

THE STATE OF NEW HAMPSHIRE

CHAIRMAN  
Thomas B. Getz

COMMISSIONERS  
Clifton C. Below  
Amy L. Ignatius

EXECUTIVE DIRECTOR  
AND SECRETARY  
Debra A. Howland



PUBLIC UTILITIES COMMISSION

21 S. Fruit Street, Suite 10  
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH  
1-800-735-2964

Website:  
[www.puc.nh.gov](http://www.puc.nh.gov)

July 18, 2011

Ms. Debra A. Howland, Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 03301-2429



Re: DW 08-086 Eastman Sewer Company, Inc.  
Staff Recommendation Regarding the Company's Request for a Step  
Increase in Rates

Dear Ms. Howland:

On July 24, 2009, the Commission issued Order No. 24,989 in Docket DW 08-086 approving a Stipulation Agreement between the Staff of the Commission (Staff) and Eastman Sewer Company, Inc. (ESC or the Company) which resulted in an increase in the permanent rates charged by the Company. Also contained in the Stipulation Agreement approved by the Commission was a provision for one future step adjustment to ESC's rates to cover the cost of certain financed capital improvements then contemplated by the Company, as well as repayment of a short-term loan from Eastman Community Association (ECA), ESC's parent company. The cost of the capital improvements was then estimated to be \$344,534 and the short-term loan from ECA was \$30,000, for an anticipated combined financing amount of \$374,534 to be borrowed from Lake Sunapee Bank. The estimated interest rate was 5.50%.<sup>1</sup> The resulting step increase was contemplated to be equal to the annual principal and interest payments on the loan which were estimated to be \$52,854, for a 47.26% additional increase in Company revenues. Staff and ESC agreed that these additional revenues should be made part of ESC's capital reserve fund and that ESC should be allowed to withdraw its monthly loan payments from the capital reserve fund without the necessity of further authorization from the Commission. Finally, Staff and ESC agreed that the capital additions subject to the step adjustment should be treated as Contributions in Aid of Construction (CIAC), and also agreed upon an accounting methodology in order to appropriately reflect such CIAC on the Company's books and records.

<sup>1</sup> On May 21, 2009, the Commission issued Order No. 24,967 in DW 08-086 authorizing ESC to borrow an amount up to \$380,000 from Lake Sunapee Bank in order to finance the contemplated capital improvements as well as repay the short-term loan from ECA.

On May 26, 2011, in accordance with the approved Stipulation Agreement, ESC filed its request for a step adjustment with the Commission. In its filing, ESC indicated that the total amount of its loan with Lake Sunapee Bank was \$377,046 which included \$357,635 in capital improvements, \$19,375 as repayment on the ECA loan and \$36 in "miscellaneous" costs. ESC provided supporting schedules which further detailed these amounts, and indicated that the capital improvements consisted of two general construction projects. The first was the West Cove A Pump Station project, completed in November 2010 at a bank financed cost of construction totaling \$135,625. The second was the Headworks project, completed in March 2010 and totaling \$222,010 in bank financed construction costs. The Company requested and Staff agreed that the \$19,375 repayment on the ECA loan be considered as repayment on a loan for construction expenditures from ECA so that the Company can record the full amount as CIAC.

ESC stated that the term of its loan from Lake Sunapee Bank was 8 years and 11 months at an interest rate of 4.375%. The resulting monthly principal and interest payment under these terms is \$4,262, or \$51,144 annually. As such, ESC requested a step adjustment in its annual revenues of \$51,144. This equates to a 35.50% increase in revenues as measured against the revenues recognized by ESC during 2009.

Under a separate cover letter to Staff dated May 24, 2011, ESC provided documentation in support of the two general construction projects. These were mainly in the form of copies of invoices from various contractors as well as copies of checks issued by both ESC and Lake Sunapee Bank in payment of these invoices. A copy of ESC's cover letter to Staff and lead schedules are attached to this correspondence. Staff examined ESC's filing in conjunction with an examination of the supporting documentation provided by the Company, and Staff propounded discovery on June 14, 2011. ESC responded to Staff's discovery on June 27, 2011. A copy of ESC's discovery responses are also attached to this correspondence. In response to Staff Data Request 6-2, ESC stated that it had overpaid one of its contractors by \$2,302. Even though the Company is anticipating a refund from the contractor, this overpaid amount is included in the total amount borrowed from Lake Sunapee Bank. However, aside from this error, Staff found no other exceptions in the supporting documentation provided by ESC.

Based upon its review of ESC's filing including its examination of the supporting documentation provided by the Company, Staff recommends a step increase in annual revenues for ESC of \$50,886. This amount is based on the annual principal and interest payments that will be paid by the Company to Lake Sunapee Bank (\$51,144) but adjusted for the \$2,302 overpayment indicated in the Company's response to Staff Data Request 6-2. In determining this adjustment, Staff recommends that the overpayment amount should be spread over the 8 year, 11 month repayment term of the loan ( $\$2,302 \div 107$  months = \$21.50 per month) which, in turn, will result in an annual reduction of \$258 ( $\$21.50 \times 12$  months) from the Company's proposed step increase ( $\$51,144 - \$258 = \$50,886$ ).

In addition, and consistent with the approved stipulation agreement, Staff recommends that the \$50,886 step increase should be incorporated into ESC's annual capital reserve rate which is presently \$18.71 per customer. This will increase the annual capital reserve rate by \$95.12 per customer ( $\$50,886 \div 535$  customers) to a revised

July 18, 2011

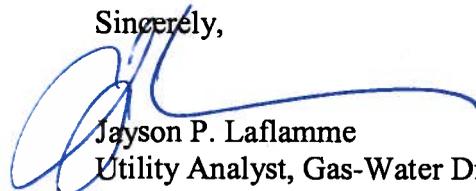
annual capital reserve rate of \$113.83 (\$18.71 + \$95.12) per customer. For residential customers, the overall sewer charge will increase from \$273.27 per year (\$68.32 per quarter) to \$368.39 per year (\$92.10 per quarter), or a 34.81% increase. For ECA, one of ESC's two commercial customers, the overall sewer charge will increase from \$2,554.14 per year (\$638.54 per quarter) to \$2,649.26 per year (\$662.32 per quarter), or a 3.72% increase. For Country Homes (formerly Eastman Lake Realty), ESC's other commercial customer, the overall sewer charge will increase from \$942.60 per year (\$235.65 per quarter) to \$1,037.72 per year (\$259.43 per quarter), or a 10.09% increase. The overall percentage increases for the two commercial customers are smaller since capital reserve funds have always been collected from all customers equally.

Staff believes that the assets resulting from the two projects are currently used and useful and that the costs of these improvements are reasonable and prudently incurred. Staff also believes that the terms of the financing with Lake Sunapee Bank are also prudent and reasonable as they are actually better than that which was originally anticipated by the Company two years ago. Lastly, Staff believes that the capital improvements placed into service by ESC as well as the resulting proposed step increase will result in customer rates that are just and reasonable.

ESC indicated that it will incur certain rate case expenses relative to preparing its step adjustment filing as well as responding to questions from Staff concerning its filing. Consistent with the approved stipulation agreement, ESC stated that it will be submitting an accounting of these rate case expenses to the Commission and will be seeking permission to recover such from its customers. ESC did not indicate the amount of these expenses or the time frame over which it would be seeking recovery. Staff does not object to the recovery of these expenses at this time but anticipates that it will be reviewing the details of these costs when submitted by ESC and it will provide a recommendation concerning the recovery of these expenses to the Commission at that time.

Staff and ESC have discussed the above recommendations proposed by Staff as contained in this correspondence and ESC has indicated that it concurs with Staff's recommendations. In addition, ESC requests that an order approving the step increase be issued at the Commission's soonest convenience. ESC is currently utilizing operating funds in order to repay its loan to Lake Sunapee Bank, which is resulting in a present strain on its cash flow. If you have any questions concerning this matter, please do not hesitate to ask either myself or any of the other Staff in the Gas-Water Division.

Sincerely,



Jayson P. Laflamme  
Utility Analyst, Gas-Water Division

Enclosures: Cover letter and lead schedules from cost detail submitted by ESC  
ESC's responses to Staff Discovery – Set 6

cc: Service List and Office of Consumer Advocate

# **STEPHEN P. ST. CYR & ASSOC.**

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17 Sky Oaks Drive, Biddeford, ME 04005  
PHONE: (207) 282-5222      FAX: (207) 282-5225

Accounting & Finance  
Budgeting & Forecasting  
Financial Statement Preparation  
Regulatory Affairs  
Tax Preparation & Planning  
Management Services

May 24, 2011

Mark Naylor  
Gas & Water Division  
Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, N. H. 03301-2429

Re: DW 08-086 Step Adjustment

Dear Mr. Naylor:

As indicated in my letter dated May 24, 2011 addressed to Ms. Howland regarding the DW 08-086 Step Adjustment, enclosed is the supporting documentation for the each transaction. If you have any questions or comments, please call me at 207-282-5222 or email me at [stephenpstcyr@yahoo.com](mailto:stephenpstcyr@yahoo.com).

Sincerely,



Stephen P. St. Cyr

Cc: Brian Harding

# Sewer Projects Transaction Listing By Account Name

For Transactions Between: 1/1/2009 and 12/31/2010

Date	Check Pd	Vendor	Deposit Amt	W/D Amount	Balance	Bank reim
05/01/2009		Bank Loan for Projects	\$380,000.00	\$0.00	\$380,000.00	
			\$380,000.00	\$0.00	\$380,000.00	
			\$0.00	\$2,118.26	(\$2,118.26)	09/08/2009
06/30/2009	2065	CLD Consulting	\$0.00	\$500.00	(\$500.00)	09/08/2009
07/21/2009	2075	Treasurer, State of NH	\$0.00	\$1,174.86	(\$1,174.86)	09/08/2009
07/30/2009	2077	CLD Consulting	\$0.00	\$129.00	(\$129.00)	11/18/2009
09/10/2009	2088	Town of Grantham	\$0.00	\$3,481.98	(\$3,481.98)	11/18/2009
09/30/2009	2111	CLD Consulting	\$0.00	\$3,411.83	(\$3,411.83)	11/18/2009
10/01/2009	2118	CLD Consulting	\$0.00	\$1,501.33	(\$1,501.33)	12/11/2009
11/30/2009	2134	CLD Consulting	\$0.00	\$1,428.81	(\$1,428.81)	12/11/2009
11/30/2009	2134	CLD Consulting	\$0.00	\$2,666.95	(\$2,666.95)	03/22/2010
02/10/2010	2174	CLD Consulting	\$0.00	\$109.00	(\$109.00)	04/20/2010
03/04/2010	2182	Town of Grantham	\$0.00	\$409.00	(\$409.00)	04/20/2010
03/04/2010	2183	Treasurer, at of NH	\$0.00	\$3,966.09	(\$3,966.09)	05/24/2010
04/30/2010	2197	CLD Consulting	\$0.00	\$453.41	(\$453.41)	07/08/2010
05/24/2010	2211	CLD Consulting	\$0.00	\$427.41	(\$427.41)	07/08/2010
06/30/2010	2225	CLD Consulting	\$0.00	\$364.08	(\$364.08)	07/06/2010
06/30/2010	2233	CLD Consulting	\$0.00	\$722.71	(\$722.71)	10/08/2010
07/30/2010	2237	CLD Consulting	\$0.00			

# Sewer Projects Transaction Listing By Account Name

For Transactions Between: 1/1/2009 and 12/31/2010

Date	Check Pd	Vendor	Deposit Amt	W/D Amount	Balance	Bank reim
09/27/2010	802107	M J Hayward (directly from Bank)	\$0.00	\$18,200.00	(\$18,200.00)	09/27/2010
09/27/2010	802107	M J Hayward (directly from Bank)	\$0.00	\$3,800.00	(\$3,800.00)	09/27/2010
10/08/2010		M J Hayward (directly from Bank)	\$0.00	\$57,000.00	(\$57,000.00)	10/08/2010
10/29/2010	804936	M J Hayward (directly from bank)	\$0.00	\$26,645.00	(\$26,645.00)	10/29/2010
11/11/2010	807492	M J Hayward (directly from bank)	\$0.00	\$1,046.00	(\$1,046.00)	11/19/2010
11/11/2010	807492	M J Hayward (directly from Bank)	\$0.00	\$5,000.00	(\$5,000.00)	11/19/2010
11/17/2010	2286	Water Systems Operators	\$0.00	\$568.75	(\$568.75)	12/06/2010
11/23/2010		Kevin Roberts	\$0.00	\$500.00	(\$500.00)	12/06/2010
06/30/2009	2065	CLD Consulting	\$0.00	\$135,624.47	(\$135,624.47)	09/08/2009
07/30/2009	2077	CLD Consulting	\$0.00	\$1,127.40	(\$1,127.40)	09/08/2009
09/01/2009	2089	Town of Grantham	\$0.00	\$139.20	(\$139.20)	11/18/2009
09/10/2009	2101	Town of Grantham	\$0.00	\$439.94	(\$439.94)	11/18/2009
09/30/2009	2111	CLD Consulting	\$0.00	\$1,711.37	(\$1,711.37)	11/18/2009
10/01/2009	2118	CLD Consulting	\$0.00	\$4,413.34	(\$4,413.34)	11/18/2008
11/30/2009	2134	CLD Consulting	\$0.00	\$4,329.66	(\$4,329.66)	12/11/2009
12/01/2009	2154	CLD Consulting	\$0.00	\$6,461.09	(\$6,461.09)	01/07/2010
12/11/2009	2153	Advance Testing	\$0.00	\$298.00	(\$298.00)	02/04/2010

# Sewer Projects Transaction Listing By Account Name

For Transactions Between: 1/1/2009 and 12/31/2010

Date	Check Pd	Vendor	Deposit Amt	W/D Amount	Balance	Bank reim
Headworks Project	12/15/2009	2154 CLD Consulting	\$0.00	\$5,377.02	(\$5,377.02)	01/07/2010
Headworks Project	01/15/2010	781233 DBU (ck directly from bank)	\$0.00	\$31,725.00	(\$31,725.00)	01/15/2010
Headworks Project	01/29/2010	2163 CLD Consulting	\$0.00	\$4,626.49	(\$4,626.49)	02/04/2010
Headworks Project	01/29/2010	2162 Advance Testing	\$0.00	\$596.00	(\$596.00)	02/04/2010
Headworks Project	02/06/2010	783619 DBU (ck directly from bank)	\$0.00	\$50,166.00	(\$50,166.00)	02/06/2010
Headworks Project	03/22/2010	786323 DBU (ck directly from bank)	\$0.00	\$40,518.50	(\$40,518.50)	03/22/2010
Headworks Project	04/07/2010	787654 DBU (ck directly from bank)	\$0.00	\$46,450.00	(\$46,450.00)	04/07/2010
Headworks Project	04/30/2010	2197 CLD Consulting	\$0.00	\$1,883.81	(\$1,883.81)	05/24/2010
Headworks Project	05/19/2010	792036 DBU (ck Directly from bank)	\$0.00	\$14,743.50	(\$14,743.50)	05/30/2010
Headworks Project	06/30/2010	2232 Water Systems Operator	\$0.00	\$162.50	(\$162.50)	07/08/2010
Headworks Project	06/30/2010	2225 CLD Consulting	\$0.00	\$361.18	(\$361.18)	07/08/2010
Headworks Project	11/30/2010	807494 DBU - Retainer Check (direct from Bank)	\$0.00	\$4,457.00	(\$4,457.00)	11/29/2010
Miscellaneous	08/31/2009	ECA Loan Payoff	\$0.00	\$222,010.21	(\$222,010.21)	
Miscellaneous	08/31/2009	Bank fee, interest	\$0.00	\$19,375.00	(\$19,375.00)	09/08/2009
Miscellaneous	10/01/2010	Miscellaneous adj	\$0.00	\$9.00	\$9.00	09/08/2009
Miscellaneous	11/08/2010	Miscellaneous to principal	\$0.00	(\$13.05)	\$13.05	
			\$0.00	\$19,411.17	(\$19,411.17)	

# Sewer Projects Transaction Listing By Account Name

For Transactions Between: 1/1/2009 and 12/31/2010

Date	Check Pd	Vendor	Deposit Amt	W/D Amount	Balance	Bank reim
<b>Grand Total</b>						
			\$380,000.00	\$377,045.85	\$2,934.15	

DW 08-086  
EASTMAN SEWER COMPANY, INC.  
COMPANY RESPONSES TO STAFF DATA REQUESTS – SET 6

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**Staff 6-1**

**Witness:** Brian Harding

Please provide a copy of the executed loan agreement with Lake Sunapee Bank.

