

**MCLANE**  
MIDDLETON

THOMAS B. GETZ  
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July 24, 2019

**Via Hand Delivery and Electronic Mail**

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

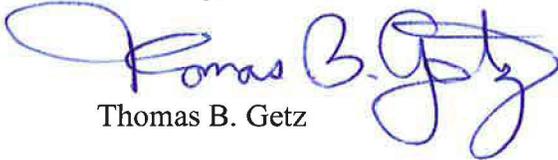
**Re: DE 19-XXX, Abenaki Water Company, Inc.  
Complaint Regarding Water Main Break**

Dear Ms. Howland:

Enclosed, pursuant to Puc 204.01 and 203.02, are an original and six copies of Omni Mount Washington Hotel, LLC's Complaint Regarding Water Main Break. An electronic copy has been filed with the Commission and the Office of the Consumer Advocate.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Thomas B. Getz

TBG:slb  
Enclosures

cc: Service List (DE 17-165)  
AB Excavating Inc.

**THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DOCKET NO. DW 19-XXX**

**ABENAKI WATER COMPANY, INC.  
ROSEBROOK WATER SYSTEM**

**COMPLAINT REGARDING WATER MAIN BREAK**

NOW COMES Omni Mount Washington Hotel, LLC (“Omni”), by and through its attorneys, McLane Middleton, Professional Association, pursuant to RSA 365:1, and asks that the New Hampshire Public Utilities Commission (“PUC” or “Commission”) find that Abenaki Water Company, Inc. (“Abenaki”) is responsible for the repair of the break in the 8-inch water main that occurred on the Rosebrook Water System (“Rosebrook”) on April 21, 2019. In support, Omni states as follows:

1. Early on Easter Sunday morning, April 21, 2019, a break occurred in Abenaki’s 8-inch water main serving the Mount Washington Hotel (“Hotel”) and several surrounding buildings. The 8-inch water main runs approximately 1,600 feet southeasterly from Base Road past the Caretaker’s Residence,<sup>1</sup> the Print Shop, and Stock Room, terminating at the Hotel, where there is an exterior shut-off valve. Moreover, an additional 2,200 feet of smaller diameter pipe branches off the 8-inch water main near the northwest corner of the Hotel and extends behind the Hotel to serve the Outdoor Pool/Cabana, Spa Building, and Nordic/Golf Building.<sup>2</sup> See Attachment A.

2. Tom Clark and Steve Charron from Omni’s Engineering Department discovered a break in the water main at approximately 6:30 am when they noticed that water was seeping to

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<sup>1</sup> The 8-inch water main serves the Caretaker’s Residence, which is separately metered and billed, and has its own shut-off valve.

<sup>2</sup> All three buildings are separately metered and billed, and have their own shut-off valves.

the surface near the Print Shop. As described in the Incident Report prepared by Omni's Director of Loss Prevention, Peter Eakley, he responded to the scene and found that there was approximately six inches of water in the basement of the Caretaker's Residence. See Attachment B. Phil Sausville from Abenaki arrived to the scene at approximately 8:40 am, and indicated that Abenaki would not be able to repair the main until Tuesday, April 23. After a conference call among Mr. Sausville, Taylor deOgburn from Abenaki, Mr. Eakley, Josh DeBottis, Omni's General Manager, and Jeremy Olson, the Twin Mountain Fire Chief, and with Abenaki's agreement,<sup>3</sup> AB Excavating Inc. was dispatched to the site, arriving at approximately 10:45 am. AB Excavating located the broken main at approximately 6:00 pm but neither Abenaki nor AB Excavating had the necessary parts available to complete the repairs. AB Excavating, with Omni's and Chief Olson's assistance, procured the necessary parts from the Towns of Lancaster and Carroll. AB Excavating resumed work at 6:30 am on Monday, April 22, and completed the repair by 12:30 pm.

3. On May 1, 2019, AB Excavating Inc. submitted a bill for \$22,848.74 to Abenaki. Pauline Doucette, Abenaki's Office Manager and Accountant, declined to pay the bill, responding that: "the work was done for Omni and should be billed directly to Omni." Donald Vaughan, Abenaki's Chairman, confirmed Ms. Doucette's position, stating: "Omni is responsible for the repairs to its *service line*. The basis for her position is expressed clearly in the Company's Terms and Conditions." (Emphasis added.) See e-mail chain provided as Attachment C for an account of communications among AB Excavating, Abenaki, and Omni.

4. The basis for Abenaki's position that the 8-inch water main is a "service line" for which Abenaki is not responsible appears to stem from tariff changes made in Docket No. DW

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<sup>3</sup> Mr. DeBottis asked Messrs. Sausville and deOgburn whether Mr. Vaughan was aware of the situation and they confirmed that he was. They also acknowledged Abenaki's responsibility for the repair.

16-448. See Order No. 25,934 (August 9, 2016) approving Abenaki's acquisition of the Rosebrook Water Company. In that proceeding, Abenaki entered into a settlement agreement that, among other things, included "*minor* tariff amendments as detailed on Revised Exhibit H to the Joint Petition, filed July 22, 2016." (Emphasis supplied.) See Attachments D and E. Notably, Revised Exhibit H, going forward, changes the terms and conditions of service in regard to a "Service Pipe" such that Abenaki would only have maintenance and repair responsibility "from the main to the property line" while from the property line to the premises served "the service pipe shall be installed, owned and maintained by the customer(s)."

5. Abenaki's attempt to shift responsibility for repair of the existing water main to Omni is unjustified. As explained more fully below, the tariff changes do not alter the fact that Abenaki continues to have the responsibility to maintain and repair the 8-inch water main. To that point, tariffs are prospective documents and the "minor changes" made in Docket No. DW 16-484, while they may affect future customers, do not magically change the physical location of the Omni shut-off valves, do not supersede the deeds and easements evincing Abenaki's obligations, nor do they otherwise retroactively change the obligations of customers.<sup>4</sup> Finally, past practice and the course of dealings since Abenaki's acquisition demonstrates that it understood its responsibility for the water system infrastructure located on Omni property.

6. First, as part of its acquisition of Rosebrook, Abenaki purchased various assets including easements for pipes and mains, in particular the 8-inch water main that runs from Base Road to the Hotel along an easement granted to Rosebrook. A review of the deeds and

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<sup>4</sup> During Mr. Vaughan's cross-examination in Docket No. DW 16-448, Commissioner Bailey observed that "it looks to me like, under Rosebrook, the utility owned the service from the property line to the customer's house. And you're changing that so now the customer owns the service line from the property line to the house?" Commissioner Bailey had it exactly right. Mr. Vaughan said that "when we have an opportunity, we want to move those curb stops to the property line." Tr. July 28, 2016 at pp. 35-36. This is not such an opportunity, however, and it is disingenuous for Abenaki to take the position that the exterior shut-off valve at the Hotel is no longer the shut-off valve but that the isolation valve in Base Road is.

easements listed in Schedule 1.1, Purchased Assets, Exhibit A to the Asset Purchase Agreement filed by Abenaki in Docket No. DW 16-448, shows that Abenaki has the responsibility for the water mains and pipelines on Omni's property. See Attachment F. Specifically, it was granted: "The perpetual right and easement to construct, reconstruct, install, repair, replace and maintain pipes, mains, manholes, conduits, pumps, pump houses, storage tanks, hydrants, wells, trenches, and such other appurtenances (all collectively referred to as the "Water System") as may be reasonably necessary to provide water service to the residents of the Bretton Woods Resort..." (Easement Deed from GS Phoenix, LLC to Rosebrook Water Company, Inc., dated December 3, 1996.) Accordingly, Abenaki is responsible for the repair of the water main and therefore the payment to AB Excavating Inc.

7. Second, Abenaki would like the 8-inch water main that runs from Base Road to the Hotel to be a "service line" or "service pipe" as currently described in its tariff, but it is not. As shown in Attachment E, prior to Abenaki's acquisition the Rosebrook tariff set forth the terms and conditions for the installation, ownership and maintenance of service pipes for commercial buildings thus: "All service pipes up to and including the premises' exterior shut-off valve shall be owned and maintained by the Company. From the exterior shut-off valve to the premises served, the service pipe shall be installed, owned and maintained by the customer(s)." In the circumstances of the Hotel, the shut-off valve is and has been located at the exterior of the Hotel, and Abenaki has the "perpetual right and easement" to, among other things, maintain and repair the 8-inch water main from Base Road to the shut-off valve. The isolation valve in Base Road is not the "premises' exterior shut-off valve" for the Hotel.

8. As part of its acquisition, Abenaki managed to amend the Rosebrook tariff so that, prospectively, Abenaki will have responsibility from a connection made in the street nearest the

customer's premises to a shut-off valve at the property line, with the customer having responsibility to own, install and maintain the pipe from the shut-off valve to its premises. The problem with Abenaki's rationale for refusing to pay AB Excavating's bill is that, as noted above, the tariff change only applies prospectively to new commercial customers; not the Hotel. Abenaki cannot retroactively evade its responsibility to maintain and repair the 8-inch main that delivers water to the Hotel.

9. Third, Abenaki's position belies the conduct of its employees on Easter Sunday and other occasions. For example, Abenaki has continued to maintain the hydrants located on Hotel property and recently painted hydrants and valve covers near the Hotel and the Bretton Arms Inn.

