.)

**CERTIFICATION:**

I certify that the above costs have been incurred for work actually performed in accordance with a \$130,000 MICRF Grant for the above named Project. This Final Report is being submitted to the Director of the Community Financing Program within 30 days of completion of the Project.

**ATTEST:**

**CANADA DRY POTOMAC  
CORPORATION**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_(SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANT AGREEMENT**

**EXHIBIT E**

**PRE-CLOSING AND CLOSING CHECKLIST**