**Response:** One copy of the loan documents including loan modification agreement will be delivered overnight to Mr. Naylor.



November 18, 2009

Brian Harding, General Manager  
Eastman Sewer Company, Inc.  
P.O. Box 470  
Grantham, NH 03753

Dear Brian,

Enclosed please find a copy of the Loan documents executed for the sewer system upgrade/renovation project.

You can anticipate receiving the monthly billing notices approximately ten (10) days prior to the date that payment is due, the first payment will be due on December 16, 2009.

We thank you for choosing Lake Sunapee Bank for your banking services and we hope that you will consider us for any future Banking services that you may need.

Please feel free to contact me directly at (802) 234-7313 should you have any questions

Sincerely,

  
Kandida L. Gray  
Commercial Lending Assistant

Enclosures

# ASSOCIATION RESOLUTION

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** Eastman Sewer Company, Inc.  
PO Box 470  
Grantham, NH 03753

**Lender:** Lake Sunapee Bank, Feb  
Woodstock Office  
1 Bond Street  
Woodstock, VT 05091

**Association:** Eastman Community Association  
PO Box 53  
Grantham, NH 03753

**WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:**

**THE ASSOCIATION'S EXISTENCE.** The complete and correct name of the Association is Eastman Community Association ("Association"). The Association is an organization which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of New Hampshire. The Association is duly authorized to transact business in all other states in which the Association is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which the Association is doing business. Specifically, the Association is, and at all times shall be, duly qualified as a foreign association in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. The Association has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. The Association maintains an office at PO Box 53, Grantham, NH 03753-0053. Unless the Association has designated otherwise in writing, the principal office is the office at which the Association keeps its books and records. The Association will notify Lender prior to any change in the location of the Association's state of organization or any change in the Association's name. The Association shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to the Association and the Association's business activities.

**RESOLUTIONS ADOPTED.** At a meeting of the officers of the Association, duly called and held on October 16, 2009, at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Resolution were adopted.

**OFFICER.** The following named person is an officer of Eastman Community Association:

<u>NAMES</u>	<u>TITLES</u>	<u>AUTHORIZED</u>	<u>ACTUAL SIGNATURES</u>
Robert E. Peterson	President	Y	x 

**ACTIONS AUTHORIZED.** The authorized person listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Association. Specifically, but without limitation, the authorized person is authorized, empowered, and directed to do the following for and on behalf of the Association:

**Guaranty.** To guarantee or act as surety for loans or other financial accommodations to Borrower from Lender on such guarantee or surety terms as may be agreed upon between the officer of the Association and Lender (the "Guaranty"). The amount of the Guaranty shall consist of all amounts owing under that certain note dated November 18, 2009, in the original principal amount of Three Hundred Eighty Thousand & 00/100 Dollars (\$380,000.00) from Borrower to Lender (the "Note"), including without limitation (1) all principal, (2) all interest, (3) all late charges, (4) all loan fees and loan charges, and (5) all collection costs and expenses relating to the Note or to any collateral for the Note, in addition to such sum or sums of money as the Association currently may have guaranteed to Lender. Collection costs and expenses include without limitation all attorneys' fees.

**Grant Security.** To mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to the Association or in which the Association now or hereafter may have an interest, including without limitation all of the Association's real property and all of the Association's personal property (tangible or intangible), as security for the Guaranty, and as a security for the payment of any loans, any promissory notes, or any other or further indebtedness of Eastman Sewer Company, Inc. to Lender at any time owing, however the same may be evidenced. Such property may be mortgaged, pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered. The provisions of this Resolution authorizing or relating to the pledge, mortgage, transfer, endorsement, hypothecation, granting of a security interest in, or in any way encumbering, the assets of the Association shall include, without limitation, hypothecation, granting of a security interest for the indebtedness, now or hereafter existing, and of any nature whatsoever, of Eastman Sewer Company, Inc. to Lender. The Association has considered the value to itself of lending collateral in support of such indebtedness, and the Association represents to Lender that the Association is benefited by doing so.

**Execute Security Documents.** To execute and deliver to Lender the forms of mortgage, deed of trust, pledge agreement, hypothecation agreement, and other security agreements and financing statements which Lender may require and which shall evidence the terms and conditions under and pursuant to which such liens and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the liens and encumbrances.

**Negotiate Items.** To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Association or in which the Association may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Association's account with Lender, or to cause such other disposition of the proceeds derived therefrom as he or she may deem advisable.

**Further Acts.** To do and perform such other acts and things and to execute and deliver such other documents and agreements, including agreements waiving the right to a trial by jury, as the officer may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

**ASSUMED BUSINESS NAMES.** The Association has filed or recorded all documents or filings required by law relating to all assumed business names used by the Association. Excluding the name of the Association, the following is a complete list of all assumed business names under which the Association does business: None.

**NOTICES TO LENDER.** The Association will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Association's name; (B) change in the Association's assumed business name(s); (C) change in the structure of the Association; (D) change in the authorized signers; (E) change in the Association's principal office address; (F) change in the Association's state of organization; (G) conversion of the Association to a new or different type of business entity; or (H) change in any other aspect of the Association that directly or indirectly relates to any agreements between the Association and Lender. No change in the Association's name or state of organization will take effect until after Lender has received notice.

**CERTIFICATION CONCERNING OFFICERS AND RESOLUTIONS.** The officer named above is duly elected, appointed, or employed by or for the Association, as the case may be, and occupies the position set opposite his or her respective name. This Resolution now stands of record on the books of the Association, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

**CONTINUING VALIDITY.** Any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Association's agreements or commitments in effect at the time notice is given.

**IN TESTIMONY WHEREOF,** we have hereunto set our hand and attest that the signature set opposite the name listed above is his or her genuine signature.

We each have read all the provisions of this Resolution, and we each personally and on behalf of the Association certify that all statements and representations made in this Resolution are true and correct. This Association Resolution is dated November 18, 2009.

CERTIFIED TO AND ATTESTED BY:

By: Robert E. Peterson  
Authorized Signer for Eastman Community  
Association

NOTE: If the officer signing this Resolution is designated by the foregoing document as one of the officers authorized to act on the Association's behalf, it is advisable to have this Resolution signed by at least one non-authorized officer of the Association.

# CORPORATE RESOLUTION TO BORROW / GRANT COLLATERAL

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Corporation:** Eastman Sewer Company, Inc.  
 PO Box 470  
 Grantham, NH 03753

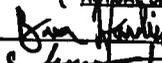
**Lender:** Lake Sunapee Bank, fcb  
 Woodstock Office  
 1 Bond Street  
 Woodstock, VT 05091

**WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:**

**THE CORPORATION'S EXISTENCE.** The complete and correct name of the Corporation is Eastman Sewer Company, Inc. ("Corporation"). The Corporation is a corporation for profit which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of New Hampshire. The Corporation is duly authorized to transact business in all other states in which the Corporation is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which the Corporation is doing business. Specifically, the Corporation is, and at all times shall be, duly qualified as a foreign corporation in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. The Corporation has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. The Corporation maintains an office at PO Box 470, Grantham, NH 03753. Unless the Corporation has designated otherwise in writing, the principal office is the office at which the Corporation keeps its books and records. The Corporation will notify Lender prior to any change in the location of the Corporation's state of organization or any change in the Corporation's name. The Corporation shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to the Corporation and the Corporation's business activities.

**RESOLUTIONS ADOPTED.** At a meeting of the Directors of the Corporation, or if the Corporation is a close corporation having no Board of Directors then at a meeting of the Corporation's shareholders, duly called and held on November 18, 2009, at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Resolution were adopted.

**OFFICERS.** The following named persons are officers of Eastman Sewer Company, Inc.:

NAMES	TITLES	AUTHORIZED	ACTUAL SIGNATURES
Brian G. Harding	General Manager	Y	X 
James Donoghue	Treasurer	Y	X 

**ACTIONS AUTHORIZED.** Any two (2) of the authorized persons listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Corporation. Specifically, but without limitation, any two (2) of such authorized persons are authorized, empowered, and directed to do the following for and on behalf of the Corporation:

**Borrow Money.** To borrow, as a co-borrower or otherwise, from time to time from Lender, on such terms as may be agreed upon between the Corporation and Lender, such sum or sums of money as in their judgment should be borrowed; however, not exceeding at any one time the amount of Three Hundred Eighty Thousand & 00/100 Dollars (\$380,000.00), in addition to such sum or sums of money as may be currently borrowed by the Corporation from Lender.

**Execute Notes.** To execute and deliver to Lender the promissory note or notes, or other evidence of the Corporation's credit accommodations, on Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Corporation's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

**Grant Security.** To mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to the Corporation or in which the Corporation now or hereafter may have an interest, including without limitation all of the Corporation's real property and all of the Corporation's personal property (tangible or intangible), as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of the Corporation to Lender at any time owing, however the same may be evidenced. Such property may be mortgaged, pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered.

**Execute Security Documents.** To execute and deliver to Lender the forms of mortgage, deed of trust, pledge agreement, hypothecation agreement, and other security agreements and financing statements which Lender may require and which shall evidence the terms and conditions under and pursuant to which such loans and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the loans and encumbrances. Notwithstanding the foregoing, any one of the above authorized persons may execute, deliver, or record financing statements.

**Negotiate Items.** To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Corporation or in which the Corporation may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Corporation's account with Lender, or to cause such other disposition of the proceeds derived therefrom as they may deem advisable.

**Further Acts.** In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements, including agreements waiving the right to a trial by jury, as the officers may in their discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

**ASSUMED BUSINESS NAMES.** The Corporation has filed or recorded all documents or filings required by law relating to all assumed business names used by the Corporation. Excluding the name of the Corporation, the following is a complete list of all assumed business names under which the Corporation does business: None.

**NOTICES TO LENDER.** The Corporation will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Corporation's name; (B) change in the Corporation's assumed business name(s); (C) change in the management of the Corporation; (D) change in the authorized signer(s); (E) change in the Corporation's principal office address; (F) change in the Corporation's state of organization; (G) conversion of the Corporation to a new or different type of business entity; or (H) change in any other aspect of the Corporation that directly or indirectly relates to any agreements between the Corporation and Lender. No change in the Corporation's name or state of organization will take effect until after Lender has received notice.

**CERTIFICATION CONCERNING OFFICERS AND RESOLUTIONS.** The officers named above are duly elected, appointed, or employed by or for the Corporation, as the case may be, and occupy the positions set opposite their respective names. This Resolution now stands of record on the books of the Corporation, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

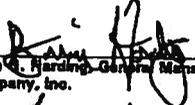
**NO CORPORATE SEAL.** The Corporation has no corporate seal, and therefore, no seal is affixed to this Resolution.

**CONTINUING VALIDITY.** Any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Corporation's agreements or commitments in effect at the time notice is given.

**IN TESTIMONY WHEREOF,** we have hereunto set our hand and attest that the signatures set opposite the names listed above are their genuine signatures.

We each have read all the provisions of this Resolution, and we each personally and on behalf of the Corporation certify that all statements and representations made in this Resolution are true and correct. This Corporate Resolution to Borrow / Grant Collateral is dated November 18, 2009.

CERTIFIED TO AND ATTESTED BY:

X   
Brian G. Harding, General Manager of Eastman Sewer  
Company, Inc.

X   
James Donoghue, Treasurer of Eastman Sewer  
Company, Inc.

NOTE: If the officers signing this Resolution are designated by the foregoing document as one of the officers authorized to act on the Corporation's behalf, it is advisable to have this Resolution signed by at least one non-authorized officer of the Corporation.

# PROMISSORY NOTE

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** Eastman Sewer Company, Inc.  
PO Box 470  
Grandham, NH 03753

**Lender:** Lake Sunapee Bank, fdb  
Woodstock Office  
1 Bond Street  
Woodstock, VT 05091

**Principal Amount:** \$380,000.00

**Initial Rate:** 3.000%

**Date of Note:** November 16, 2009

**PROMISE TO PAY.** Eastman Sewer Company, Inc. ("Borrower") promises to pay to Lake Sunapee Bank, fdb ("Lender"), or order, in lawful money of the United States of America, the principal amount of Three Hundred Eighty Thousand & 00/100 Dollars (\$380,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

**PAYMENT.** Subject to any payment changes resulting from changes in the index, Borrower will pay this loan in accordance with the following payment schedule, which calculates interest on the unpaid principal balances as described in the "INTEREST CALCULATION METHOD" paragraph using the interest rates described in this paragraph: 12 monthly consecutive interest payments, beginning December 16, 2009, with interest calculated on the unpaid principal balances using an interest rate based on the Wall Street Journal Prime Rate (currently 3.250%), plus a margin of -0.250 percentage points, resulting in an initial interest rate of 3.000% per annum; 107 monthly consecutive principal and interest payments in the initial amount of \$4,376.56 each, beginning December 16, 2010, with interest calculated on the unpaid principal balances using an interest rate of 5.000% per annum based on a year of 360 days; and one principal and interest payment of \$4,377.07 on November 16, 2019, with interest calculated on the unpaid principal balances using an interest rate of 5.000% per annum based on a year of 360 days. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled and that the index does not change; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Note. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any late charges; and then to any unpaid collection costs. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**VARIABLE INTEREST RATE.** The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the Wall Street Journal Prime Rate (the "index"). The index is not necessarily the lowest rate charged by Lender on its loans. If the index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current index rate upon Borrower's request. The interest rate change will not occur more often than each Quarter. Borrower understands that Lender may make loans based on other rates as well. The index currently is 3.250% per annum. The interest rate or rates to be applied to the unpaid principal balance during this Note will be the rate or rates set forth herein in the "Payment" section. Notwithstanding any other provision of this Note, after the first payment stream, the interest rate for each subsequent payment stream will be effective as of the last payment date of the just-ending payment stream. NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law. Whenever increases occur in the interest rate, Lender, at its option, may do one or more of the following: (A) increase Borrower's payments to ensure Borrower's loan will pay off by its original final maturity date, (B) increase Borrower's payments to cover accruing interest, (C) increase the number of Borrower's payments, and (D) continue Borrower's payments at the same amount and increase Borrower's final payment.

**INTEREST CALCULATION METHOD.** Interest on this Note during the initial interest-only payment period is computed on a 365/365 simple interest basis; that is, by applying the ratio of the interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Interest on this Note following the initial interest-only phase is computed on a 30/360 simple interest basis; that is, with the exception of odd days before the first full payment cycle, monthly interest is calculated by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by a month of 30 days. Interest for the odd days before the first full month is calculated on the basis of the actual days and a 360-day year. All interest payable under this Note is computed using these methods in the described order.

**APPLICABLE INTEREST RATES.** Borrower expressly agrees that the interest rates specified in this Note shall be the applicable interest rates due (A) on amounts outstanding during the term of this Note, notwithstanding the rate of interest prescribed by statute from time to time, and (B) with respect to any amounts outstanding on and after the maturity date of this Note.

**PREPAYMENT.** Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Lake Sunapee Bank, fdb, P.O. Box 7 Newport, NH 03773.

**LATE CHARGE.** If a payment is 15 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased to 18.000% per annum based on a year of 360 days. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**JURY WAIVER.** Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

**GOVERNING LAW.** This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Hampshire without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of New Hampshire.

**CHOICE OF VENUE.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Windsor County, State of Vermont.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

**COLLATERAL.** Borrower acknowledges this Note is secured by a first security interest in all fees and assessments of the Eastman Sewer Company, Inc., as described in a Security Agreement dated 11/16/09 and further evidence by UCC-1 Financing Statement #20090018295H filed with the Secretary of State of New Hampshire on 9/15/09.