10. Furthermore, Abenaki chooses to ignore that the 8-inch water main from Base Road to the Hotel is just one part of the extensive network of pipes that comprise the Rosebrook water system. As a consequence of the unique history of this resort community, significant portions of the water system on the west side of Route 302, including the vast majority of the central 16-inch backbone of the system on that side of the highway and the water tank, also lie within Omni property. Omni owns other commercial buildings in this area, including the Base Lodge, the Ski Area Maintenance Building, Rosebrook Recreation Center, the First Aid Building, and the Alpine Club. Carrying Abenaki's argument to its logical conclusion, Omni would suddenly be responsible for all of these mains as well. The same illogic would apply to the 1,000 feet of 6-inch water main that runs from Base Road to the Bretton Arms Inn and feeds the Stables and the Administrative Building. See Attachment A.

11. By the same theory, the relationship between Abenaki and the various homeowners' associations would change in those instances where the shut-off valves are outside

the premises instead of at the property line. For example, it appears that Abenaki could take the similar position for Fairway Village and argue that its responsibilities end at Base Road.

Customers would henceforth be responsible for maintaining any Rosebrook infrastructure located within the boundaries of association property, irrespective of where the shut-off valves to the premises are actually located.

12. Abenaki's new theory also has a ripple effect on its proposed water pressure reduction project in that it raises questions about what it believes with respect to who would own and be responsible for the construction and maintenance of facilities such as looping mains that comprise Phase II as described in its April 8, 2019 Reconciliation filing. See Attachment G.

13. Finally, Abenaki made a number of unfounded assertions about the water main break in its May 10, 2019 Request for Concurrence on Scope of Engineering and Phase II. See Exhibit H. In that letter, Ms. Brown said: "Due to the holiday weekend, Omni urged the Company to delay shutting off the service until Monday when it could effectuate repair of the line. The Company remained on site to monitor the leak and the impact of the leak on its water system until the repair."<sup>5</sup> As noted in his May 11, 2019 letter, provided as Attachment I, Mr. Eakley reports that Ms. Brown was not on scene and does not correctly portray what occurred. He indicated that: "At no time did any member of the Resort encourage or imply that the repair and shutting off the water should be delayed Until Monday, 22 April 2019, this statement is completely inaccurate."

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<sup>5</sup> Ms. Brown also asserted that the "break illustrates how significantly the extreme high pressure compromises the water system and adversely affects customers." There is no factual support, however, for the conclusion that the break was caused by high water pressure. She also said that during the March technical session "NHDES stated that the service lines are prone to leaking under high pressure." As Mr. Eakley noted: "Nobody on scene, including the Water Company representatives, ever concluded that the cause was from high pressure. The hole in the pipe could have been caused by a multitude of reasons, including ground setline/shifting, fatigued pipe, or the joint that feeds the caretakers house splitting."

14. In conclusion, Abenaki seeks to avoid responsibility for a duty it clearly owes pursuant to RSA 374:1, that is, to “furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.” Through its misapplication of the tariff, its assertion as to tariff changes it would seek to absolve it of responsibility for leaks in high water pressure areas, and the extraordinary relief of collecting costs related to the engineering of a project before it is deemed used and useful,<sup>6</sup> Abenaki’s transparent goal is to shift risk on to customers at every opportunity. Abenaki’s refusal to pay AB Excavating’s bill is neither just nor reasonable.

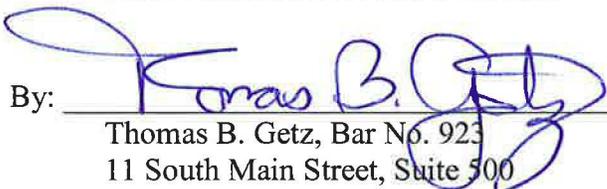
WHEREFORE, Omni respectfully requests that the Commission:

- A. Find that Abenaki is responsible for the repair of the 8-inch water main;
- B. Direct Abenaki to make payment to AB Excavating Inc.; and
- C. Grant such further relief as it deems appropriate.

Respectfully submitted,

Omni Mount Washington Hotel, LLC  
By Its Attorneys,  
McLANE MIDDLETON,  
PROFESSIONAL ASSOCIATION

Dated: July 24, 2019

By: 

Thomas B. Getz, Bar No. 923  
11 South Main Street, Suite 500  
Concord, NH 03301  
(603) 226-0400  
[thomas.getz@mclane.com](mailto:thomas.getz@mclane.com)

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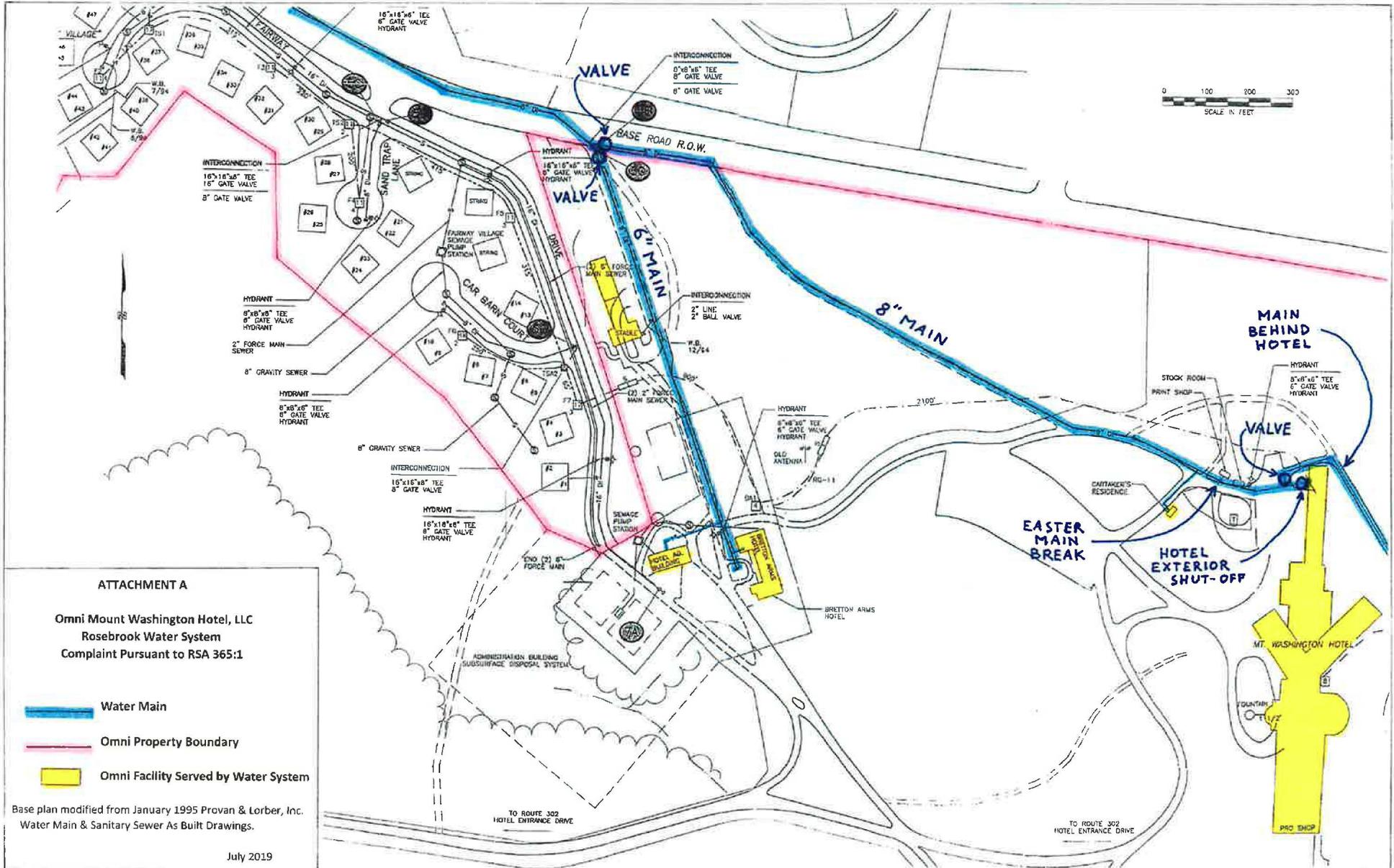
<sup>6</sup> See, for example, the Commission’s discussion of step increases in Docket DW 01-081, *Pennihcuck Water Works, Inc.*, Order No. 23,923 (March 1, 2002) at p. 13-15. In that case, the Commission found: “We believe the limitation of the items included in the step adjustment in this case, so as to allow recovery only of expenditures of an extraordinary nature for items which are in service and necessary for the provision of safe and adequate service, is consistent with meeting the obligations that rates be just and reasonable.”

Certificate of Service

I hereby certify that on the 24<sup>th</sup> of July, 2019, an original and six copies of the foregoing Complaint was hand-delivered to the New Hampshire Public Utilities Commission and an electronic copy was served upon the Distribution List.

  
Thomas B. Getz

# **ATTACHMENT A**



**ATTACHMENT A**

**Omni Mount Washington Hotel, LLC  
Rosebrook Water System  
Complaint Pursuant to RSA 365:1**

- Water Main
- Omni Property Boundary
- Omni Facility Served by Water System

Base plan modified from January 1995 Provan & Lorber, Inc.  
Water Main & Sanitary Sewer As Built Drawings.