**LINE OF CREDIT.** This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. The following person or persons are authorized to request advances and authorize payments during the construction loan phase under this Note until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: Brian G. Harding, General Manager of Eastman Sewer Company, Inc.; and James Donoghue, Treasurer of Eastman Sewer Company, Inc. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

**APPRAISAL.** The Bank reserves the right to reappraise the collateral at the Borrower's expense.

**FINANCIAL INFORMATION.** The Borrower agrees to furnish the Lender with, as soon as possible, but in no event later than 120 days after the end of each fiscal year, Borrower's balance sheet and income statement for the year ended. All financial reports required must be prepared in accordance with generally accepted accounting principles, applied on a consistent basis and certified by Borrower as being true and correct. The Borrower also agrees to furnish Lender with such additional information, including but not limited to: lists of assets and liabilities, aging of receivables and payables, inventory schedules, budgets, forecasts, tax returns, personal financial statements and other reports with respect to the Borrower's financial condition and business operations as Lender may request.

**FINANCIAL INFORMATION ACCURACY.** The Borrower warrants that to the best of their knowledge, all financial information, including but not limited to tax returns, personal financial statements and interim statements, provided to the Bank are complete and accurate.

**DISBURSEMENT OF FUNDS.** Upon request for each disbursement during the Construction Phase, the General Contractor will provide lien releases for each requested disbursement at the time the disbursement is made or at the time of the next and each subsequent disbursement, due to the Mechanics Lien Law requirements in the State of New Hampshire.

**IMBALANCE.** In the event that the cost of construction is increased for any reason, so that it becomes evident to the Lender that the funds of the Loan available to the Borrower will not fully pay the cost of renovation, then the Borrower, at the request of the Lender, shall advance sufficient sums of money to provide for the full payment of the cost of construction.

**REVISIONS OF PLANS.** No material deviations from the approved final plans and specifications may be made without prior written approval of the Lender.

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES.** Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: Lake Sunapee Bank, fax P.O. Box 29 Newport, NH 03773.

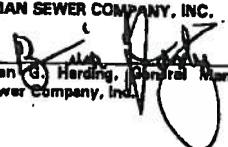
**GENERAL PROVISIONS.** If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

**PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.**

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

**BORROWER:**

**EASTMAN SEWER COMPANY, INC.**

By:   
Brian G. Harding, General Manager of Eastman  
Sewer Company, Inc.

By:   
James Donoghue, Treasurer of Eastman Sewer  
Company, Inc.

# COMMERCIAL GUARANTY

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** Eastman Sewer Company, Inc.  
PO Box 470  
Grafton, NH 03753

**Lender:** Lake Sunapee Bank, fcb  
Woodstock Office  
1 Bond Street  
Woodstock, VT 05091

**Guarantor:** Eastman Community Association  
PO Box 53  
Grafton, NH 03753

**GUARANTEE OF PAYMENT AND PERFORMANCE.** For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of Guarantor's Share of the indebtedness of Borrower to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the indebtedness or against any collateral securing the indebtedness, this Guaranty or any other guaranty of the indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents.

**INDEBTEDNESS.** The word "indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorneys' fees, arising from any and all debts, liabilities and obligations that Borrower individually or collectively or interchangeably with others, owes or will owe Lender under the Note and Related Documents and any renewals, extensions, modifications, refinancings, consolidations and substitutions of the Note and Related Documents.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other guaranties. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other unexpired guaranties.

**GUARANTOR'S SHARE OF THE INDEBTEDNESS.** The words "Guarantor's Share of the indebtedness" as used in this Guaranty mean 100.00% of all the principal amount, interest thereon to the extent not prohibited by law, and all collection costs, expenses and attorneys' fees whether or not there is a lawsuit, and if there is a lawsuit, any fees and costs for trial and appeals.

Lender shall determine Guarantor's Share of the indebtedness when Lender makes demand on Guarantor. After a determination, Guarantor's Share of the indebtedness will only be reduced by sums actually paid by Guarantor under this Guaranty, but will not be reduced by sums from any other source including, but not limited to, sums realized from any collateral securing the indebtedness or this Guaranty, or payments by anyone other than Guarantor, or reductions by operation of law, judicial order or equitable principles. Lender has the sole and absolute discretion to determine how sums shall be applied among guaranties of the indebtedness.

The above limitation on liability is not a restriction on the amount of the Note of Borrower to Lender either in the aggregate or at any one time.

**CONTINUING GUARANTY.** THIS GUARANTY ENCOMPASSES A LINE OF CREDIT AND GUARANTOR UNDERSTANDS AND AGREES THAT THIS GUARANTY SHALL BE OPEN AND CONTINUOUS UNTIL THE INDEBTEDNESS IS PAID IN FULL AND THE LENDER DECLARES THAT THE LINE OF CREDIT IS FULLY SATISFIED, PERFORMED AND TERMINATED.

**DURATION OF GUARANTY.** This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the indebtedness shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. Release of any other guaranty or termination of any other guaranty of the indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty.

**GUARANTOR'S AUTHORIZATION TO LENDER.** Guarantor authorizes Lender, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the indebtedness or any part of the indebtedness, including increases and decreases of the rate of interest on the indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

**GUARANTOR'S REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants to Lender that (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the date the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

**GUARANTOR'S FINANCIAL STATEMENTS.** Guarantor agrees to furnish Lender with the following:

**Annual Statements.** As soon as available after the end of each fiscal year, Guarantor's balance sheet and income statement for the year ended, prepared by Guarantor in form satisfactory to Lender.

**Tax Returns.** As soon as available after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by a tax professional satisfactory to Lender.

All financial reports required to be provided under this Guaranty shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Guarantor as being true and correct.

**GUARANTOR'S WAIVERS.** Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects

Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law (limiting, qualifying, or discharging the indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the indebtedness; (D) any right to claim discharge of the indebtedness on the basis of unjustified impairment of any collateral for the indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding indebtedness which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

**GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS.** Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

**SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR.** Guarantor agrees that the indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the debts of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Guaranty:

**Amendments.** This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

**Governing Law.** This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Hampshire without regard to its conflicts of law provisions.

**Choice of Venue.** If there is a lawsuit, Guarantor agrees upon Lender's request to submit to the jurisdiction of the courts of Windsor County, State of Vermont.

**Integration.** Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parcel evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

**Interpretation.** In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

**Notices.** Any notice required to be given under this Guaranty shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Unless otherwise provided or required by law, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Successors and Assigns.** Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**Waive Jury.** Lender and Guarantor hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Guarantor against the other.

**Financial Information Accuracy.** The Borrower warrants that to the best of their knowledge, all financial information, including but not limited to tax returns, personal financial statements and interim statements, provided to the Bank are complete and accurate.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Borrower.** The word "Borrower" means Eastman Sewer Company, Inc. and includes all co-signers and co-makers signing the Note and all

their successors and assigns.

GAAP. The word "GAAP" means generally accepted accounting principles.

Guarantor. The word "Guarantor" means everyone signing this Guaranty, including without limitation Eastman Community Association, and in each case, any signer's successors and assigns.

Guarantor's Share of the Indebtedness. The words "Guarantor's Share of the Indebtedness" mean Guarantor's indebtedness to Lender as more particularly described in this Guaranty.

Guaranty. The word "Guaranty" means this guaranty from Guarantor to Lender.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means Lake Sunapee Bank, Inc, its successors and assigns.

Note. The word "Note" means the promissory note dated November 18, 2009, in the original principal amount of \$380,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED NOVEMBER 18, 2009.

GUARANTOR:

EASTMAN COMMUNITY ASSOCIATION

By: Robert E. Peterson  
Robert E. Peterson, President of Eastman  
Community Association

# CONSTRUCTION LOAN AGREEMENT

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** Eastman Sewer Company, Inc.  
PO Box 470  
Grantham, NH 03753

**Lender:** Lake Sunapee Bank, fcb  
Woodstock Office  
1 Bond Street  
Woodstock, VT 05091

**THIS CONSTRUCTION LOAN AGREEMENT** dated November 16, 2009, is made and executed between Eastman Sewer Company, Inc. ("Borrower") and Lake Sunapee Bank, fcb ("Lender") on the following terms and conditions. Borrower has applied to Lender for one or more loans for purposes of constructing the Improvements on the Real Property described below. Lender is willing to lend the loan amount to Borrower solely under the terms and conditions specified in this Agreement and in the Related Documents, to each of which Borrower agrees. Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement, and (B) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

**TERM.** This Agreement shall be effective as of November 16, 2009, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as the parties may agree in writing to terminate this Agreement.

**ADVANCE AUTHORITY.** The following person or persons are authorized to request advances and authorize payments during the construction loan phase under the Note until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: Brian G. Harding, General Manager of Eastman Sewer Company, Inc.; and James Donoghue, Treasurer of Eastman Sewer Company, Inc.

**LOAN.** The Loan shall be in an amount not to exceed the principal sum of U.S. \$380,000.00 and shall bear interest on so much of the principal sum as shall be advanced pursuant to the terms of this Agreement and the Related Documents. The Loan shall bear interest on each Advance from the date of the Advance in accordance with the terms of the Note. Borrower shall use the Loan Funds solely for the payment of: (A) the costs of constructing the Improvements and equipping the Project in accordance with the Construction Contract; (B) other costs and expenses incurred or to be incurred in connection with the construction of the Improvements as Lender in its sole discretion shall approve; and (C) if permitted by Lender, interest due under the Note, including all expenses and all loan and commitment fees described in this Agreement. The Loan amount shall be subject at all times to all maximum limits and conditions set forth in this Agreement or in any of the Related Documents, including without limitation, any limits relating to loan to value ratios and acquisition and Project costs.

**PROJECT DESCRIPTION.** The word "Project" as used in this Agreement means the construction and completion of all Improvements contemplated by this Agreement, including without limitation the erection of the building or structure on the Real Property identified to this Agreement by Borrower and Lender, installation of equipment and fixtures, landscaping, and all other work necessary to make the Project usable and complete for the intended purposes. The Project includes the following work:

Provide funds for upgrades to essential capital equipment within the Eastman sewer system.

The word "Property" as used in this Agreement means the Real Property together with all Improvements, all equipment, fixtures, and other articles of personal property now or subsequently attached or affixed to the Real Property, together with all accessories, parts, and additions to, all replacements of, and all substitutions for any of such property, and all proceeds (including insurance proceeds and refunds of premiums) from any sale or other disposition of such property. The real estate described below constitutes the Real Property as used in this Agreement.

**FEES AND EXPENSES.** Whether or not the Project shall be consummated, Borrower shall assume and pay upon demand all out-of-pocket expenses incurred by Lender in connection with the preparation of loan documents and the making of the Loan, including without limitation the following: (A) all closing costs, loan fees, and disbursements; (B) all expenses of Lender's legal counsel; and (C) all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

**NO CONSTRUCTION PRIOR TO RECORDING OF SECURITY DOCUMENT.** Borrower will not permit any work or materials to be furnished in connection with the Project until (A) Borrower has signed the Related Documents; (B) Lender's mortgage or deed of trust and other Security Interests in the Property have been duly recorded and perfected; (C) Lender has been provided evidence, satisfactory to Lender, that Borrower has obtained all insurance required under this Agreement or any Related Documents and that Lender's liens on the Property and Improvements are valid perfected first liens, subject only to such exceptions, if any, acceptable to Lender.

**REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any indebtedness exists:

Organization. Borrower is a corporation for profit which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of New Hampshire. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign corporation in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at PO Box 470, Grantham, NH 03753. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

Assumed Business Names. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

Authorization. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of (a) Borrower's articles of incorporation or organization, or bylaws, or (b) any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

Hazardous Substances. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of the Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral. (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to

make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. In addition, Borrower represents and warrants that Borrower's Collateral does not contain urea formaldehyde foam insulation or urea formaldehyde resin in violation of any applicable state laws. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

**Litigation and Claims.** No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

**Taxes.** All of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

**Lien Priority.** Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

**Binding Effect.** This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

**Title to Property.** Borrower has, or on the date of first disbursement of Loan proceeds will have, good and marketable title to the Collateral free and clear of all defects, liens, and encumbrances, excepting only liens for taxes, assessments, or governmental charges or levies not yet delinquent or payable without penalty or interest, and such liens and encumbrances as may be approved in writing by the Lender. The Collateral is contiguous to publicly dedicated streets, roads, or highways providing access to the Collateral.

**Project Costs.** The Project costs are true and accurate estimates of the costs necessary to complete the improvements in a good and workmanlike manner according to the Plans and Specifications presented by Borrower to Lender, and Borrower shall take all steps necessary to prevent the actual cost of the Improvements from exceeding the Project costs.

**Utility Services.** All utility services appropriate to the use of the Project after completion of construction are available at the boundaries of the Collateral.

**Assessment of Property.** The Collateral is and will continue to be assessed and taxed as an independent parcel by all governmental authorities.

**Compliance with Governing Authorities.** Borrower has examined and is familiar with all the assessments, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements affecting the Project. The Project will at all times and in all respects conform to and comply with the requirements of such assessments, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements.

**Survival of Representations and Warranties.** Borrower understands and agrees that in making the Loan, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the making of the Loan and delivery to Lender of the Related Documents, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

**CONDITIONS PRECEDENT TO EACH ADVANCE.** Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

**Approval of Contractors, Subcontractors, and Materialmen.** Lender shall have approved a list of all contractors employed in connection with the construction of the Improvements, showing the name, address, and telephone number of each contractor, a general description of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of the labor, work, or materials with respect to each contractor or materialman. Lender shall have the right to communicate with any person to verify the facts disclosed by the list or by any application for any Advance, or for any other purpose.

**Plans, Specifications, and Permits.** Lender shall have received and accepted a complete set of written Plans and Specifications setting forth all Improvements for the Project, and Borrower shall have furnished to Lender copies of all permits and requisite approvals of any governmental body necessary for the construction and use of the Project.

**Architect's and Construction Contracts.** Borrower shall have furnished in form and substance satisfactory to Lender an executed copy of the Architect's Contract and an executed copy of the Construction Contract.

**Related and Support Documents.** Borrower shall provide to Lender in form satisfactory to Lender the following support documents for the Loan: Assignment of Construction Contract.

**Budget and Schedule of Estimated Advances.** Lender shall have approved detailed budget and cash flow projections of total Project costs and a schedule of the estimated amount and time of disbursements of each Advance.

**Borrower's Authorization.** Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the consummation of the Project and duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, in their sole discretion, may require.

**Bond.** If requested by Lender, Borrower shall have furnished a performance and payment bond in an amount equal to 100% of the amount of the Construction Contract, as well as a materialmen's and mechanics' payment bond, with such riders and supplements as Lender may require, each in form and substance satisfactory to Lender, naming the General Contractor as principal and Lender as an additional obligee.

**Appraisal.** If required by Lender, an appraisal shall be prepared for the Property, at Borrower's expense, which in form and substance shall be satisfactory to Lender, in Lender's sole discretion, including applicable regulatory requirements.

**Plans and Specifications.** If requested by Lender, Borrower shall have assigned to Lender on Lender's forms the Plans and Specifications for the Project.

**Environmental Report.** If requested by Lender, Borrower shall have furnished to Lender, at Borrower's expense, an environmental report and certificate on the Property in form and substance satisfactory to Lender, prepared by an engineer or other expert satisfactory to Lender stating that the Property complies with all applicable provisions and requirements of the "Hazardous Substances" paragraph set forth in this Agreement.

**Soil Report.** If requested by Lender, Borrower shall have furnished to Lender, at Borrower's expense, a soil report for the Property in form and substance satisfactory to Lender, prepared by a registered engineer satisfactory to Lender stating that the Property is free from soil or other geological conditions that would preclude its use or development as contemplated without extra expense for precautionary, corrective or remedial measures.

**Survey.** If requested by Lender, Borrower shall have furnished to Lender a survey of recent date, prepared and certified by a qualified surveyor and providing that the improvements, if constructed in accordance with the Plans and Specifications, shall lie wholly within the boundaries of the Collateral without encroachment or violation of any zoning ordinances, building codes or regulations, or setback requirements, together with such other information as Lender in its sole discretion may require.

**Zoning.** Borrower shall have furnished evidence satisfactory to Lender that the Collateral is duly and validly zoned for the construction, maintenance, and operation of the Project.

**Title Insurance.** Borrower shall have provided to Lender an ALTA Lender's extended coverage policy of title insurance with such endorsements as Lender may require, issued by a title insurance company acceptable to Lender and in a form, amount, and content satisfactory to Lender, insuring or agreeing to insure that Lender's security agreement or other security document on the Property is or will be upon recordation a valid first lien on the Property free and clear of all defects, liens, encumbrances, and exceptions except those as specifically accepted by Lender in writing. If requested by Lender, Borrower shall provide to Lender, at Borrower's expense, a foundation endorsement to the title policy upon the completion of each foundation for the improvements, showing no encroachments, and upon completion an endorsement which insures the lien-free completion of the improvements.

**Insurance.** Unless waived by Lender in writing, Borrower shall have delivered to Lender the following insurance policies or evidence thereof: (a) an all risks course of construction insurance policy (builder's risk), with extended coverage covering the improvements issued in an amount and by a company acceptable to Lender, containing a loss payable or other endorsement satisfactory to Lender insuring Lender as mortgagee, together with such other endorsements as may be required by Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender; (b) owners and General Contractor general liability insurance, public liability and workmen's compensation insurance; (c) flood insurance if required by Lender or applicable law; and (d) all other insurances required by this Agreement or by the Related Documents.

**Workers' Compensation Coverage.** Provide to Lender proof of the General Contractor's compliance with all applicable workers' compensation laws and regulations with regard to all work performed on the Project.

**Payment of Fees and Expenses.** Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

**Satisfactory Construction.** All work usually done at the stage of construction for which disbursement is requested shall have been done in a good and workmanlike manner and all materials and fixtures usually furnished and installed at that stage of construction shall have been furnished and installed, all in compliance with the Plans and Specifications. Borrower shall also have furnished to Lender such proofs as Lender may require to establish the progress of the work, compliance with applicable laws, freedom of the Property from liens, and the basis for the requested disbursement.

**Certification.** Borrower shall have furnished to Lender a certification by an engineer, architect, or other qualified inspector acceptable to Lender that the construction of the improvements has complied and will continue to comply with all applicable statutes, ordinances, codes, regulations, and similar requirements.

**Lien Waivers.** Borrower shall have obtained and attached to each application for an Advance, including the Advance to cover final payment to the General Contractor, executed acknowledgments of payments of all sums due and releases of mechanic's and materialmen's liens, satisfactory to Lender, from any party having lien rights, which acknowledgments of payment and releases of liens shall cover all work, labor, equipment, materials done, supplied, performed, or furnished prior to such application for an Advance.

**No Event of Default.** There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

**DISBURSEMENT OF LOAN FUNDS.** The following provisions relate to the disbursement of funds from the Loan Fund.

**Application for Advances.** Each application shall be stated on a standard AIA payment request form or other form approved by Lender, executed by Borrower, and supported by such evidence as Lender shall reasonably require. Borrower shall apply only for disbursement with respect to work actually done by the General Contractor and for materials and equipment actually incorporated into the Project. Each application for an Advance shall be deemed a certification of Borrower that as of the date of such application, all representations and warranties contained in the Agreement are true and correct, and that Borrower is in compliance with all of the provisions of this Agreement.

**Payments.** At the sole option of Lender, Advances may be paid in the joint names of Borrower and the General Contractor, subcontractor(s), or supplier(s) in payment of sums due under the Construction Contract. At its sole option, Lender may directly pay the General Contractor and any subcontractors or other parties the sums due under the Construction Contract. Borrower appoints Lender as its attorney-in-fact to make such payments. This power shall be deemed coupled with an interest, shall be irrevocable, and shall survive an Event of Default under this Agreement.

**Projected Cost Overruns.** If Lender at any time determines in its sole discretion that the amount in the Loan Fund is insufficient, or will be insufficient, to complete fully and to pay for the Project, then within ten (10) days after receipt of a written request from Lender, Borrower shall deposit in the Loan Fund an amount equal to the deficiency as determined by Lender. The judgment and determination of Lender under this section shall be final and conclusive. Any such amounts deposited by Borrower shall be disbursed prior to any Loan proceeds.

**Final Payment to General Contractor.** Upon completion of the Project and fulfillment of the Construction Contract to the satisfaction of Lender and provided sufficient Loan Funds are available, Lender shall make an Advance to cover the final payment due to the General Contractor upon delivery to Lender of endorsements to the ALTA title insurance policy following the posting of the completion notice, as provided under applicable law. Construction shall not be deemed complete for purposes of final disbursement unless and until Lender shall have received all of the following:

- (1) Evidence satisfactory to Lender that all work under the Construction Contract requiring inspection by any governmental authority with jurisdiction has been duly inspected and approved by such authority, that a certificate of occupancy has been issued, and that all parties performing work have been paid, or will be paid, for such work;
- (2) A certification by an engineer, architect, or other qualified inspector acceptable to Lender that the improvements have been completed substantially in accordance with the Plans and Specifications and the Construction Contract, that direct connection has been made to all utilities set forth in the Plans and Specifications, and that the Project is ready for occupancy; and
- (3) Acceptance of the completed improvements by Lender and Borrower.

**Construction Default.** If Borrower fails in any respect to comply with the provisions of this Agreement or if construction ceases before completion regardless of the reason, Lender, at its option, may refuse to make further Advances, may accelerate the indebtedness under the terms of the Note, and without thereby impairing any of its rights, powers, or privileges, may enter into possession of the construction site and perform or cause to be performed any and all work and labor necessary to complete the improvements, substantially in accordance with the Plans and Specifications.

**Damage or Destruction.** If any of the Collateral or Improvements is damaged or destroyed by casualty of any nature, within sixty (60) days thereafter Borrower shall restore the Collateral and improvements to the condition in which they were before such damage or destruction with funds other than those in the Loan Fund. Lender shall not be obligated to make disbursements under this Agreement until such restoration has been accomplished.

**Adequate Security.** When any event occurs that Lender determines may endanger completion of the Project or the fulfillment of any condition or covenant in this Agreement, Lender may require Borrower to furnish, within ten (10) days after delivery of a written request, adequate security to eliminate, reduce, or indemnify Lender against, such danger. In addition, upon such occurrence, Lender in its sole discretion may advance funds or agree to undertake to advance funds to any party to eliminate, reduce, or indemnify Lender against, such danger or to complete the Project. All sums paid by Lender pursuant to such agreements or undertakings shall be for Borrower's account and shall be without prejudice to Borrower's rights, if any, to receive such funds from the party to whom paid. All sums expended by Lender in the exercise of its option to complete the Project or protect Lender's interests shall be payable to Lender on demand together with interest from the date of the Advance at the rate applicable to the Loan. In addition, any Advance of funds under this Agreement, including without limitation direct disbursements to the General Contractor or other parties in payment of sums due under the Construction Contract, shall be deemed to have been expended by or on behalf of Borrower and to have been secured by Lender's security agreement, if any, on the Collateral.

**CESSATION OF ADVANCES.** If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender; or (E) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred.

**LIMITATION OF RESPONSIBILITY.** The making of any Advance by Lender shall not constitute or be interpreted as either (A) an approval or acceptance by Lender of the work done through the date of the Advance, or (B) a representation or indemnity by Lender to any party against any deficiency or defect in the work or against any breach of any contract. Inspections and approvals of the Plans and Specifications, the improvements, the workmanship and materials used in the improvements, and the exercise of any other right of inspection, approval, or inquiry

CONSTRUCTION LOAN AGREEMENT  
(Continued)

Loan No: 6000735626

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granted to Lender in this Agreement are acknowledged to be solely for the protection of Lender's interests, and under no circumstances shall they be construed to impose any responsibility or liability of any nature whatsoever on Lender to any party. Neither Borrower nor any contractor, subcontractor, materialman, laborer, or any other person shall rely, or have any right to rely, upon Lender's determination of the appropriateness of any Advance. No disbursement or approval by Lender shall constitute a representation by Lender as to the nature of the Project, its construction, or its intended use for Borrower or for any other person, nor shall it constitute an indemnity by Lender to Borrower or to any other person against any deficiency or defects in the Project or against any breach of any contract.

**AFFIRMATIVE COVENANTS.** Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

**Notices of Claims and Litigation.** Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

**Financial Records.** Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

**Financial Statements.** Furnish Lender with the following:

**Annual Statements.** As soon as available after the end of each fiscal year, Borrower's balance sheet and income statement for the year ended, prepared by Borrower in form satisfactory to Lender.

**Tax Returns.** As soon as available after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by a tax professional satisfactory to Lender.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

**Additional Information.** Furnish such additional information and statements, lists of assets and liabilities, agings of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations as Lender may request from time to time.

**Other Agreements.** Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

**Insurance.** Maintain fire and other risk insurance, hail, federal crop insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations. In form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

**Insurance Reports.** Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

**Guarantee.** Prior to disbursement of any Loan proceeds, furnish executed guarantees of the Loans in favor of Lender, executed by the guarantor named below, on Lender's forms, and in the amount and under the conditions set forth in those guarantees.

<u>Name of Guarantor</u>	<u>Amount</u>
Eastman Community Association	100.000% of \$390,000.00

**Loan Fees, Charges and Expenses.** Whether or not the Project is completed, Borrower also shall pay upon demand all out-of-pocket expenses incurred by Lender in connection with the preparation of loan documents and the making of the Loan, including, without limitation, all closing costs, fees, and disbursements, all expenses of Lender's legal counsel, and all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

**Loan Proceeds.** Use the Loan Funds solely for payment of bills and expenses directly related to the Project.

**Taxes, Charges and Liens.** Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits. Provided however, Borrower will not be required to pay and discharge any such assessment, tax, charge, levy, lien or claim so long as (1) the legality of the same shall be contested in good faith by appropriate proceedings, and (2) Borrower shall have established on Borrower's books adequate reserves with respect to such contested assessment, tax, charge, levy, lien, or claim in accordance with GAAP.

**Performance.** Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

**Inspection.** Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

**Compliance Certificates.** Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

**Construction of the Project.** Commence construction of the Project no later than November 18, 2009, and cause the improvements to be constructed and equipped in a diligent and orderly manner and in strict accordance with the Plans and Specifications approved by Lender, the Construction Contract, and all applicable laws, ordinances, codes, regulations, and rights of adjoining or concurrent property owners. Borrower agrees to complete the Project for purposes of final payment to the General Contractor on or before November 18, 2010, regardless of the reason for any delay.

**Defects.** Upon demand of Lender, promptly correct any defect in the improvements or any departure from the Plans and Specifications not approved by Lender in writing before further work shall be done upon the portion of the improvements affected.

**Project Claims and Litigation.** Promptly inform Lender of (1) all material adverse changes in the financial condition of the General Contractor; (2) any litigation and claims, actual or threatened, affecting the Project or the General Contractor, which could materially affect the successful completion of the Project or the ability of the General Contractor to complete the Project as agreed; and (3) any condition or event which constitutes a breach or default under any of the Related Documents or any contract related to the Project.

**Payment of Claims and Removal of Liens.** (1) Cause all claims for labor done and materials and services furnished in connection with the improvements to be fully paid and discharged in a timely manner, (2) diligently file or procure the filing of a valid notice of completion of the improvements, or such comparable document as may be permitted under applicable lien laws, (3) diligently file or procure the filing of a notice of cessation, or such comparable document as may be permitted under applicable lien laws, upon the happening of cessation of labor on the improvements for a continuous period of thirty (30) days or more, and (4) take all reasonable steps necessary to remove all claims of liens against the Collateral, the improvements or any part of the Collateral or improvements, or any rights or interests appurtenant to the Collateral or improvements. Upon Lender's request, Borrower shall make such demands or claims upon or against laborers, materialmen, subcontractors, or other persons who have furnished labor, services, or materials in connection with the improvements, which demands or claims shall under the laws of the state where the improvements are located require diligent assertions of lien claims upon penalty of loss or waiver thereof. Borrower shall, within ten (10) days after the filing of any claim of lien that is disputed or contested by Borrower, provide Lender with a surety bond issued by a surety acceptable to Lender sufficient to release the claim of lien or deposit with Lender an amount satisfactory to Lender for the possibility that the contest will be unsuccessful. If Borrower

fails to remove any lien on the Collateral or improvements or provide a bond or deposit pursuant to this provision, Lender may pay such lien, or may contest the validity of the lien, and Borrower shall pay all costs and expenses of such contest, including Lender's reasonable attorneys' fees.

**Taxes and Claims.** Pay and discharge when due all of Borrower's indebtedness, obligations, and claims that, if unpaid, might become a lien or charge upon the Collateral or improvements; provided, however, that Borrower shall not be required to pay and discharge any such indebtedness, obligation, or claim so long as (1) its legality shall be contested in good faith by appropriate proceedings, (2) the indebtedness, obligation, or claim does not become a lien or charge upon the Collateral or improvements, and (3) Borrower shall have established on its books adequate reserves with respect to the amount contested in accordance with GAAP. If the indebtedness, obligation, or claim does become a lien or charge upon the Collateral or improvements, Borrower shall remove the lien or charge as provided in the preceding paragraph.

**Environmental Studies.** Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substances, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

**Additional Assurances.** Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests in the Collateral and Improvements.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

**NEGATIVE COVENANTS.** Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

**Indebtedness and Liens.** (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of Borrower's accounts, except to Lender.

**Continuity of Operations.** (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) pay any dividends on Borrower's stock (other than dividends payable in its stock), provided, however that notwithstanding the foregoing, but only so long as no Event of Default has occurred and is continuing or would result from the payment of dividends, if Borrower is a "Subchapter S Corporation" (as defined in the Internal Revenue Code of 1986, as amended), Borrower may pay cash dividends on its stock to its shareholders from time to time in amounts necessary to enable the shareholders to pay income taxes and make estimated income tax payments to satisfy their liabilities under federal and state law which arise solely from their status as Shareholders of a Subchapter S Corporation because of their ownership of shares of Borrower's stock, or purchase or retire any of Borrower's outstanding shares or alter or amend Borrower's capital structure.

**Loans, Acquisitions and Guarantees.** (1) Loan, invest in or advance money or assets to any other person, enterprise or entity, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

**Modification of Contract.** Make or permit to be made any modification of the Construction Contract.

**Liens.** Create or allow to be created any lien or charge upon the Collateral or the Improvements.

**Agreements.** Enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith.

**GENERAL PROJECT PROVISIONS.** The following provisions relate to the construction and completion of the Project:

**Change Orders.** All requests for changes in the Plans and Specifications, other than minor changes involving no extra cost, must be in writing, signed by Borrower and the architect, and delivered to Lender for its approval. Borrower will not permit the performance of any work pursuant to any change order or modification of the Construction Contract or any subcontract without the written approval of Lender. Borrower will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order.

**Purchase of Materials; Conditional Sales Contracts.** No materials, equipment, fixtures, or articles of personal property placed in or incorporated into the Project shall be purchased or installed under any Security Agreement or other agreement whereby the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider such items as personal property after their incorporation into the Project, unless otherwise authorized by Lender in writing.

**Lender's Right of Entry and Inspection.** Lender and its agents shall have at all times the right of entry and free access to the Property and the right to inspect all work done, labor performed, and materials furnished with respect to the Project. Lender shall have unrestricted access to and the right to copy all records, accounting books, contracts, subcontracts, bills, statements, vouchers, and supporting documents of Borrower relating in any way to the Project.

**Lender's Right to Stop Work.** If Lender in good faith determines that any work or materials do not conform to the approved Plans and Specifications or sound building practices, or otherwise depart from any of the requirements of this Agreement, Lender may require the work to be stopped and withhold disbursements until the matter is corrected. In such event, Borrower will promptly correct the work to Lender's satisfaction. No such action by Lender will affect Borrower's obligation to complete the improvements on or before the Completion Date. Lender is under no duty to supervise or inspect the construction or examine any books and records. Any inspection or examination by Lender is for the sole purpose of protecting Lender's security and preserving Lender's rights under this Agreement. No default of Borrower will be waived by any inspection by Lender. In no event will any inspection by Lender be a representation that there has been or will be compliance with the Plans and Specifications or that the construction is free from defective materials or workmanship.

**Indemnity.** Borrower shall indemnify, defend, and hold Lender harmless from any and all claims asserted against Lender or the Property by any person, entity, or governmental body, or arising out of or in connection with the Property, improvements, or Project. Lender shall be entitled to appear in any proceedings to defend itself against such claims, and all costs and expenses attorneys' fees incurred by Lender in connection with such defense shall be paid by Borrower to Lender. Lender shall, in its sole discretion, be entitled to settle or compromise any asserted claims against it, and such settlement shall be binding upon Borrower for purposes of this indemnification. All amounts paid by Lender under this paragraph shall be secured by Lender's security agreement or security agreement, if any, on the Property, shall be deemed an additional principal Advances under the Loan, payable upon demand, and shall bear interest at the rate applicable to the Loan.