July 2019

# **ATTACHMENT B**

# OMNI HOTELS & RESORTS

## Incident Report

Property: MountWashington

Report #: 190421-0005

Supplement

Type of Incident <b>Property Damage - Hotel</b>		Location of Incident <b>Driveway by Paint Shop</b>	Condition of Area <b>See report</b>	Routing <input type="checkbox"/> Corporate Risk Management
Date of Incident <b>04/21/2019</b>	Time of Incident <b>0600</b>	Date Reported <b>04/21/2019</b>	Time Reported <b>0700</b>	
<b>Subject</b>				
Subject Name (last) (first) (middle) <b>MTWASH</b>		Subject Address (street) (city) (state) (zip) <b>310 Mount Washington Rd Bretton Woods NH 03575</b>		
Age	Primary Phone <b>(603)278-4610</b>	Office <b>Office</b>	Secondary Phone	Subject Type
Speak directly with Subject?	Describe Subject Attitude/ Concerns			
<b>Property</b>				
Loss/Damage to Property <b>YES</b>		Subject Estimate of Loss/Damage <b>TBD</b>		
Describe (quantity, brand, style, color, model #, serial #, etc)		<b>Attach separate Property Report Form as needed</b>		
<b>See Report</b>				
<b>Injury</b>				
If injury, nature of injury		First Aid Offered	First Aid Accepted	
Type of First Aid Administered			Administered by	
Transported to Dr/Hospital (Name)			Transported by	
<b>Witness</b>				
Witness Name (last) (first) (middle)		Witness Address (street) (city) (state) (zip)		
Primary Phone	Secondary Phone	Witness Type		
Speak directly with Witness?	Describe Witness Attitude/ Concerns			
<b>Police/Fire/EMS</b>				
Responding Agency				
Notification Date/Time	Case #	Unit #	Badge #	
<b>Additional Documentation</b>				
<input checked="" type="checkbox"/> Photos - Description _____ <input type="checkbox"/> Guest Folio - Description _____ <input type="checkbox"/> Police Report - Description _____ <input type="checkbox"/> Diagram - Description _____ <input type="checkbox"/> Room Access Log - Description _____ <input type="checkbox"/> Witness Statement - Description _____ <input type="checkbox"/> Other - Description _____				
<b>Narrative Summary</b>				
<b>Please see Narrative Page for details</b>				
Prepared By <b>Jonathan McEntire</b>		Date/Time Prepared <b>04/21/2019</b> <span style="float: right;"><b>0936</b></span>		
Reviewed By <b>Peter Eakley</b>		Date/Time Reviewed <b>04/22/2019</b>		

# OMNI HOTELS & RESORTS

## INCIDENT REPORT

REPORT #:  
190421-0005

Supplement

NARRATIVE

1. Assignment: Broken Water Main - Main Feed to MTWASH Hotel
- 2.
- 3.
4. Narrative:
- 5.
6. On 21 April 2019 at approximately 0700 the undersigned was notified by the MTWASH Engineering Department that a water pipe had broken
7. under the pavement by the print shop and was leaking to the surface.
- 8.
9. The undersigned responded to the scene and also discovered that the basement Caretaker's House had approximately 6 inches of water. The
10. undersigned notified, Mr. Peter T. Eakley - Director of Loss Prevention and Abenaki Water Company of the incident.
- 11.
12. Engineering and the undersigned set up pumps in the basement of the Caretaker's House and attempted to divert the water flow to a culvert. At
13. approximately 0840 an employee from Abenaki Water Company arrived on scene.
- 14.
15. Scene command was turned over to senior Resort Leadership. Abenaki Water Company stated they would not be able to repair the broken pipe
16. until 23 April 2019. This was an unacceptable response and our own contractors were dispatched.
- 17.
18. At 1300 hours water had to be turned off to the MTWASH Hotel. Mr. Eakley met with Twin Mountain Fire and Rescue. Guests were
19. allowed to remain in the hotel, but would not be allowed to sleep in the structure. Impacted guests were reassigned to vacant rooms in
20. the Motor Lodge. In addition, associates who live in the dorms, who were impacted, were moved to unaffected buildings.
- 21.
- 22.
23. The scene was excavated and the broken main (8 inch diameter) was found to be 12-14 feet below the surface at approximately 1800 hours.
24. The pipe could not be completely repaired until 22 April 2019, do to needed materials.
- 25.
26. Whereas there was no sprinkler system, Twin Mountain Fire and Rescue assigned an engine company to the MTWASH from 2100-0700. It was
27. determined an automatic first alarm would be called if there was any activated fire alarm, bringing tanker trucks (since fire hydrants would not
28. operate) to the scene for a water supply.
- 29.
30. On 22 April 2019, the contractors returned to the scene at 0630. The pipe was repaired and water restored at 1230, with an all clear to occupy
31. the Hotel at 1315. As part of the all clear all ice machines were flushed, all water systems in the building flushed, and sprinkler pressure
32. checked to be operational. Twin Mountain Fire and Rescue was updated.
- 33.
34. Calculation for total cost for this event will be conducted by senior resort management. The cause of the water main break is assumed to be
35. normal wear and tear to the private water system.
- 36.
- 37.
38. Group:
39. Transient:
40. Associate:
41. Patron:
- 42.
43. Guest Information:
44. Name:
45. Address:
46. Phone:
47. Email:
48. Check-in:

Prepared By  
**Jonathan McEntire**

Date/Time Prepared  
04/21/2019

Reviewed By  
**Peter Eakley**

Date/Time Prepared  
04/22/2019

Corporate Risk Management

# OMNI HOTELS & RESORTS

## INCIDENT REPORT

REPORT #:  
190421-0005

Supplement

### NARRATIVE

1. Check-out:
- 2.
3. Voluntary Statement:
- 4.
- 5.
6. Timeline: see above
7. Investigation:
8. Attachments:
9. Notifications: Director of Loss Prevention Mr. Peter T. Eakley
10. Disposition: Closed
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Prepared By  
**Jonathan McEntire**

Date/Time Prepared  
**04/21/2019**

Reviewed By  
**Peter Eakley**

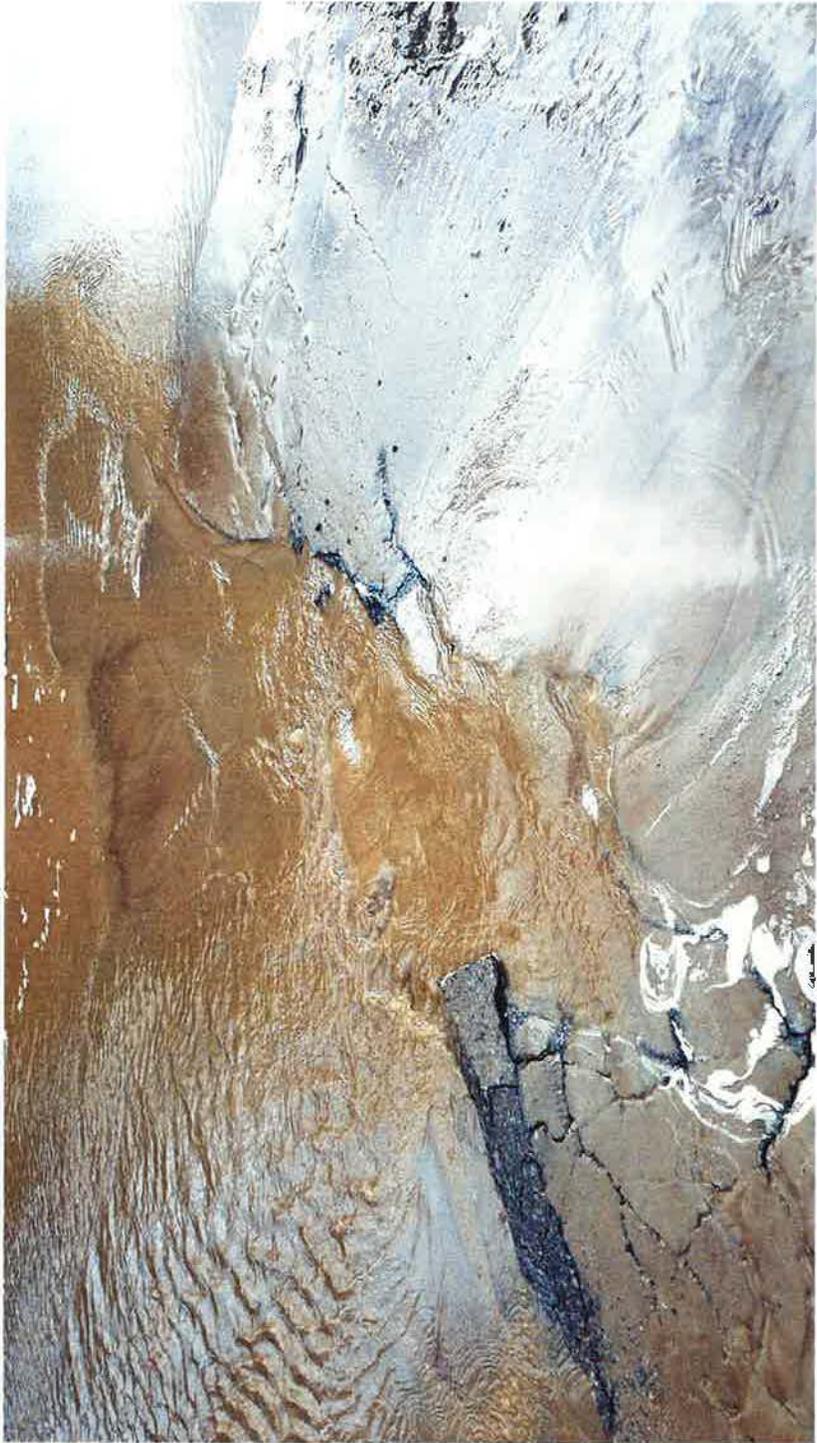
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**04/22/2019**