**Publicity.** Lender may display a sign at the construction site informing the public that Lender is the construction lender for the Project. Lender may obtain other publicity in connection with the Project through press releases and participation in ground-breaking and opening ceremonies and similar events.

**Actions.** Lender shall have the right to commence, appear in, or defend any action or proceeding purporting to effect the rights, duties, or liabilities of the parties to this Agreement, or the disbursement of funds from the Loan Fund. In connection with this right, Lender may incur and pay reasonable costs, expenses and attorneys' fees. Borrower covenants to pay to Lender on demand all such expenses, together with interest from the date Lender incurs the expense at the rate specified in the Note, and Lender is authorized to disburse funds from the Loan Fund for such purposes.

**CONSTRUCTION LOAN COMMITMENT.** Lender has issued a construction loan commitment letter for the Loan to Borrower with an acceptance date of June 29, 2009 and with a closing date of November 16, 2009.

**RELATIONSHIP TO THIS AGREEMENT.** The terms and provisions of this Agreement, the Note and the Related Documents supersede any inconsistent terms and conditions of Lender's construction loan commitment letter to Borrower, provided that all obligations of Borrower under the commitment to pay any fees to Lender or any costs and expenses relating to the Loan or the commitment shall survive the execution and delivery of this Agreement, the Note and the Related Documents. Any failure of Borrower to perform any such obligation shall constitute a

default under this Agreement.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

**DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Borrower fails to make any payment when due under the Loan.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Construction Contract.** The Improvements are not constructed in accordance with the Plans and Specifications or in accordance with the terms of the Construction Contract.

**Cessation of Construction.** Prior to the completion of construction of the Improvements and equipping of the Project, the construction of the Improvements or the equipping of the Project is abandoned or work thereon ceases for a period of more than ten (10) days for any reason, or the Improvements are not completed for purposes of final payment to the General Contractor prior to November 16, 2010, regardless of the reason for the delay.

**Transfer of Property.** Sale, transfer, hypothecation, assignment, or conveyance of the Property or the Improvements or any portion thereof or interest therein by Borrower or any Borrower without Lender's prior written consent.

**Condemnation.** All or any material portion of the Collateral is condemned, seized, or appropriated without compensation, and Borrower does not within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation.

**Events Affecting Guarantor.** Any of the preceding events occur with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default on indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower or Grantor, as the case may be, after Lender sends written notice to Borrower or Grantor, as the case may be, demanding cure of such default: (1) cure the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**EFFECT OF AN EVENT OF DEFAULT; REMEDIES.** Upon the occurrence of any Event of Default and at any time thereafter, Lender may, at its option, but without any obligation to do so, and in addition to any other right Lender without notice to Borrower may have, do any one or more of the following without notice to Borrower: (a) Cancel this Agreement; (b) Institute appropriate proceedings to enforce the performance of this Agreement; (c) Withhold further disbursement of Loan Funds; (d) Expend funds necessary to remedy the default; (e) Take possession of the Property and continue construction of the Project; (f) Accelerate maturity of the Note and/or Indebtedness and demand payment of all sums due under the Note and/or Indebtedness; (g) Bring an action on the Note and/or Indebtedness; (h) Foreclose Lender's security agreement or security agreement, if any, on the Property in any manner available under law; and (i) Exercise any other right or remedy which it has under the Note or Related Documents, or which is otherwise available at law or in equity or by statute.

**COMPLETION OF IMPROVEMENTS BY LENDER.** If Lender takes possession of the Collateral, it may take any and all actions necessary in its judgment to complete construction of the Improvements, including but not limited to making changes in the Plans and Specifications, work, or materials and entering into, modifying or terminating any contractual arrangements, subject to Lender's right at any time to discontinue any work without liability. If Lender elects to complete the Improvements, it will not assume any liability to Borrower or to any other person for completing the Improvements or for the manner or quality of construction of the Improvements, and Borrower expressly waives any such liability. Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to complete the Improvements, at Lender's option, either in Borrower's name or in its own name. In any event, all sums expended by Lender in completing the construction of the Improvements will be considered to have been disbursed to Borrower and will be secured by the Collateral for the Loan. Any such sums that cause the principal amount of the Loan to exceed the face amount of the Note will be considered to be an additional Loan to Borrower, bearing interest at the Note rate and being secured by the Collateral. For these purposes, Borrower assigns to Lender all of its right, title and interest in and to the Project Documents; however Lender will not have any obligation under the Project Documents unless Lender expressly hereafter agrees to assume such obligations in writing. Lender will have the right to exercise any rights of Borrower under the Project Documents upon the occurrence of an Event of Default. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently.

**ADDITIONAL DOCUMENTS.** Borrower shall provide Lender with the following additional documents:

**Corporate Resolution.** Borrower has provided or will provide Lender with a certified copy of resolutions properly adopted by Borrower's Board of Directors, and certified by Borrower's corporate secretary, assistant secretary, or other authorized officer, under which Borrower's Board of Directors authorized one or more designated officers or employees to execute this Agreement, the Note and any and all Security Agreements directly or indirectly securing repayment of the same, and to consummate the borrowings and other transactions as contemplated under this Agreement, and to consent to the remedies following any default by Borrower as provided in this Agreement and in any Security Agreements.

**Opinion of Counsel.** When required by Lender, Borrower has provided or will provide Lender with an opinion of Borrower's counsel certifying to and that: (1) Borrower's Note, any Security Agreements and this Agreement constitute valid and binding obligations on Borrower's part that are enforceable in accordance with their respective terms; (2) Borrower is validly existing and in good standing; (3) Borrower has authority to enter into this Agreement and to consummate the transactions contemplated under this Agreement; and (4) such other matters as may have been requested by Lender or by Lender's counsel.

**DISBURSEMENT OF FUNDS.** Upon request for each disbursement during the Construction Phase, the General Contractor will provide lien releases for each requested disbursement at the time the disbursement is made or at the time of the next and each subsequent disbursement, due to the Mechanics Lien Law requirements in the State of New Hampshire.

**IMBALANCE.** In the event that the cost of construction is increased for any reason, so that it becomes evident to the Lender that the funds of the Loan available to the Borrower will not fully pay the cost of renovation, then the Borrower, at the request of the Lender, shall advance sufficient sums of money to provide for the full payment of the cost of construction.

**REVISIONS OF PLANS.** No material deviations from the approved final plans and specifications may be made without prior written approval of the Lender.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

**Authority to File Notices.** Borrower appoints and designates Lender as its attorney-in-fact to file for the record any notices that Lender deems necessary to protect its interest under this Agreement. This power shall be deemed coupled with an interest and shall be irrevocable while any sum or performance remains due and owing under any of the Related Documents.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Hampshire without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of New Hampshire.

**Choice of Venue.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Windsor County, State of Vermont.

**Indemnification of Lender.** Borrower agrees to indemnify, to defend and to save and hold Lender harmless from any and all claims, suits, obligations, damages, losses, costs and expenses (including, without limitation, Lender's attorneys' fees, as well as Lender's architect's and engineering fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever that may be asserted against or incurred by Lender, its officers, directors, employees, and agents arising out of, relating to, or in any manner occasioned by this Agreement and the exercise of the rights and remedies granted Lender under this. The foregoing indemnity provisions shall survive the cancellation of this Agreement as to all matters arising or accruing prior to such cancellation and the foregoing indemnity shall survive in the event that Lender elects to exercise any of the remedies as provided under this Agreement following default hereunder.

**Consent to Loan Participation.** Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in asserting any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

**Survival of Representations and Warranties.** Borrower understands and agrees that in making the Loan, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the making of the Loan and delivery to Lender of the Related Documents, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**Waive Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

**Advance.** The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

**Agreement.** The word "Agreement" means this Construction Loan Agreement, as this Construction Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Construction Loan Agreement from time to time.

**Architect's Contract.** The words "Architect's Contract" mean the architect's contract between Borrower and the architect for the Project.

**Borrower.** The word "Borrower" means Eastman Sewer Company, Inc. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**Completion Date.** The words "Completion Date" mean November 18, 2010.

**Construction Contract.** The words "Construction Contract" mean the contract dated November 3, 2009 between Borrower and DBU Construction, Inc., the general contractor for the Project, and any subcontracts with subcontractors, meterialmen, laborers, or any other person or entity for performance of work on the Project or the delivery of materials to the Project.

**Contractor.** The word "Contractor" means DBU Construction, Inc., the general contractor for the Project.

CONSTRUCTION LOAN AGREEMENT  
(Continued)

Loan No: 6000735626

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Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan and any guarantor under a completion guaranty agreement.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future buildings, structures, facilities, fixtures, additions, and similar construction on the Collateral.

Indebtedness. The word "indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means Lake Sunapee Bank, fsb, its successors and assigns.

Loan. The word "Loan" means the loan or loans made to Borrower under this Agreement and the Related Documents as described.

Loan Fund. The words "Loan Fund" mean the undischursed proceeds of the Loan under this Agreement together with any equity funds or other deposits required from Borrower under this Agreement.

Note. The word "Note" means the promissory note dated November 16, 2009, in the original principal amount of \$380,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Permitted Liens. The words "Permitted Liens" mean (1) liens and security interests securing indebtedness owed by Borrower to Lender; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of this Agreement titled "Indebtedness and Liens"; (5) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and (6) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets.

Plans and Specifications. The words "Plans and Specifications" mean the plans and specifications for the Project which have been submitted to and initialed by Lender, together with such changes and additions as may be approved by Lender in writing.

Project. The word "Project" means the construction project as described in the "Project Description" section of this Agreement.

Project Documents. The words "Project Documents" mean the Plans and Specifications, all studies, data and drawings relating to the Project, whether prepared by or for Borrower, the Construction Contract, the Architect's Contract, and all other contracts and agreements relating to the Project or the construction of the Improvements.

Property. The word "Property" means the property as described in the "Project Description" section of this Agreement.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in the "Project Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS CONSTRUCTION LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS CONSTRUCTION LOAN AGREEMENT IS DATED NOVEMBER 16, 2009.

BORROWER:

EASTMAN SEWER COMPANY, INC.

By: [Signature]  
Brian G. Harding, General Manager of Eastman Sewer Company, Inc.

By: [Signature]  
James Derogatis, Treasurer of Eastman Sewer Company, Inc.

LENDER:

LAKE SUNAPEE BANK, FSB

By: [Signature]  
Authorized Signatory

# COMMERCIAL SECURITY AGREEMENT

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Grantor:** Eastman Sewer Company, Inc.  
PO Box 470  
Grantham, NH 03753

**Lender:** Lake Sunapee Bank, feb  
Woodstock Office  
1 Bond Street  
Woodstock, VT 06081

THIS COMMERCIAL SECURITY AGREEMENT dated November 16, 2009, is made and executed between Eastman Sewer Company, Inc. ("Grantor") and Lake Sunapee Bank, feb ("Lender").

**GRANT OF SECURITY INTEREST.** For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

**COLLATERAL DESCRIPTION.** The word "Collateral" as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, in which Grantor is giving to Lender a security interest for the payment of the indebtedness and performance of all other obligations under the Note and this Agreement:

All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, including an assignment of Grantor's right to future income, including the right to receive dues and common expense assessments, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting so-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property; all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds) property as further described in UCC Financing Statement #20090016295H filed with the Secretary of State of New Hampshire on 9/16/09.

In addition, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (A) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later.
- (B) All products and produce of any of the property described in this Collateral section.
- (C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.
- (D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.
- (E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

**CROSS-COLLATERALIZATION.** In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

**FUTURE ADVANCES.** In addition to the Note, this Agreement secures all future advances made by Lender to Grantor regardless of whether the advances are made a) pursuant to a commitment or b) for the same purposes.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL.** With respect to the Collateral, Grantor represents and promises to Lender that:

**Perfection of Security Interest.** Grantor agrees to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender. This is a continuing Security Agreement and will continue in effect even though all or any part of the indebtedness is paid in full and even though for a period of time Grantor may not be indebted to Lender.

**Notice to Lender.** Grantor will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (1) change in Grantor's name; (2) change in Grantor's assumed business name(s); (3) change in the management of the Corporation Grantor; (4) change in the authorized signor(s); (5) change in Grantor's principal office address; (6) change in Grantor's state of organization; (7) conversion of Grantor to a new or different type of business entity; or (8) change in any other aspect of Grantor that directly or indirectly relates to any agreements between Grantor and Lender. No change in Grantor's name or state of organization will take effect until after Lender has received notice.

**No Violation.** The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its articles or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

**Enforceability of Collateral.** To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any account becomes subject to a security interest in favor of Lender, the account shall be a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor, for merchandise held subject to delivery instructions or previously shipped or delivered pursuant to a contract of sale, or for services previously performed by Grantor with or for the account debtor. So long as this Agreement remains in effect, Grantor shall not, without Lender's prior written consent, compromise, settle, adjust, or extend payment under or with regard to any such Accounts. There shall be no setoffs or counterclaims against any of the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

**Location of the Collateral.** Except in the ordinary course of Grantor's business, Grantor agrees to keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts or general intangibles, the records concerning the Collateral) at Grantor's address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Grantor will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the

following: (1) all real property Grantor owns or is purchasing; (2) all real property Grantor is renting or leasing; (3) all storage facilities Grantor owns, rents, leases, or uses; and (4) all other properties where Collateral is or may be located.

**Removal of the Collateral.** Except in the ordinary course of Grantor's business, including the sales of inventory, Grantor shall not remove the Collateral from its existing location without Lender's prior written consent. To the extent that the Collateral consists of vehicles, or other titled property, Grantor shall not take or permit any action which would require application for certificates of title for the vehicles outside the State of New Hampshire, without Lender's prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

**Transactions Involving Collateral.** Except for inventory sold or accounts collected in the ordinary course of Grantor's business, or as otherwise provided for in this Agreement, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While Grantor is not in default under this Agreement, Grantor may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of Grantor's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

**Title.** Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

**Repairs and Maintenance.** Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

**Inspection of Collateral.** Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

**Taxes, Assessments and Liens.** Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory notes or notes evidencing the indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could occur as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

**Compliance with Governmental Requirements.** Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

**Hazardous Substances.** Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substances. In addition, Grantor represents and warrants that the Collateral does not contain urea formaldehyde foam insulation or urea formaldehyde resin in violation of any New Hampshire state laws. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify and defend shall survive the payment of the indebtedness and the satisfaction of this Agreement.

**Maintenance of Casualty Insurance.** Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

**Application of Insurance Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Collateral, whether or not such casualty or loss is covered by insurance. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the indebtedness, and shall pay the balance to Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the indebtedness.

**Insurance Reserves.** Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

**Insurance Reports.** Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (6) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

**Financing Statements.** Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. If Grantor changes Grantor's name or address, or the name or address of any person granting a security interest under this Agreement changes, Grantor will promptly notify the Lender of such changes.

**GRANTOR'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS.** Until default and except as otherwise provided below with respect to accounts, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful

manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. Until otherwise notified by Lender, Grantor may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Lender may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Lender for application to the indebtedness. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the indebtedness.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Grantor fails to make any payment when due under the indebtedness.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Insolvency.** The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occur with respect to any Guarantor of any of the indebtedness or Guarantor dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Cure Provisions.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Grantor demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the New Hampshire Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

**Accelerate Indebtedness.** Lender may declare the entire indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

**Assemble Collateral.** Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

**Sell the Collateral.** Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral proceeding foreclosure or sale, and to collect the Rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Collect Revenues, Apply Accounts.** Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the indebtedness or apply it to payment of the indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

**Obtain Deficiency.** If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

**Other Rights and Remedies.** Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and

remedies it may have available at law, in equity, or otherwise.

**Election of Remedies.** Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Hampshire without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of New Hampshire.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Windsor County, State of Vermont.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Notices.** Any notices required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Power of Attorney.** Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photograph or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstances. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the indebtedness.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**Waive Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Agreement.** The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

**Borrower.** The word "Borrower" means Eastman Sewer Company, Inc. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Default.** The word "Default" means the Default set forth in this Agreement in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**Grantor.** The word "Grantor" means Eastman Sewer Company, Inc..

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and

interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. Specifically, without limitation, indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Agreement.

Lender. The word "Lender" means Lake Sunapee Bank, fsb, its successors and assigns.