Corporate Risk Management



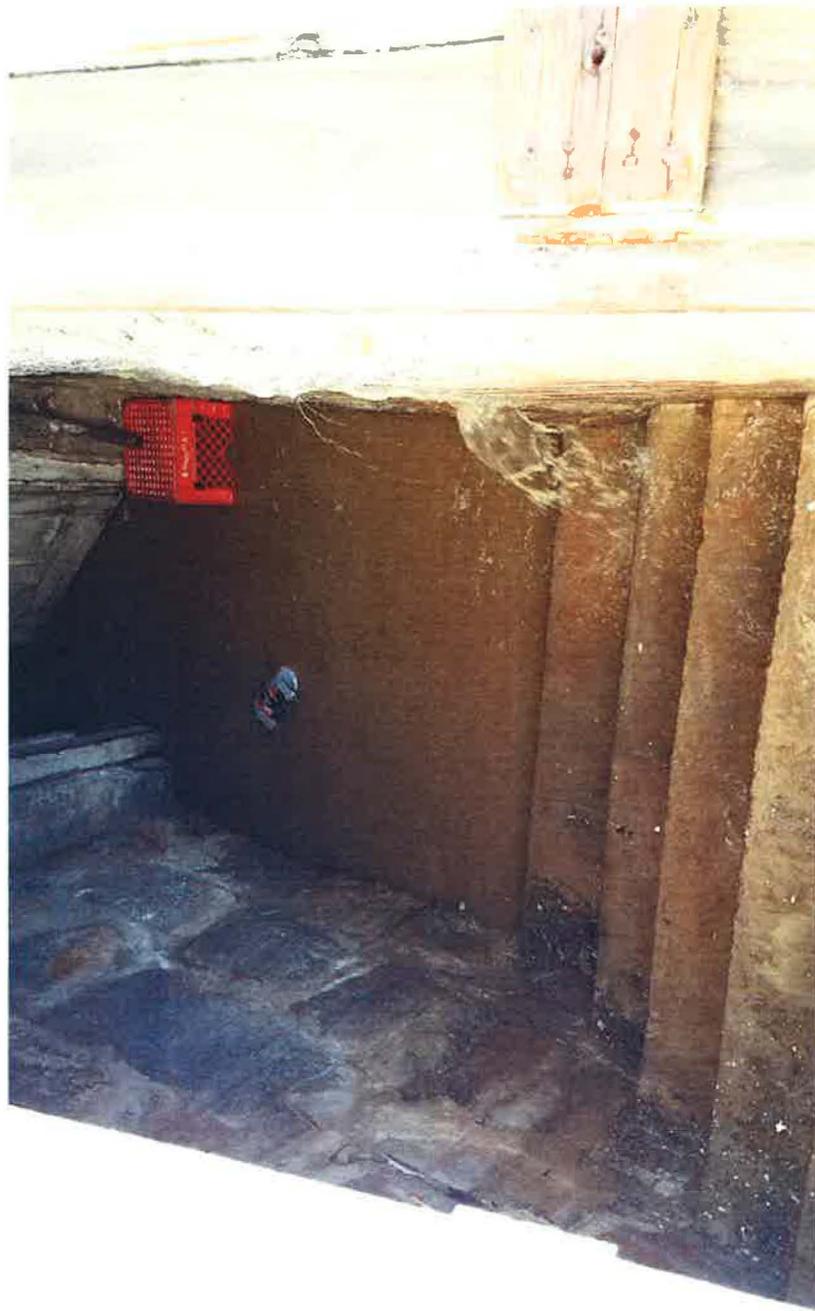




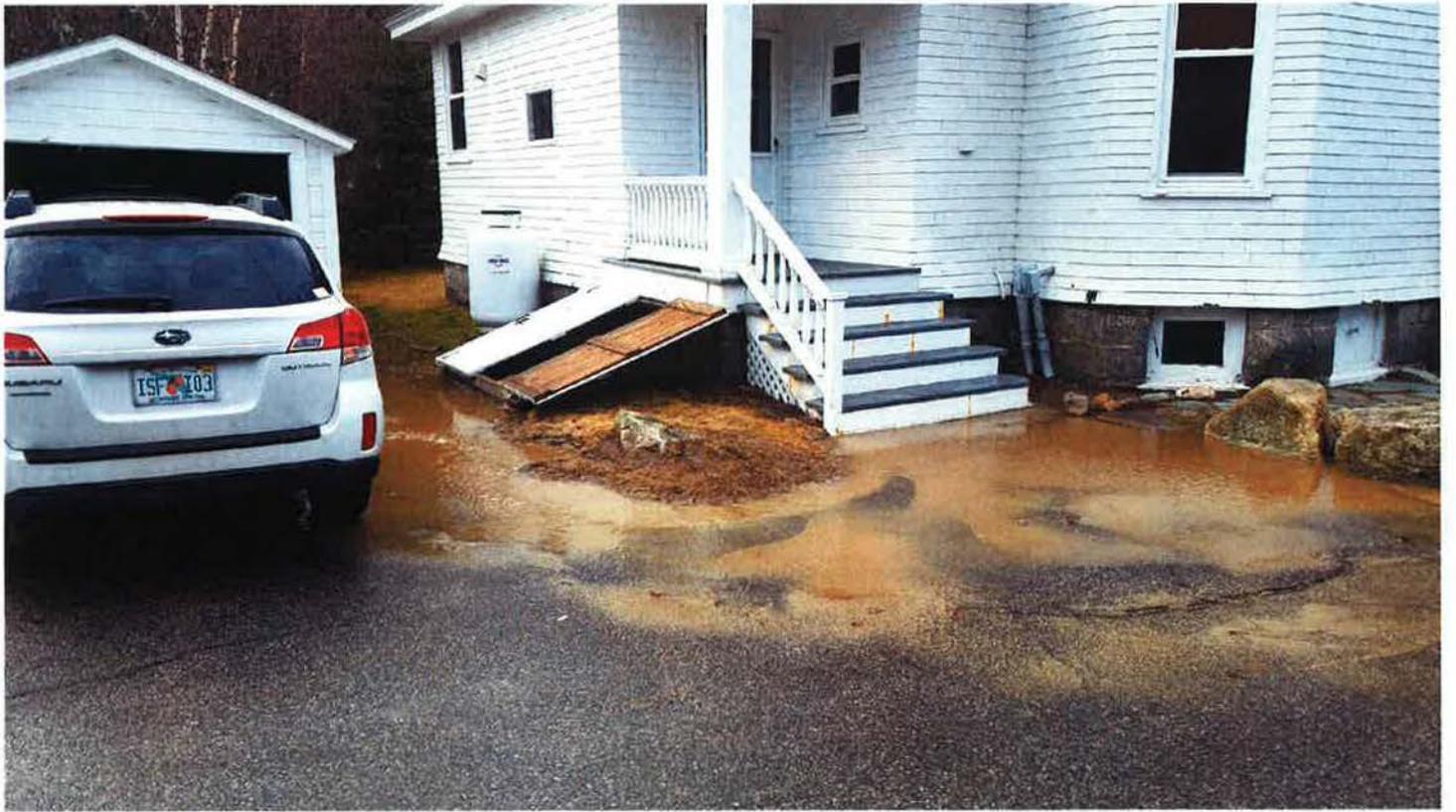








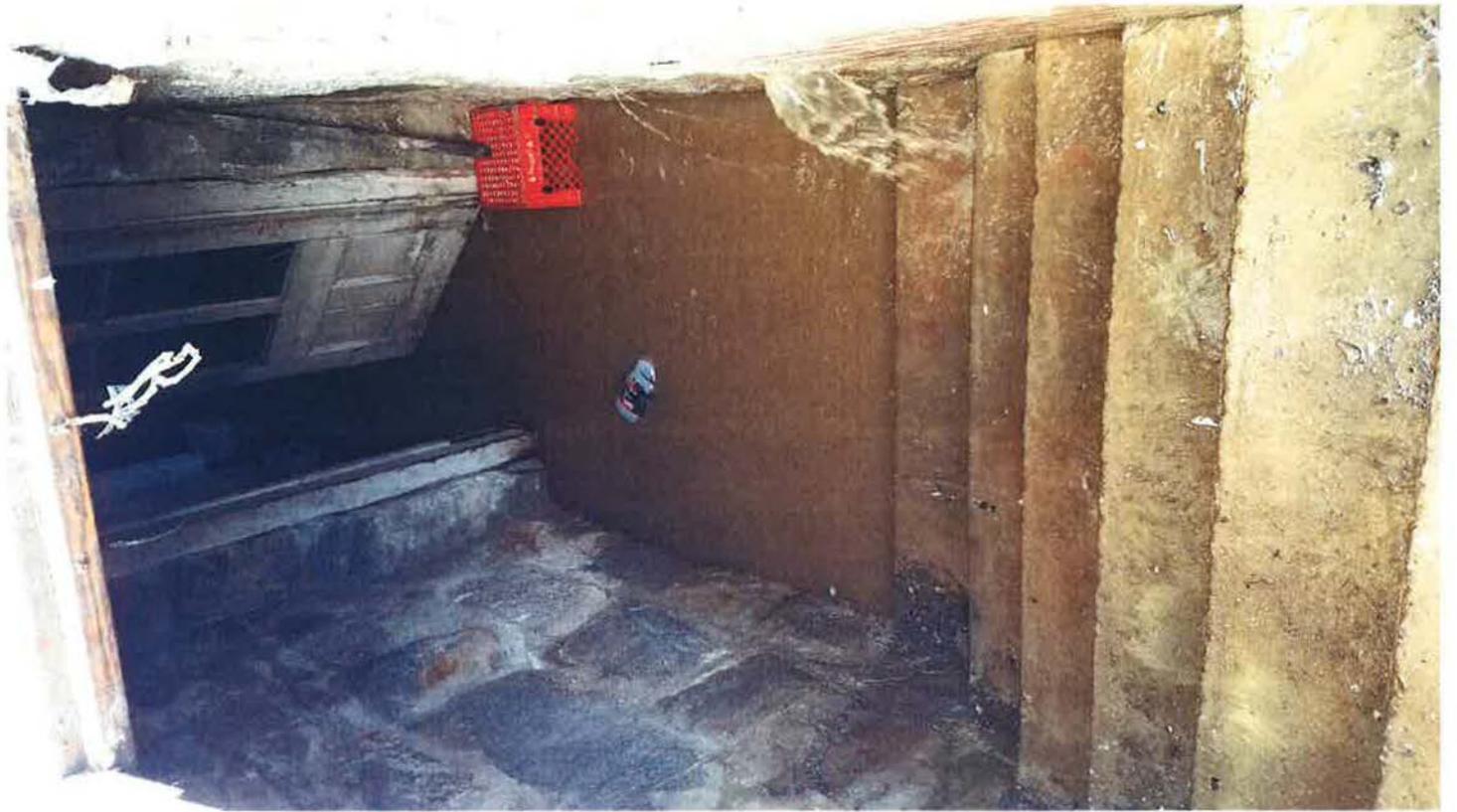




















































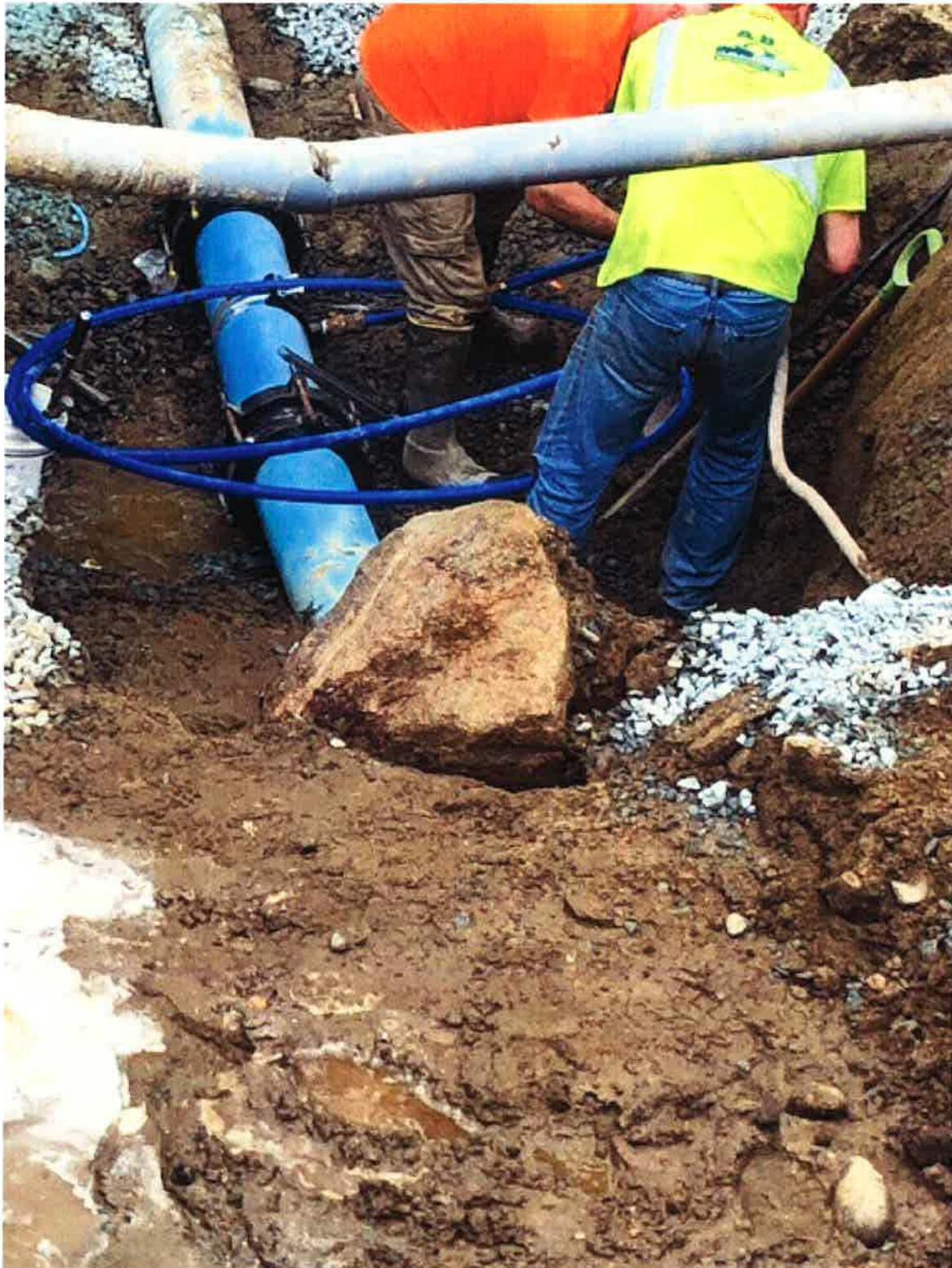
