Note. The word "Note" means the Note executed by Eastman Sewer Company, Inc. in the principal amount of \$380,000.00 dated November 16, 2009, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED NOVEMBER 16, 2009.

GRANTOR:

EASTMAN SEWER COMPANY, INC.

By: [Signature]  
Brian G. Harding, General Manager of Eastman Sewer Company, Inc.

By: [Signature]  
James Donegan, Treasurer of Eastman Sewer Company, Inc.

LENDER:

LAKE SUNAPEE BANK, FSB

X [Signature]  
Authorized Signatory

# AGREEMENT TO PROVIDE INSURANCE

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*\*" has been omitted due to text length limitations.

**Grantor:** Eastman Sewer Company, Inc.  
PO Box 470  
Grantham, NH 03753

**Lender:** Lake Sunapee Bank, fcb  
Woodstock Office  
1 Bond Street  
Woodstock, VT 05091

**INSURANCE REQUIREMENTS.** Grantor, Eastman Sewer Company, Inc. ("Grantor"), understands that insurance coverage is required in connection with the extending of a loan or the providing of other financial accommodations to Grantor by Lender. These requirements are set forth in the security documents for the loan. The following minimum insurance coverages must be provided on the following described collateral (the "Collateral"):

**Collateral:** All inventory, Equipment, Fixtures, Timber and Minerals, Oil and Gas.  
**Type:** All risks, including fire, theft and liability.  
**Amount:** Full Insurable Value.  
**Basis:** Replacement value.  
**Endorsements:** Lake Sunapee Bank, fcb, is Loss Payee; and further stipulating that coverage will not be cancelled or diminished without a minimum of 10 days prior written notice to Lender.  
**Latest Delivery Date:** By the loan closing date.

**INSURANCE COMPANY.** Grantor may obtain insurance from any insurance company Grantor may choose that is reasonably acceptable to Lender. Grantor understands that credit may not be denied solely because insurance was not purchased through Lender.

**INSURANCE MAILING ADDRESS.** All documents and other materials relating to insurance for this loan should be mailed, delivered or directed to the following address:

Lake Sunapee Bank, fcb  
P.O. Box 7  
Newport, NH 03773

**FAILURE TO PROVIDE INSURANCE.** Grantor agrees to deliver to Lender, on the latest delivery date stated above, proof of the required insurance as provided above, with an effective date of November 16, 2009, or earlier. Grantor acknowledges and agrees that if Grantor fails to provide any required insurance or fails to continue such insurance in force, Lender may do so at Grantor's expense as provided in the applicable security document. The cost of any such insurance, at the option of Lender, shall be added to the indebtedness as provided in the security document. GRANTOR ACKNOWLEDGES THAT IF LENDER SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE WILL PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL UP TO AN AMOUNT EQUAL TO THE LESSER OF (1) THE UNPAID BALANCE OF THE DEBT, EXCLUDING ANY UNEARNED FINANCE CHARGES, OR (2) THE VALUE OF THE COLLATERAL; HOWEVER, GRANTOR'S EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

**AUTHORIZATION.** For purposes of insurance coverage on the Collateral, Grantor authorizes Lender to provide to any person (including any insurance agent or company) all information Lender deems appropriate, whether regarding the Collateral, the loan or other financial accommodations, or both.

**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT TO PROVIDE INSURANCE AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED NOVEMBER 16, 2009.**

**GRANTOR:**

**EASTMAN SEWER COMPANY, INC.**

By: Brian G. Harding  
Brian G. Harding, General Manager of Eastman  
Sewer Company, Inc.

By: James Donoghue  
James Donoghue, Treasurer of Eastman Sewer  
Company, Inc.

FOR LENDER USE ONLY	
INSURANCE VERIFICATION	PHONE
DATE: _____	_____
AGENT'S NAME: _____	_____
AGENCY: _____	_____
ADDRESS: _____	_____
INSURANCE COMPANY: _____	_____
POLICY NUMBER: _____	_____
EFFECTIVE DATES: _____	_____
COMMENTS: _____	_____

# DISBURSEMENT REQUEST AND AUTHORIZATION

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "###" has been omitted due to text length limitations.

**Borrower:** Eastman Sewer Company, Inc.  
PO Box 470  
Grantham, NH 03753

**Lender:** Lake Sunapee Bank, fdb  
Woodstock Office  
1 Bond Street  
Woodstock, VT 05081

**LOAN TYPE.** This is a Variable Rate Nondisclosable Loan to a Corporation for \$380,000.00 due on November 16, 2019.

**PRIMARY PURPOSE OF LOAN.** The primary purpose of this loan is for:

- Personal, Family, or Household Purpose or Personal Investment.  
 Business (Including Real Estate Investment).

**SPECIFIC PURPOSE.** The specific purpose of this loan is: Provide construction & permanent financing for upgrades to essential capital equipment within the Eastman sewer system and payoff existing loan with lender.

**DISBURSEMENT INSTRUCTIONS.** Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$380,000.00 as follows:

Amount paid on Borrower's account:	\$26,378.95
\$26,318.73 Payment on Loan # 6000733127 principal due as of 11/16/09	
\$58.22 Payment on Loan # 6000733127 Interest due as of 11/16/09	
Other Disbursements:	\$363,623.05
\$363,623.05 Non-Revolving funds to be disbursed upon request of the Borrower in accordance with the terms and conditions of the Construction Loan Agreement of even date.	

Note Principal: \$380,000.00

**FINANCIAL CONDITION.** BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED NOVEMBER 16, 2009.

**BORROWER:**

EASTMAN SEWER COMPANY, INC.

By: Brian G. Harding  
Brian G. Harding, General Manager of Eastman Sewer Company, Inc.

By: James Donoghue  
James Donoghue, Treasurer of Eastman Sewer Company, Inc.

# STATEMENT OF FINANCE CHARGES - NHRSA 399-B

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

<b>Borrower:</b> Eastman Sewer Company, Inc. PO Box 470 Grantham, NH 03753	<b>Lender:</b> Lake Sunapee Bank, Inc. Woodstock Office 1 Bond Street Woodstock, VT 05091	
<b>Guarantor:</b> Eastman Community Association PO Box 53 Grantham, NH 03753		

In connection with the loan transaction consummated on November 16, 2009, between Lake Sunapee Bank, Inc. which is organized under the laws of the United States, with a principal place of business at Woodstock Office, 1 Bond Street, Woodstock, VT 05091, ("Lender"); Eastman Sewer Company, Inc., with a mailing address of PO Box 470, Grantham, NH 03753, ("Borrower"); and Eastman Community Association, with a mailing address of PO Box 53, Grantham, NH 03753, ("Guarantor"), Borrower and Guarantor are hereby informed pursuant to NHRSA 399-B that Borrower, or in the event Borrower fails to do so, Guarantor, according to the terms of the guaranty, shall pay the following:

**INTEREST.** Pursuant to a Note of even date, Borrower shall pay interest on the loan having an original principal balance of Three Hundred Eighty Thousand & 00/100 Dollars (\$380,000.00).

**PAYMENT.** Subject to any payment changes resulting from changes in the index, Borrower will pay this loan in accordance with the following payment schedule, which calculates interest on the unpaid principal balance as described in the "INTEREST CALCULATION METHOD" paragraph using the interest rates described in this paragraph: 12 monthly consecutive interest payments, beginning December 16, 2009, with interest calculated on the unpaid principal balance using an interest rate based on the Wall Street Journal Prime Rate (currently 3.250%), plus a margin of -0.250 percentage points, resulting in an initial interest rate of 3.000% per annum; 107 monthly consecutive principal and interest payments in the initial amount of \$4,376.56 each, beginning December 16, 2010, with interest calculated on the unpaid principal balance using an interest rate of 5.000% per annum based on a year of 360 days; and one principal and interest payment of \$4,377.07 on November 16, 2019, with interest calculated on the unpaid principal balance using an interest rate of 5.000% per annum based on a year of 360 days. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled and that the index does not change; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this loan.

**VARIABLE INTEREST RATE.** The interest rate on the Note is subject to change from time to time based on changes in an independent index which is the Wall Street Journal Prime Rate (the "Index"). The index is not necessarily the lowest rate charged by Lender on its loans. If the index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current index rate upon Borrower's request. The interest rate change will not occur more often than each Quarter. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 3.250% per annum. The interest rate or rates to be applied to the unpaid principal balance during the Note will be the rate or rates set forth herein in the "Payment" section. Notwithstanding any other provision of this loan, after the first payment stream, the interest rate for each subsequent payment stream will be effective as of the least payment date of the just-ending payment stream. **NOTICE:** Under no circumstances will the interest rate on the Note be more than the maximum rate allowed by applicable law. Whenever increases occur in the interest rate, Lender, at its option, may do one or more of the following: (A) increase Borrower's payments to ensure Borrower's loan will pay off by its original final maturity date, (B) increase Borrower's payments to cover accruing interest, (C) increase the number of Borrower's payments, and (D) continue Borrower's payments at the same amount and increase Borrower's final payment.

**INTEREST CALCULATION METHOD.** Interest on this loan during the initial interest-only payment period is computed on a 365/365 simple interest basis; that is, by applying the ratio of the interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Interest on this loan following the initial interest-only phase is computed on a 30/360 simple interest basis; that is, with the exception of odd days before the first full payment cycle, monthly interest is calculated by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by a month of 30 days. Interest for the odd days before the first full month is calculated on the basis of the actual days and a 360-day year. All interest payable under this loan is computed using these methods in the described order.

**APPLICABLE INTEREST RATE.** Borrower expressly agrees that the interest rate specified in this loan shall be the applicable interest rate due, notwithstanding the rate of interest prescribed by statute from time to time, (A) on amounts outstanding during the term of the Loan, and (B) on amounts outstanding on and after the maturity date of the Loan, demand, the initiation of suit for collection, or the initiation of any foreclosure proceedings with respect to any collateral securing any portion of the Loan. The aforementioned interest rate shall be applicable to (except to the extent expressly provided to the contrary in any of the loan documents), and shall accrue on account of, any and all amounts owing by Borrower, other than unpaid interest, under each of the documents executed in connection with this Loan.

**ORIGINATION FEE.** There are no origination fees on this loan.

**OTHER CHARGES.** Borrower has paid or will pay the following other charges in connection with this Loan:

- Credit Availability.           \$ \_\_\_\_\_
- Annual Fee.                   \$ \_\_\_\_\_
- Overdraft Fee.                \$ \_\_\_\_\_

Late Charges. If a payment is 15 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment.  
 Credit Life Insurance. Type of Insurance Purchased: No Insurance Purchased.

**PREPAYMENT.**

**EXPENSES.** Borrower shall pay legal costs and expenses incurred in the preparation of documents and the closing of the transaction and related expenses, including filing and recording fees, in the estimated amount as described below. The actual amount of such costs and expenses may be somewhat more or less than estimated.

### Amount Financed Itemization

Amount paid on Borrower's account:	\$26,376.95
\$26,318.73 Payment on Loan # 8000733127 principal due as of 11/16/09	
\$58.22 Payment on Loan # 6000733127 interest due as of 11/16/09	
<b>Other Disbursements:</b>	<b>\$353,623.05</b>
\$353,623.05 Non-Revolving funds to be disbursed upon request of the Borrower in accordance with the terms and conditions of the Business Loan Agreement of even date.	
<b>Notes Principal:</b>	<b>\$380,000.00</b>
<b>Prepaid Finance Charges:</b>	<b>\$0.00</b>
<b>Amount Financed:</b>	<b>\$380,000.00</b>

BORROWER AND GUARANTOR EACH ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT AT THE LOAN CLOSING HELD ON THIS DATE AND ACKNOWLEDGE AGREEMENT WITH THE TERMS HEREOF.

BORROWER:

EASTMAN SEWER COMPANY, INC.

By:   
Brian S. Harding, General Manager of Eastman  
Sewer Company, Inc.

By:   
James Doherty, Treasurer of Eastman Sewer  
Company, Inc.

GUARANTOR:

EASTMAN COMMUNITY ASSOCIATION

By:   
Robert E. Peterson, President of Eastman  
Community Association

### **Loan Modification Agreement**

This Loan Modification Agreement, made this 13<sup>th</sup> day of January, 2011 amends and supplements the Documents and the Note as defined below:

1. **The Bank:**  
Lake Sunapee Bank, F.S.B., a New Hampshire banking corporation having a principle place of business in Newport, New Hampshire (mailing address: 9 Main Street, Newport, NH 03773) (hereinafter Bank).
2. **The Note:**  
Promissory Note dated November 16, 2009 by Borrower to Bank in the original face amount of \$380,000.00 and presently known as Lake Sunapee Bank Loan #6000735626 (hereinafter Note).
3. **The Borrower:**  
Reference is made to a certain promissory note given by Eastman Sewer Company, Inc. of Grantham, County of Grantham and State of New Hampshire (hereinafter Borrower(s)).
4. **The Documents:**  
Refers to the Note, Security Agreement and all other related documents, contracts or agreements by and between the Borrower and the Bank arising from or otherwise related to the loan from Bank to Borrower evidenced by the Note, including, but not limited to, any prior modification agreements.
  - a) The Loan Documents shall remain in full force and effect and shall continue to secure the Note as amended by this Agreement.
  - b) In all other respects, the Loan Documents shall remain in full force and effect and unmodified.
  - c) The Guarantors, if any, by signing below, accept and expressly agree to the terms of this Agreement.
  - d) If the terms set forth herein are inconsistent with any prior modifications or Loan Documents, the parties agree that the terms set forth herein shall govern.
  - e) All covenants, agreements, stipulations and conditions in said Documents shall be and remain in full force and effect except as herein modified, and none of the Borrower's obligations or liabilities under said Documents shall be diminished or released by any provisions hereof; nor shall this Agreement in any way impair, diminish, or affect any of the Bank's rights under or remedies under the Documents, whether such rights or remedies arise thereunder or by operation of law. Also, all rights of recourse to which the Bank is presently entitled against any property or any other persons in any way obligated for or liable under the Documents, are expressly reserved by the Bank.
  - f) Borrower(s) agree(s) to make and execute such other documents or papers as may be necessary or required to effectuate the terms and conditions of this Agreement which, if approved and accepted by the Bank, shall bind and inure to the heirs, executors, administrators, and assigns of the Borrower(s).
5. **The Modifications:**  
In consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Note or Documents):  
  
Upon the Bank's receipt of the properly executed Modification Agreement, the Bank hereby agrees to:
  - a). **Reduce The Current Interest Rate on the Note:**  
Effective as of January 16, 2011, the interest rate on the Note will be changed from 5.00% to 4.375% fixed until maturity.
  - b). **Modify the Monthly Payment on the Note:**  
The monthly payment of the Note shall be modified to re-amortize the principal balance as of 1/16/11 over the remaining amortization period (106 months) and reduced interest rate. The regular monthly payments shall be modified from \$4,374.70 to \$4,262.98, beginning with the payment due February 16, 2011.
6. **Additional Provisions**  
If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in the Borrower is sold or transferred and the Borrower is not a natural person) without the Bank's prior

written consent, the Bank may, at its option, require immediate payment in full of all sums secured by the Documents.

If the Bank exercises this option, the Bank shall give the Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which the Borrower must pay all sums secured by the Documents. If the Borrower fails to pay these sums prior to the expiration of this period, the Bank may invoke any remedies permitted by the Documents without further notice or demand on the Borrower.

The Borrower will comply with all other covenants, agreements, and requirements of the Documents, including without limitation, the Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that the Borrower is obligated to make under the Documents.

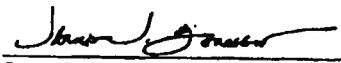
Except as stated in this Amendment to Promissory Note, and Modification Agreement dated 11/24/10, all of the terms, covenants, provisions, conditions and warranties contained in the Note are hereby affirmed and ratified. Nothing in the Agreement shall be understood or construed to be a satisfaction or release in whole or part of the Note and Documents except as otherwise specifically provided in this Agreement.

Executed this 13<sup>th</sup> day of January, 2011.

**BORROWER:**

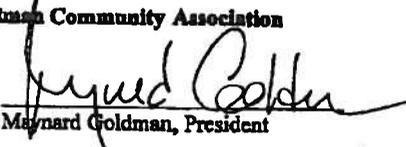
**Eastman Sewer Company, Inc.**

By:   
Brian O. Harding, General Manager

By:   
James J. Donoghue, Treasurer

**GUARANTOR:**

**Eastman Community Association**

By:   
Maynard Goldman, President

**LENDER:**

**LAKE SUNAPEE BANK, F.S.B.**

By:   
Dennis J. Driscoll, Vice President  
Duly Authorized

**DW 08-086**  
**EASTMAN SEWER COMPANY, INC.**  
**COMPANY RESPONSES TO STAFF DATA REQUESTS – SET 6**

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**Staff 6-2**

**Witness:** Brian Harding

The Company's payment to CLD Consulting made by Check # 2111 (9/30/09) in the amount of \$5,193.35 on Invoices # 43500 and # 43468 include "past due" charges of \$1,174.86 and \$1,127.40, respectively. However, these charges appear to have been previously paid by the Company by Check # 2077 (07/30/09) in the amount of \$2,302.26 on Invoices # 43328 (\$1,174.86) and # 43349 (\$1,127.40). Please explain.

**Response:** A review of the transactions indicates that the Company did pay such amounts twice. The Company has discussed this matter with CLD Consulting and CLD Consulting has agreed to issue a refund.

**DW 08-086**  
**EASTMAN SEWER COMPANY, INC.**  
**COMPANY RESPONSES TO STAFF DATA REQUESTS – SET 6**

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**Staff 6-3**

**Witness: Brian Harding**

Please provide copies of the original contract agreements as well as any change orders relative to the invoices provided by the Company from the following contractors:

- a) CLD Consulting
- b) DBU Construction
- c) M J Hayward

**Response:**

One copy of the CLD Amendment to General Services Agreement for Professional Services, DBU Construction Agreement and change orders and M. J. Hayward Proposal will be delivered overnight to Mr. Naylor.



**Amendment to General Services Agreement for Professional Services  
dated May 13, 2008  
Between  
Eastman Sewer Company  
and  
CLD Consulting Engineers, Inc.**

THIS AMENDMENT TO GENERAL SERVICES AGREEMENT FOR PROFESSIONAL SERVICES ("Amendment") made and entered in to as of December 3, 2009 amends the Agreement entered into between Eastman Sewer Company, hereinafter referred to as "OWNER," and CLD Consulting Engineers, Inc., hereinafter referred to as "ENGINEER."

Name of Assignment: Eastman Headworks Design

CLD Reference No. 08-0191

**Further Description of Services, Responsibilities, Time, and Related Matters**

Specific articles of the AGREEMENT are amended and supplemented to include the following agreement of the parties:

**I. ENGINEER's Services**

**A. Scope of Services:**

The Services to be provided by ENGINEER shall be modified as indicated below.

Some work was completed outside the scope as defined in the General Services Agreement dated May 13, 2008 for the Assignment Eastman Headworks Design. This work is described below:

Building Design: The Headworks building and channel design became more complex and involved than originally anticipated.

Construction Cost Estimate: At the request of the Sewer Board, we completed a construction cost estimate for the proposed Headworks project.



**Permitting & Contract Documents:** CLD completed an Energy Code application that was required in addition to the building permit. We submitted a complete Site Plan Review Application for the Town of Grantham, coordinated with Town officials, and presented the project for the Planning Board to receive approval. We submitted an application to the Eastman Environmental Control Committee and presented the project for the committee to receive approval. CLD advertised the project for bid in two newspapers and completed all the transactions of bid documents to contractors. We fielded questions about the project and produced addenda to supplement the original documents.

**ARRA:** We met several times with NHDES personnel and conducted many phone calls regarding ARRA funding for the project. We prepared Environmental Review documents and a pre-application for the funding.

**Electrical Engineering:** As the design progressed and became more complex, CLD realized the need for an electrical engineer to complete the design. We employed Lee Carroll, PE as our subconsultant and he produced an electrical design, plans, and specifications for bidding.

**Sewer Board Meetings:** CLD representatives attended many sewer board meetings to present new ideas, discuss the project, and receive direction from the Board.

**Public Utilities Commission Representation:** CLD attended two PUC hearings to assist the Sewer Board in securing a rate increase.

Fee for Services outside Original Scope: \$20,971

New services shall include:

**Construction Administration:** This scope of work is proposed for the duration of the construction of the Sewer Headworks Building.

**Contract Documents:** ENGINEER will attend the contract signing and will produce and distribute executed original contract documents to the OWNER and CONTRACTOR.

**Site Inspection:** ENGINEER will organize and lead weekly construction meetings to review work completed and discuss issues. ENGINEER will conduct two site inspections per week for eight weeks of construction to ensure the project is being constructed according to plan and to answer any questions asked by the CONTRACTOR.

**Submittals & Pay Applications:** ENGINEER will review all submittals for materials to be used on the project to ensure compliance with the



contract documents and the intent of the design. ENGINEER will review pay applications, coordinate with the CONTRACTOR to make and required revisions, and approve the application for payment by the OWNER.

*General Construction Administration:* ENGINEER will provide assistance to the CONTRACTOR by phone and email to answer any questions that may arise. ENGINEER will coordinate relevant decisions with the OWNER.

Estimated Fee = \$12,500

**II. Estimated Fees for Scope of Assignment**

**A. Compensation:**

The estimated fees for Engineering Services shall increase by \$33,471, from \$15,800 to \$49,271.

Please note that direct expenses such as mileage, copies, etc. are not included and will be billed directly.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, the Effective Date of which is indicated below.

**OWNER:**

EASTMAN SEWER BOARD

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

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

Date Signed: \_\_\_\_\_

Address:

P.O. Box 53

Grantham, NH 03753

**ENGINEER:**

CLD CONSULTING ENGINEERS, INC.

For the Firm: \_\_\_\_\_

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

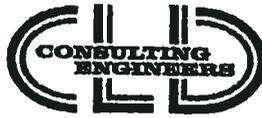
Date Signed: \_\_\_\_\_

Address:

540 Commercial Street

Manchester, NH 03101





**EASTMAN SEWER COMPANY  
HEADWORKS BUILDING ENGINEERING COST SUMMARY**

Review of Work Completed

The original estimated fee was \$15,800 and the project scope was defined in our proposal and contract. A detailed explanation of additional services provided was included in the proposed Amendment to General Services Agreement submitted December 3, 2009.

The following is a list of tasks that were not included in the original scope of work. These items were requested or authorized by the Sewer Board or the Manager:

1. Construction Cost Estimate Amount Billed = \$1,437  
This additional work estimated at a cost of \$2,000 and was authorized in an email from Brian Harding dated August 22, 2008.
2. ARRA Assistance Amount Billed = \$2,395  
This additional work was done at the direction of the Board.
3. Sewer Board and PUC Meetings Amount Billed = \$3,342  
Attendance at these meetings was outside the original scope of work and was only done at the request of the Board. PUC Meetings were part of issues outside the scope of the Headworks project and this time will be moved to another project. The amount is unknown at this time, but we will figure it out soon.
4. Electrical Engineering Amount Billed = \$3,600  
Lee Carroll's participation in the project was acknowledged in a Sewer Board meeting on May 19, 2009.
5. Permitting Amount Billed = \$1,450  
Site Plan Review process including application and hearing presentation was outside the original scope and was requested by the Sewer Board. The Board also requested that we complete the ECC application and approval process.

**SUBTOTAL = \$12,224**



The following is a summary of the overages associated with tasks that were included in the original scope. This work was necessary to design the project, but the volume of work was not anticipated.

5. Building and Headworks Design	Amount over Budget = \$6,439
6. Permitting and Contract Documents	Amount over Budget = \$2,308
	<b>SUBTOTAL = \$8,747</b>

Review of Work Proposed

In a Sewer Board meeting on April 21, 2009, Brian Harding recommended that CLD be used to oversee the construction of the Headworks Facility.

7. Construction Administration	Amount for New Services = \$12,500
	<b>SUBTOTAL = \$12,500</b>

Amendment Summary

Amount outside Original Scope (acknowledged or approved)	\$12,224
Amount over Budget	\$8,747
Amount for New Services	<u>\$12,500</u>
Amendment Requested	\$33,471
<b>Amount of Original Contract</b>	<b><u>\$15,800</u></b>
<b>Total Amended Contract</b>	<b>\$49,271</b>

This is Exhibit SR-A Assignment, consisting of two (2) pages referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services dated May 13, 2008.

Name of Assignment: Eastman Headworks Design

CLD Project # 08-0191

**Further Description of Services, Responsibilities, Time, and Related Matters**

Specific articles of the Agreement are amended and supplemented to include the following agreement of the parties:

**A.1.01 ENGINEER's Services**

A. ENGINEER will provide Services in connection with Eastman Headworks Design

located on Clearwater Drive in Grantham, NH.

**B. Scope of Services Include:**

*Survey & Data Acquisition*

- Complete field survey of area surrounding the proposed location of the new Headworks Facility
- Drafting associated with producing an existing conditions base plan

*Headworks Facility Design*

- Coordination with product representatives to define the placement requirements, electrical requirements, and product suitability
- Conceptual design and layout of building and headworks components
- Structural design of building foundation
- Finalize the design and prepare construction plans
- Design erosion control features for use during construction
- Drafting associated with producing plans for proposed conditions

*Permitting & Contract Documents*

- Coordination with NH Department of Environmental Services regarding design of the Headworks Facility
- Provide application and related documents for Town of Grantham building permit for new headworks building
- Prepare contract documents including technical specifications, bidding documents, and contract documents

**A.1.02 OWNER's Responsibilities**

A. OWNER shall do the following in a timely manner, so as not to delay the services of ENGINEER:

1. Provide all criteria and full information as to OWNER's requirements for the Assignment.

2. Furnish to ENGINEER all existing studies, reports and other available data pertinent to the Assignment, obtain or authorize ENGINEER to obtain or provide additional reports and data as required, and furnish to ENGINEER services of others as required for the performance of ENGINEER's services.

B. ENGINEER shall be entitled to use and rely upon all such information and services provided by OWNER or others in performing ENGINEER's services under this Agreement.

C. OWNER shall bear all costs incident to compliance with its responsibilities.

**A.2.01 Estimated Fees for Scope of Assignment**

A. ENGINEER shall furnish the services listed in A1.01 for an estimated fee of Fifteen Thousand Eight Hundred and 00/100 dollars (\$ 15,800 ) based upon our Standard Hourly Rates plus reimbursable expenses estimated at \$ 800 .

B. A retainer equal to one-third of estimated fee of Five Thousand Two Hundred Sixty Six and 67/100 dollars (\$ 5,266.67 ) will be applied to the OWNER's final invoice(s).

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CLIENT:

Eastman Sewer Company

By: Brian Harding

Title: General Manager

Date Signed: July 3, 2008

ENGINEER:

CLD CONSULTING ENGINEERS, INC.

By: Charles Harding

Title: Branch Manager

Date Signed: May 13, 2008

**AGREEMENT**

**THIS AGREEMENT**, made this 3rd day of November, 2009 by  
and between Eastman Sewer Company, hereinafter called "OWNER"  
(Name of Owner)  
and DBU Construction, Inc. doing business as  
a corporation hereinafter called "CONTRACTOR".

**WITNESSETH:** That for and in consideration of the payments and agreements hereinafter mentioned:

1. The **CONTRACTOR** will commence and complete the construction of  
Eastman Sewer Company – Sewer Headworks Improvements  
(Project)

2. The **CONTRACTOR** will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the **PROJECT** described herein.

3. The **CONTRACTOR** will commence the work required by the **CONTRACT DOCUMENTS** in the (month of year). Completion time for the project will be calculated as calendar days from the date specified in the **NOTICE TO PROCEED, not to exceed dates listed as follows:**

90 calendar days for substantial completion.\*  
240 for contract completion.\*\*

Liquidated damages will be in the amount of \$ 500 for each calendar day of delay from the date established for substantial completion and \$ 500 for each calendar day of delay from the date established for contract completion

\*Substantial Completion shall mean ALL systems and components have been installed and are operable.

\*\*Contract Completion shall mean completion of all work included in the Contract as specified within the Contract Documents including, but not limited to, Contract, Specifications, Drawings, and/or any supplemental materials provided.

4. The **CONTRACTOR** agrees to perform all of the **WORK** described in the **CONTRACT DOCUMENTS** and comply with the terms therein for the sum \$ 183,910 or as shown in the **BID** schedule.

5. The term "**CONTRACT DOCUMENTS**" means and includes the following:

- (A) ADVERTISEMENT FOR BIDS
- (B) INFORMATION FOR BIDDERS
- (C) BID
- (D) BID BOND
- (E) AGREEMENT
- (F) GENERAL CONDITIONS
- (G) SPECIAL CONDITIONS
- (H) PAYMENT BOND
- (I) PERFORMANCE BOND
- (J) NOTICE OF AWARD
- (K) NOTICE TO PROCEED
- (L) CONTRACTORS AFFIDAVIT
- (M) CONTRACTORS RELEASE
- (N) CERTIFICATE OF SUBSTANTIAL COMPLETION
- (O) CHANGE ORDER(S)
- (P) DRAWINGS prepared by:

**CLD Consulting Engineers, Inc., 16 Hemlock Ridge Dr., Suite#103, Village of Wilder, White River Junction, VT 50001**

numbered C1-C4, E1 and dated September 2009

(Q) SPECIFICATIONS prepared or issued by:

**CLD Consulting Engineers, Inc., 16 Hemlock Ridge Dr., Suite#103, Village of Wilder, White River Junction, VT 50001**

and dated September 2009

(R) ADDENDA:

No.	<u>1</u>	dated	<u>September 22,</u>	<u>20</u>	<u>09</u>
No.	<u>2</u>	dated	<u>October 5,</u>	<u>20</u>	<u>09</u>
No.	<u>3</u>	dated	<u>October 8,</u>	<u>20</u>	<u>09</u>
No.	<u>          </u>	dated	<u>                  </u>	<u>20</u>	<u>          </u>

6. The **OWNER** will pay to the **CONTRACTOR** in the manner and at such times as set forth in the General Conditions such amounts as required by the **CONTRACT DOCUMENTS**.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

**IN WITNESS WHEREOF**, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in 3 copies, each of which shall be deemed an original on the date first above written.

**OWNER:** Eastman Sewer Company

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

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

*Brian Harding*  
*Brian Harding*  
(Please Type)

(SEAL)

ATTEST: \_\_\_\_\_

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

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

**CONTRACTOR:** DBU Construction Inc

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

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

Address: \_\_\_\_\_

*Adam Towse* CFO  
*Adam Towse*  
Po Box 987  
Essex NH 03234

(SEAL)

ATTEST: \_\_\_\_\_

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

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

B-7.1

**CHANGE ORDER**

PROJECT: Eastman Sewer Company DATE OF ISSUANCE: No. 1  
Sewer Headworks Improvements 1/28/10

OWNER: Eastman Sewer Company  
P.O. Box 53, Grantham, NH 03753  
 (Address)

CONTRACTOR: DBU Construction, Inc. OWNER's Project No. \_\_\_\_\_  
 CONTRACT FOR: Eastman Headworks ENGINEER CLD Consulting Engineers, Inc.  
 ENGINEER's Project No. 08-0191

You are directed to make the following changes in the Contract Documents.

**Description:** This change order adds \$900 to the contract for the ductile iron pipe used for the sewer pipe crossing over the water service on Clearwater Drive under Item # 1 PVC Gravity Sewer. It adds \$2,000 to the contract for an additional 100 LF of electrical and communications wire to Item #4 Electrical & Telephone Service. It also extends the contract time for Substantial Completion to March 15, 2010.  
**Justification:** This additional work was required to complete the project and was deemed outside the original scope of work. The additional time for Substantial Completion is necessary due to a lengthy submittal review period for some of the key pieces of equipment.  
**Attachments:** DBU Change Order Request #2, DBU Change Order Request #3

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIME
Original Contract Price \$ <u>183,910.00</u>	Original Contract Time <u>2/1/10 (Substantial) 7/1/10 (Final)</u> (days or date)
Previous Change Orders \$ <u>0.00</u>	Net change from previous Change Orders <u>None</u> (days)
Contract Price prior to this Change Order \$ <u>183,910.00</u>	Contract Time prior to this Change Order <u>2/1/10 (Substantial) 7/1/10 (Final)</u> (days or date)
Net Increase (Decrease) of this Change Order \$ <u>2,900.00</u>	Net Increase (decrease) this Change Order <u>6 weeks (Substantial) None (Final)</u> (days)
Contract Price with all approved Change Orders \$ <u>186,810.00</u>	Contract Time with all Change Orders <u>3/15/10 (Substantial) 7/1/10 (Final)</u> (days or date)

This document will become a supplement to the CONTRACT and all provisions will apply hereto. The attached Contractor's Revised Project Schedule reflects increases or decreases in Contract Time as authorized by this Change Order.