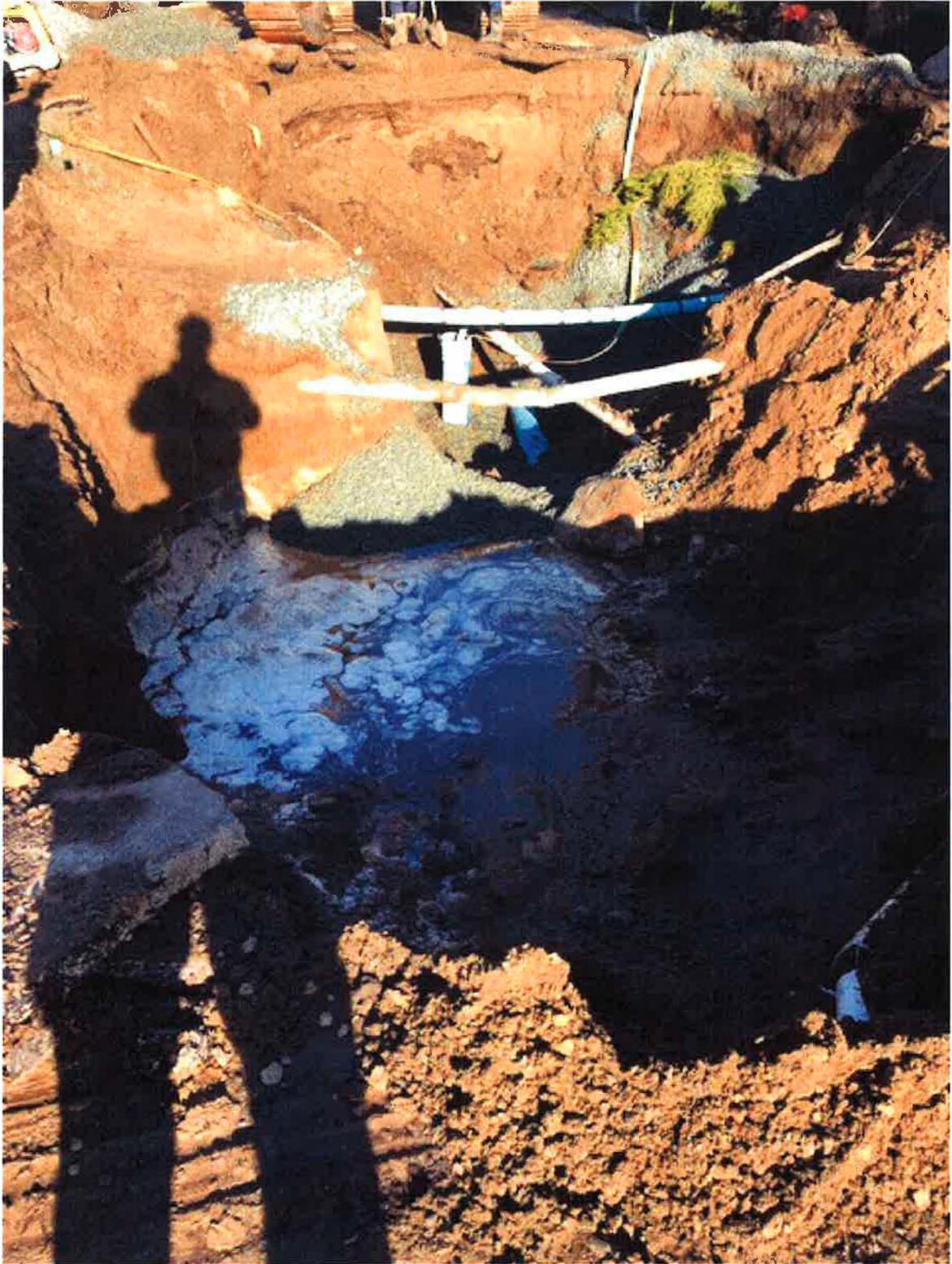






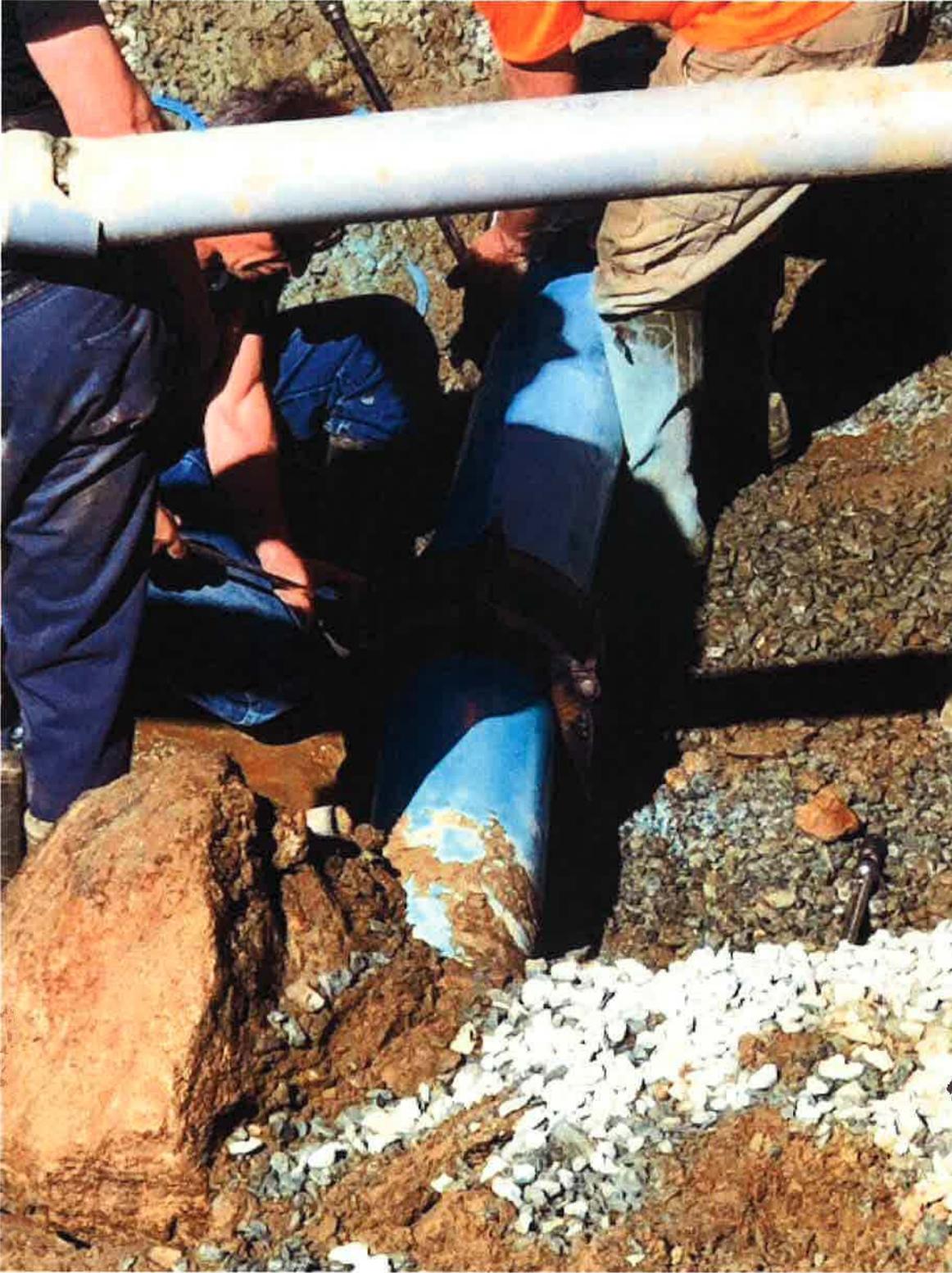


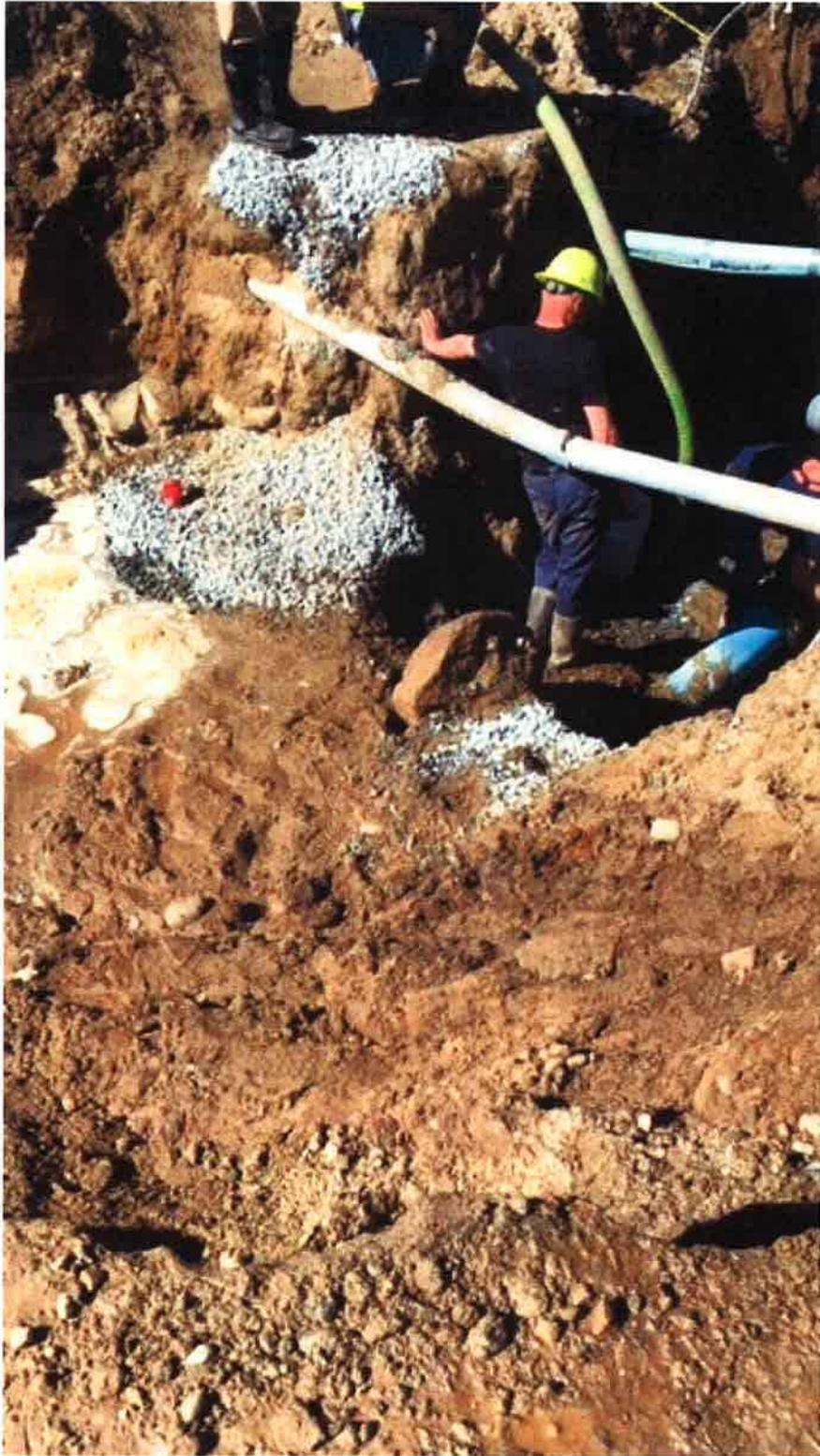












# **ATTACHMENT C**

## Burgess, Stacey

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**From:** Don Vaughan <dvaughan@newenglandservicecompany.com>  
**Sent:** Tuesday, May 28, 2019 5:45 PM  
**To:** Getz, Thomas  
**Cc:** 'Marcia Brown'; 'Christopher Ellms'; 'Pauline Doucette'  
**Subject:** RE: Invoice 1002162 from AB Excavating Inc.

Hi Tom,  
Pauline is absolutely correct in her position stating that Omni is responsible for the repairs to its service line. The basis for her position is expressed clearly in the Company's Terms and Conditions, approved by the PUC. In fact, this is a common customer responsibility with most water utilities.  
Don V.

**From:** Getz, Thomas [mailto:Thomas.Getz@MCLANE.com]  
**Sent:** Tuesday, May 28, 2019 4:35 PM  
**To:** Don Vaughan <dvaughan@newenglandservicecompany.com>  
**Cc:** Marcia Brown <mab@nhbrownlaw.com>; Christopher Ellms <CELLms@omnihotels.com>  
**Subject:** FW: Invoice 1002162 from AB Excavating Inc.

Don,  
Below is an email chain that Chris Ellms forwarded to me about the Easter Sunday main break.  
In the highlighted portion, Pauline takes the position that Abenaki is not responsible for the repairs made by AB Excavating.  
Does this accurately represent the Company's position and, if so, what is the basis for saying that Omni, and not Abenaki, is responsible for the repairs?  
Thanks  
Tom

**From:** Travis Horan [mailto:travis@abexcavatinginc.com]  
**Sent:** Monday, May 06, 2019 12:26 PM  
**To:** Christopher Ellms <CELLms@omnihotels.com>  
**Subject:** [EXTERNAL] FW: Invoice 1002162 from AB Excavating Inc.

Chris,

Please see the email chain below from Pauline.

Let me know if you need anything.

Thank you,

**Travis Horan**



653 Main Street, Lancaster, NH 03584

(603) 616-8678 Cell  
(603) 788-5110 Office  
Visit us online at: [www.abexcavatinginc.com](http://www.abexcavatinginc.com)

**From:** David Begin <[david@abexcavatinginc.com](mailto:david@abexcavatinginc.com)>  
**Sent:** Monday, May 6, 2019 12:24 PM  
**To:** Travis Horan <[travis@abexcavatinginc.com](mailto:travis@abexcavatinginc.com)>  
**Subject:** FW: Invoice 1002162 from AB Excavating Inc.

**David Begin**  
**Controller**  
[david@abexcavatinginc.com](mailto:david@abexcavatinginc.com)



653 Main Street  
Lancaster, NH 03584  
Office - (603) 788-5110  
Visit us online at: [www.abexcavatinginc.com](http://www.abexcavatinginc.com)

**From:** Pauline Doucette <[pdoucette@newenglandservicecompany.com](mailto:pdoucette@newenglandservicecompany.com)>  
**Sent:** Thursday, May 2, 2019 9:08 AM  
**To:** David Begin <[david@abexcavatinginc.com](mailto:david@abexcavatinginc.com)>  
**Subject:** RE: Invoice 1002162 from AB Excavating Inc.

Good Morning David:

After talking with the field operators for Abenaki Water, the main break was found on Omni's Service Line, which is after the shut off valve. This makes the repair on Omni's side of the service line and is their responsibility of maintenance and repairs. Please bill Omni accordingly.

Thanks,  
Pauline

**From:** David Begin <[david@abexcavatinginc.com](mailto:david@abexcavatinginc.com)>  
**Sent:** Thursday, May 2, 2019 6:57 AM  
**To:** Pauline Doucette <[pdoucette@newenglandservicecompany.com](mailto:pdoucette@newenglandservicecompany.com)>  
**Subject:** RE: Invoice 1002162 from AB Excavating Inc.

Per Chris Elms at Omni, the bill needs to be sent to you.

**David Begin**  
**Controller**  
[david@abexcavatinginc.com](mailto:david@abexcavatinginc.com)



653 Main Street  
Lancaster, NH 03584  
Office - (603) 788-5110  
Visit us online at: [www.abexcavatinginc.com](http://www.abexcavatinginc.com)

**From:** Pauline Doucette <[pdoucette@newenglandservicecompany.com](mailto:pdoucette@newenglandservicecompany.com)>  
**Sent:** Wednesday, May 1, 2019 7:37 PM  
**To:** David Begin <[david@abexcavatinginc.com](mailto:david@abexcavatinginc.com)>; [customerservice@abenakiwatercompany.com](mailto:customerservice@abenakiwatercompany.com)  
**Subject:** RE: Invoice 1002162 from AB Excavating Inc.

Hello:

I believe this invoice is for the work that was done for Omni and should be billed directly to Omni.

Thanks,  
Pauline Doucette

**From:** David Begin <[david@abexcavatinginc.com](mailto:david@abexcavatinginc.com)>  
**Sent:** Wednesday, May 1, 2019 4:37 PM  
**To:** [customerservice@abenakiwatercompany.com](mailto:customerservice@abenakiwatercompany.com)  
**Subject:** Invoice 1002162 from AB Excavating Inc.

## AB Excavating Inc.

**Invoice** Due:04/26/2019  
1002162

Amount Due: **\$22,848.74**

Dear Customer:

Your invoice-1002162 for 22,848.74 is attached. Please remit payment at your earliest convenience.

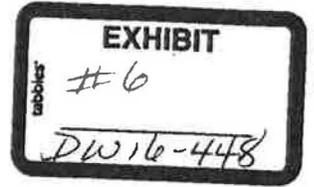
Thank you for your business - we appreciate it very much.

Sincerely,  
AB Excavating Inc.

603-788-5110

The information contained in this electronic message may be confidential, and the message is for the use of intended recipients only. If you are not an intended recipient, do not disseminate, copy, or disclose this communication or its contents. If you have received this communication in error, please immediately notify me by reply email or McLane Middleton at (603) 625-6464 and permanently delete this communication. If tax or other legal advice is contained in this email, please recognize that it may not reflect the level of analysis that would go into more formal advice or a formal legal opinion. [xdf]

# **ATTACHMENT D**



STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

DW 16-448

RE: ABENAKI WATER CO., INC. AND ROSEBROOK WATER CO., INC.

Joint Petition to Transfer Utility Assets and Franchise and for Related Approvals

SETTLEMENT AGREEMENT

**I. INTRODUCTION**

This Settlement Agreement ("Agreement") is entered into as of this 21st day of July 2016, between and among Abenaki Water Co, Inc. ("Abenaki"), Rosebrook Water Company, Inc. ("Rosebrook"), Office of the Consumer Advocate ("OCA"), and the Staff of the New Hampshire Public Utilities Commission ("Staff") (collectively, the "Settling Parties"), with the intent of resolving certain issues, more fully described below, in the above-captioned proceeding.

**II. THE PARTIES**

Abenaki is a regulated public utility providing water service to approximately 95 customers in the Town of Bow, and water and sewer service to approximately 150 customers in the Town of Belmont. Abenaki is a wholly-owned subsidiary of New England Service Company, Inc. ("New England Service"), which in turn owns utility subsidiaries in Connecticut and Massachusetts. Rosebrook is a regulated water utility serving approximately 410 customers in the Town of Carroll.

**III. PROCEDURAL BACKGROUND**

On April 15, 2016 Abenaki and Rosebrook submitted a joint petition (the "Joint Petition") for approval to: (1) transfer Rosebrook's water utility assets and franchise to Abenaki

DW 16-448 Abenaki Water Co. Inc. & Rosebrook Water Company. Inc.  
Joint Petition to Transfer Utility Assets and Franchise and Related Approvals  
Settlement Agreement

as set forth in an Asset Purchase Agreement (the APA), pursuant to RSA 374:22 & 30; (2) discontinue Rosebrook's operation as a public water utility following the transfer pursuant to RSA 374:28; (3) authorize Abenaki to borrow an amount not to exceed \$400,000, pursuant to RSA 369:1 & 2, to finance the transfer of Rosebrook's utility assets and franchise and to undertake improvements to the water system; and (4) authorize Abenaki to modify Rosebrook's existing tariff to provide for monthly billing pursuant to RSA 378:3, and for other minor tariff revisions. The Joint Petition was accompanied by the prefiled testimony of Donald J.E. Vaughn, P.E., Abenaki's Board Chairman; Alex L. Crawshaw, P.E., President of Abenaki; and Deborah O. Carson, Treasurer. Pursuant to the APA, Abenaki agrees to pay the net book value of Rosebrook's assets as of the day the transaction is closed, plus a 10% premium. Further, Rosebrook and Abenaki agree to assign and direct the sale proceeds to REDUS NH Water Co., LLC ("REDUS"). REDUS is the holder of certain rights to acquire the stock of Rosebrook pursuant to an agreement approved by the Commission in Order No. 25,685 issued July 1, 2014 in Docket No. DW 12-299.

On April 19, 2016, the OCA filed a letter with the Commission, providing notice that pursuant to RSA 363:28, the OCA would be participating in this docket on behalf of residential ratepayers.

On May 11, 2016, the Commission issued an Order of Notice establishing a prehearing conference and technical session for June 1, 2016. No petitions for intervention were received. On June 3 by secretarial letter, the Commission approved a procedural schedule submitted by Staff, calling for discovery, a conference call, and a date for filing of testimony or a settlement agreement. The procedural schedule established a hearing on the merits for July 28, 2016.

DW 16-448 Abenaki Water Co. Inc. & Rosebrook Water Company. Inc.  
Joint Petition to Transfer Utility Assets and Franchise and Related Approvals  
Settlement Agreement

**IV. TERMS OF AGREEMENT**

The Settling Parties agree as follows.