Stipulated price and time adjustment includes all costs and time associated with the above described change. Contractor waives all rights for additional time extension for said change. Contractor and Owner agree that the price(s) and time adjustment(s) stated above are equitable and acceptable to both parties.

RECOMMENDED:

By: [Signature]  
Engineer  
1/28/10  
Date

APPROVED:

By: [Signature]  
Owner  
1/28/10  
Date

APPROVED:

By: [Signature]  
Contractor  
1/28/10  
Date



PO Box 984 - 1034 Suncook Valley Highway, Epsom, NH 03234-0984

CONSTRUCTION, INC.

Phone (603) 736-9100 - Fax (603) 736-9101

# Change Order

## No. 2

Project Name: Eastman Sewer Company Sewer Headworks Improvements

Project Address: Grantham, NH

Contract No.: D90012

Date: December 21, 2009

Description of Proposed Change:

Change sewer line from SDR to ductile iron

Description of Work:	Qty	Unit	Rate	Extension
PC-300 lost time	6	HR	\$ 160.00	\$ 960.00
Labor lost time	6	HR	\$ 30.00	\$ 180.00
DI Difference add	38	FT	\$ 25.00	\$ 900.00
		HR		
		FT		
		E		
		CY		
		E		
		CY		
		E		
				\$ 2,040.00
		OH&P	15%	\$ -
				\$ 2,040.00
		Fuel Surcharge	5%	\$ -

Cost of Proposed Change: \$ 2,040.00

Additional Time Required: \_\_\_\_\_

It is understood and mutually agreed that this form is intended to be used only to record minor modifications to the work, as authorized below:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Project Manager: David Fraser

Signature: Stam FMM Date: 12-22-09



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CONSTRUCTION, INC.

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# Change Order

## No. 3

Project Name: Eastman Sewer Company Sewer Headworks Improvements

Project Address: Grantham, NH

Contract No.: D90012 Date: January 26, 2010

**Description of Proposed Change:**

Reroute electrical service to new headwork's building along edge of road adding 100' to total length

Description of Work:	Qty	Unit	Rate	Extension
additional wire	100	FT	\$ -	\$ 2,000.00
		OH&P	15%	\$ 2,000.00
		Fuel Surcharge	5%	\$ -
<b>Cost of Proposed Change:</b>				<b>\$ 2,000.00</b>

Additional Time Required: \_\_\_\_\_

It is understood and mutually agreed that this form is intended to be used only to record minor modifications to the work, as authorized below:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Project Manager: David Fraser

Signature: [Signature] Date: 1-26-10



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CONSTRUCTION, INC.

Phone (603) 736-9100 - Fax (603) 736-9101

# Change Order

# No. 4

Project Name: Eastman Sewer Company Sewer Headworks Improvements

Project Address: Grantham, NH

Contract No.: D90012 Date: March 23, 2010

**Description of Proposed Change:**

Move dialer in blower building from electrical room to office area

Description of Work:	Qty	Unit	Rate	Extension
Relocate dialer			\$ -	\$ 1,250.00
		OH&P	15%	\$ 1,250.00
				\$ 1,250.00
		Fuel Surcharge	5%	\$ -
<b>Cost of Proposed Change:</b>				<b>\$ 1,250.00</b>

Additional Time Required: \_\_\_\_\_

It is understood and mutually agreed that this form is intended to be used only to record minor modifications to the work, as authorized below:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Signature: Scario Fran Date: 3-23-10

# M. J. Hayward

MECHANICAL / ELECTRICAL SERVICES, INC.  
12 Commerce Avenue  
West Lebanon, NH 03784  
Phone - (603) 298-6981 Fax - (603) 298-6985

# PROPOSAL

Page No. 1 of 2 Pages  
Date 07/08/10  
Job Number/Name 10-153  
Location WEST COVE PUMPING STATION

To: EASTMAN COMMUNITY ASSOCIATION  
P. O. BOX 53  
GRANTHAM, NH 03753  
ATTN: MR. BRIAN HARDING

Phone  
Fax  
Email

WE PROPOSE TO PERFORM THE FOLLOWING UPGRADES TO THE WEST COVE PUMPING STATION:

- \*INSTALL A NEW OUTDOOR 80 KW 240 V AC SINGLE PHASE LP GAS-FIRED GENERATOR AND 200 A TRANSFER SWITCH.
- \*GENERATOR TO BE SET ON A SIX-FOOT X FIFTEEN-FOOT X SIX-INCH REINFORCED PAD SET TO THE EAST SIDE OF THE PUMP HOUSE.
- \*INSTALL A VARIABLE FREQUENCY DRIVE (VFD), ONE (1) FOR EACH OF THE 20 HP PUMPS TO CONVERT THE INCOMING SINGLE PHASE POWER TO THREE PHASE POWER REQUIRED BY THE PUMPS.
- \*CONTROLS TO BE CONNECTED TO THE EXISTING PLC (PLC PROGRAMMING BY OTHERS).
- \*EXISTING 200 A SINGLE PHASE SERVICE TO REMAIN.
- \*INTERIOR BUILDING WIRING TO BE REPLACED AS NEEDED TO MEET CODE.
- \*INSTALL NEW BOXES AND WIRING AT THE WET WELL TO CONFORM TO NEC CLASS 1 DIVISION 1 (EXPLOSION PROOF) REQUIREMENTS.
- \*REMOVAL AND DISPOSAL OF THE EXISTING GENERATOR AND ROTO-PHASE.
- \*REMOVAL OF THE DAMPERS AND CLOSING THE OPENINGS TO MATCH EXISTING.
- \*LANDSCAPING AS SHOWN ON CLD PRINTS DATED JUNE 3, 2010.

INVESTMENT PRICE: \$107,525.00

THANK YOU.

[www.mjhayward.com](http://www.mjhayward.com) / <http://mjhayward.blogspot.com>

PLEASE SIGN AND RETURN ONE COPY.

The Proposed Work will be completed for the sum of \$107,525.00

(US Dollars).

Terms:

For M. J. Hayward Mechanical/Electrical Services, Inc. by \_\_\_\_\_  
Duly Authorized

NOTE: This proposal is VOID after 30 days. Payable upon receipt of invoice.

### ACCEPTANCE OF PROPOSAL AND CONDITIONS ON REVERSE

The above price and proposal are accepted. M. J. Hayward Mechanical/Electrical Services, Inc. is authorized to perform the Proposed Work as specified. I / We agree to all conditions set forth on the front and reverse of this proposal, including payment and interest terms. The person/s signing below are authorized to do so and warrant that the Owner of the Job Site is named above.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Owner or Duly Authorized

## QUOTATION AND PROPOSAL—TERMS AND CONDITIONS

**PLEASE NOTE: Your acceptance of this Quotation and Proposal ("Proposal") constitutes your acceptance of all of the terms and conditions set forth on both sides of this document. Any changes to this Proposal must be in writing and signed by M. J. Hayward Mechanical / Electrical Services, Inc. to be binding and effective.**

1. Terms – Payable upon receipt of Invoicing. M. J. Hayward Mechanical / Electrical Services, Inc. is not obligated to schedule or commence the Proposed Work before receiving the signed Quotation and Proposal from the customer / owner.
2. M. J. Hayward Mechanical / Electrical Services, Inc. will furnish all labor, materials, and equipment to complete the Proposed Work in a workmanlike manner and within a reasonable period of time following Owner's acceptance of the Proposal and payment of the Deposit. Any modification of the Proposed Work will only be provided with a written Change Order.
3. The manufacturer of any equipment warrants its equipment, and M. J. Hayward Mechanical / Electrical Services, Inc. warrants its own workmanship, for a period of one year from the date of completion of the Proposed Work. As an installer, M. J. Hayward Mechanical / Electrical Services, Inc. shall not be responsible for any defects relating to product. Owner agrees to make all product warranty claims only against the product's manufacturer. M. J. Hayward Mechanical / Electrical Services, Inc. is not responsible for damage caused to its work by other persons, including Owner. If any material or workmanship is defective, Owner's exclusive remedy is that M. J. Hayward Mechanical / Electrical Services, Inc. will replace or repair any part of the work that is defective. M. J. Hayward Mechanical / Electrical Services, Inc. shall not be liable for any incidental, subsequential, or consequential losses or damages claimed, regardless of the legal theory under which the claims are made. **THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION SET FORTH ON THE FACE OF THIS DOCUMENT. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. M. J. HAYWARD MECHANICAL / ELECTRICAL SERVICES, INC. SPECIFICALLY EXCLUDES ALL IMPLIED WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY LAW, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY.**
4. Amounts due and unpaid following completion of the Proposed Work are subject to a 1.5% monthly interest charge, compounded monthly on the entire outstanding balance, including accrued interest, computed from the date M. J. Hayward Mechanical / Electrical Services, Inc. leaves the Job Site. Owner agrees to pay all expenses, including reasonable attorney's fees, incurred by M. J. Hayward Mechanical / Electrical Services, Inc. in enforcing any provision of this Proposal, including M. J. Hayward Mechanical / Electrical Services, Inc.'s defense of any claim or counterclaim advanced by Owner in any action between them.
5. M. J. Hayward Mechanical / Electrical Services, Inc. may terminate this Proposal at any time prior to or after Owner's acceptance, effective immediately, by notice to Owner if: (A) Owner is in default of any of the terms and conditions of this Proposal; or (B) M. J. Hayward Mechanical / Electrical Services, Inc. is interrupted in its performance of the Proposed Work by Owner or Owner's agents or Owner fails to take reasonable steps to permit M. J. Hayward Mechanical / Electrical Services, Inc. reasonable access to the Job Site to enable M. J. Hayward Mechanical / Electrical Services, Inc. to perform the Proposed Work.
6. M. J. Hayward Mechanical / Electrical Services, Inc. agrees to provide Owner with advance verbal notice before commencing the Proposed Work. Following this notice, if Owner fails to provide M. J. Hayward Mechanical / Electrical Services, Inc. with access to the Job Site to commence the Proposed Work, or if Owner cancels or terminates the Proposed Work following acceptance of this Proposal, Owner is liable to M. J. Hayward Mechanical / Electrical Services, Inc. for all expenses incurred by M. J. Hayward Mechanical / Electrical Services, Inc., including M. J. Hayward Mechanical / Electrical Services, Inc.'s lost profit.
7. If M. J. Hayward Mechanical / Electrical Services, Inc. encounters unexpected concealed conditions that are different from those ordinarily encountered or is delayed due to the presence of hazardous material (including, but not limited to, asbestos or PCB), M. J. Hayward Mechanical / Electrical Services, Inc. shall be permitted to stop work immediately until the hazardous material is removed or rendered harmless and M. J. Hayward Mechanical / Electrical Services, Inc. and Owner agree to equitably adjust the price for the Proposed Work upward to reflect the delay, additional work required, and expenses incurred by M. J. Hayward Mechanical / Electrical Services, Inc. to complete the Proposed Work. This adjustment shall be evidenced by a Change Order.
8. Owner shall hold M. J. Hayward Mechanical / Electrical Services, Inc. liable for claims or losses only for personal injury or property damage caused by M. J. Hayward Mechanical / Electrical Services, Inc.'s employees' and agents' negligent acts or omissions. M. J. Hayward Mechanical / Electrical Services, Inc. is not responsible for delays or faults caused by circumstances beyond its control, including, but not limited to, delays caused by the Owner delays in transportation, or obtaining materials, labor difficulties, and acts of God. M. J. Hayward Mechanical / Electrical Services, Inc. shall be entitled to an equitable adjustment in the Proposal price for any additional costs due to unanticipated project delays or accelerations.
9. Owner is responsible for purchasing and maintaining property insurance upon the entire Job Site for its full insurable value and agrees to make no claim against M. J. Hayward Mechanical / Electrical Services, Inc. for any property losses.
10. All terms of this Proposal shall be governed by New Hampshire law. Any proceeding relating to this Proposal shall be heard only in a court of competent jurisdiction in New Hampshire.
11. This Proposal shall benefit and be binding on the parties' heirs, executors, administrators, successors, and assigns.

**DW 08-086**  
**EASTMAN SEWER COMPANY, INC.**  
**COMPANY RESPONSES TO STAFF DATA REQUESTS – SET 6**

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**Staff 6-4**

**Witness: Brian Harding**

Please provide substantiating documentation for the ECA Loan Payoff in the amount of \$19,375.00.

Response: One copy of the "Credit – Miscellaneous," which documents the payment of \$19,375.00 from Company to Eastman Community Association will be delivered overnight to Mr. Naylor.



Contact

Exit



Welcome to Lake Sunapee Bank and its First Brandon Division Online Banking Center

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- Current Transactions
- Bill Payment
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Customer Service Center, Monday-Friday 9-5pm & Saturday 9-12, (800)310-8356

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**CREDT - MISCELLANEOUS**

Date: 9/8/09      Amount: 19,375.00

DESCRIPTION:

Payment from ESE Inv # 95857  
P+1 for Short-Term Borrowing

19 375.00 ✓

Eastern Community Assoc.

Account # 828 808 2020

54

2617702008

ECA loan pay off

they also added to loan 58.23 loan fees at the beginning

18981.00 2060  
394.00  
3050

**DW 08-086**  
**EASTMAN SEWER COMPANY, INC.**  
**COMPANY RESPONSES TO STAFF DATA REQUESTS – SET 6**

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**Staff 6-5**

**Witness: Brian Harding**

Regarding the five projects that formed the basis of the anticipated step adjustment as approved by Order 24,989 (see page 6, paragraph 2, Step Adjustment):

- a) Please indicate the status of each project.
- b) Please indicate which projects were put out to bid and which were not, with appropriate explanation (was low bidder selected, why a specific project was not put out to bid, etc.).

**Response:**

The status of five projects and whether such projects were put out to bid are as follows:

**(1) West Cove B Pump Station**

This project is complete (wiring upgrades). Because the upgrades were recommended and designed by Water System Operators, Inc. (ESC's licensed operator), the project was not put out to bid but instead completed by WSO, Inc.

**(2) Grinder, Influent Flowmeter and pH Meter**

This was part of the Headworks project and is complete. The Headworks project was put out to bid and subsequently awarded to D.B.U. Construction (low bidder).

**(3) Headworks Modification**

This project is complete. The Headworks project was put out to bid and subsequently awarded to D.B.U. Construction (low bidder).

**(4) West Cove A Pump Station**

This project was completed in late 2010. Because of the limited funds available to complete this project (due to unanticipated engineering costs on the Headworks Project), the WCA project was not put out to bid but instead was "value engineered" and completed by electrical and mechanical contractor MJ Hayward (with approval of the ESC Board of Directors).

**(5) West Cove A Overflow Structure**

This project was eliminated from the WCA project after consultation with the ESC Board, the project contractor – MJ Hayward, ESC contract operator – Water System Operators and residents of the West Cove A area. It was agreed that the planned upgrades in the WCA project were sufficient to provide adequate fail-safe measures and the overflow structure was an expensive and unnecessary redundancy.

**DW 08-086**  
**EASTMAN SEWER COMPANY, INC.**  
**COMPANY RESPONSES TO STAFF DATA REQUESTS – SET 6**

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**Staff 6-6**

**Witness: Brian Harding**

Were any stimulus funds, PSNH grants for energy efficient equipment upgrades, or other funds, other than the bank loan itself, applied for or secured in relation to any of the projects? If so, please provide details. If not, please explain.

**Response:** The Company did apply for stimulus funds, but did not receive any such funds.

**DW 08-086**  
**EASTMAN SEWER COMPANY, INC.**  
**COMPANY RESPONSES TO STAFF DATA REQUESTS – SET 6**

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**Staff 6-7**

**Witness: Brian Harding**

Has the Company established the receivables account on its balance sheet and booked offsetting credits to CIAC, as contemplated by paragraph II.E. of the May 28, 2009 stipulation executed by Eastman and Staff?

Response: Yes.