**A. Sale of Assets**

The Settling Parties agree that such sale by Rosebrook as set forth in the APA is for the public good pursuant to RSA 374:30 and, therefore, recommend the Commission approve the sale.

**B. Authority to Operate**

The Settling Parties agree that Abenaki has the requisite managerial, technical, and financial expertise to provide service to Rosebrook's customers within the current Rosebrook franchise area. Accordingly, the Settling Parties recommend the Commission find that Abenaki's request for approval to engage in the business of providing water service in Rosebrook's franchise area is for the public good.

**C. Authority to Discontinue Service**

The Settling Parties agree that Rosebrook's discontinuation of service is for the public good, and recommend the Commission grant Rosebrook's request to cease providing service as a public utility as of the date of the closing of the transaction as contemplated in the APA.

**D. Authority to Issue Long Term Debt**

The Settling Parties agree that the terms and conditions of the proposed financing are consistent with the public good. Abenaki should be authorized to borrow up to \$400,000 from CoBank as set forth in the Joint Petition and in the testimony of Deborah Carson and on such other terms and conditions as are not inconsistent therewith.

DW 16-448 Abenaki Water Co. Inc. & Rosebrook Water Company, Inc.  
Joint Petition to Transfer Utility Assets and Franchise and Related Approvals  
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Abenaki should further be authorized to grant a security interest in any or all assets acquired from Rosebrook in furtherance of its financing proposal, as well as to update its existing approved mortgage to include the newly acquired Rosebrook assets. The Settling parties recommend the Commission grant Abenaki's request for financing approval pursuant to RSA 369:1 & 2.

**E. Tariff Revisions**

The Settling Parties agree and recommend that the Commission approve Abenaki's request to modify its billing frequency and begin issuing bills monthly subsequent to the acquisition of the Rosebrook assets and franchise. Abenaki intends to implement the installation of radio-read meters for customers, facilitating monthly readings and the tendering of monthly bills. Abenaki also seeks approval of minor tariff amendments as detailed on Revised Exhibit H to the Joint Petition, filed July 22, 2016. The Settling Parties agree these amendments are reasonable and recommend the Commission provide its approval.

**V. CONDITIONS**

This Agreement is expressly conditioned upon the Commission's acceptance of all of its provisions, without change or condition, and if the Commission does not accept said provisions in their entirety, without change or condition, the Agreement shall at any of the Settling Parties' option exercised within ten (10) days of such Commission order, be deemed to be null and void and without effect and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

DW 16-448 Abenaki Water Co. Inc. & Rosebrook Water Company. Inc.  
Joint Petition to Transfer Utility Assets and Franchise and Related Approvals  
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The Commission's acceptance of this Agreement does not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that, as the Settling Parties believe, the provisions set forth herein in their totality are just and reasonable and in the public good.

The information and testimony previously provided in this proceeding are not expected to be subject to cross-examination by the Settling Parties, which would normally occur in a fully litigated case. The Settling Parties agree that all of their pre-filed exhibits should be admitted as full exhibits for the purpose of consideration of this Agreement. Agreement to admit all pre-filed testimony without challenge does not constitute agreement by the Settling Parties that the content of the pre-filed testimony filed on behalf of the other is accurate or what weight, if any, should be given to the views of any witness.

The discussions which have produced this Agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

This Agreement may be executed in multiple counterparts, which together shall constitute one Agreement.

The Settling Parties agree that the proposed Agreement is lawful and consistent with the public good, and therefore recommend its approval.

DW 16-448 Abenaki Water Co. Inc. & Rosebrook Water Company. Inc.  
Joint Petition to Transfer Utility Assets and Franchise and Related Approvals  
Settlement Agreement

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly  
executed in their respective names by their authorized agents.

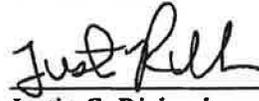
Abenaki Water Company

By Its Counsel,

UPTON & HATFIELD, LLP

Date: July 21, 2016

By:



Justin C. Richardson

NHBA #12148

159 Middle Street

Portsmouth, New Hampshire 03801

(603) 436-7046

[jrichardson@uptonhatfield.com](mailto:jrichardson@uptonhatfield.com)

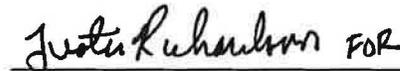
Rosebrook Water Company, Inc.

By Its Counsel,

DEVINE, MILLIMET & BRANCH,  
PROFESSIONAL ASSOCIATION

Date: July 21, 2016

By:



Harper R. Marshall

NHBA #18234

111 Amherst Street

Manchester, New Hampshire 03101

(603) 695-8645

[hmarshall@devinemillimet.com](mailto:hmarshall@devinemillimet.com)

DW 16-448 Abenaki Water Co. Inc. & Rosebrook Water Company. Inc.  
Joint Petition to Transfer Utility Assets and Franchise and Related Approvals  
Settlement Agreement

Staff, New Hampshire Public Utilities Commission

Date: July 21, 2016

By:   
\_\_\_\_\_  
John S. Clifford  
Staff Attorney  
21 South Fruit Street; Ste. 10  
Concord, NH 03301  
603-271-2431

Office of the Consumer Advocate

Date: July 21, 2016

By:   
\_\_\_\_\_  
Donald M. Kreis  
Consumer Advocate  
21 South Fruit Street; Ste. 18  
Concord, NH 03301  
603-271-1172

# **ATTACHMENT E**



NHPUC No. 21- Water

ROSEBROOK-ABENAKI WATER COMPANY, INC.

Carroll, NH

TARIFF

For

WATER SERVICE

In

THE STATE OF NEW HAMPSHIRE

Issued: March 9, 2012

Issued by: Michael Brunetti Donald Vaughan

Effective:

Title: Director Chairman

NHPUC NO. 2-1 - Water  
Rosebrook-Abenaki Water Company, Inc.  
Carroll, NH

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## SERVICE AREA

The territory authorized to be served by Rosebrook-Abenaki Water Company and to which this tariff applies is as follows:

A limited area in the Towns of Carroll, Bethlehem and the incorporated Township of Crawford's Purchase as shown on a map filed separately with the Commission and incorporated in this tariff by reference.

## DEFINITIONS

Approved backflow device - A backflow prevention device that has been manufactured to allow for accurate testing and inspection by an Rosebrook-Abenaki Water Company licensed operator so as to allow verification of performance.

Backflow - The flow of unwanted substances into the water distribution pipes of a potable supply of water.

Backflow prevention device - A device that is designed to, and which in practice does, prohibit unwanted substances from flowing into the water distribution pipes of a potable supply of water.

Bypass - Any piping arrangement installed so that water flows around rather than through a meter, pressure reducing valve or backflow prevention device.

Company - Employee or Representative of Rosebrook-Abenaki Water Company, Inc.

Cross-connection - Any actual or potential physical connection between public water supply and a potential source of contamination that would allow water or contaminants to be drawn back into the water system.

Developer - A person or entity proposing a new subdivision or other type of development.

Exterior shut off ('Curb Stop') - water shut off controlled by the Company.

Individual Connection - a connection having a securable water supply valve that shall only be opened or closed by an employee or agent of the Company.

Premises - includes the building, common area, and lawns.

NHPUC NO. ~~2~~1 - Water  
Rosebrook-Abenaki Water Company, Inc.  
Carroll, NH

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**TERMS AND CONDITIONS**

**1. Service Pipe.**

a. Location.

(1) Single Family Homes: Service pipe connections will be made in the street which is nearest to the premises served.

(2) Condominiums and Other Multi-Family Residences: One main service pipe may serve the total structure with individual connections to all units therein from a distribution manifold located on common property owned by the property owners' association.

(3) Commercial Buildings: Service pipe connections will be made in the street which is nearest to the premises served and one main service pipe may serve the total structure with individual connections to all businesses/units therein from a distribution manifold.

b. Installation, Ownership, and Maintenance.

(1) Single Family Homes: All service pipe ~~from the main to the property line or common area up to and including the premises' exterior shut-off valve shall be owned and maintained by the Company. From the exterior shut-off valve property line or common area to the premises served, the service pipe shall be installed, owned and maintained by the customer(s).~~ Such installations shall be in a manner approved by the Company in writing prior to construction and shall be no less than 3/4 inch inside diameter. All new exterior shut-off valves shall be placed at the property line.

(2) Condominiums and Other Multi-Family Residences: All service pipes ~~from the main to the property line or common area up to and including the unit's exterior shut-off valve shall be owned and maintained by the Company. For condominiums, the space from the exterior shut off valve to the premises shall belong to the association. From the property line or common area to the premise served the service pipe shall be installed, owned and maintained by the association or customer(s).~~

(3) Commercial Building: All service pipes ~~from the main to the property line or common area up to and including the premises' exterior shut-off valve shall be owned and maintained by the Company. From the property line or common area exterior shut off valve to the premises served, the service pipe shall be installed, owned and maintained by the customer( s).~~

c. Joint Use of Service Pipe Trench. No service pipes shall be laid in the same trench with gas pipe, sewer pipe or any other facility of a public utility, nor within three (3) feet of any open excavation or vault.

d. Temporary Service Connection. Temporary service is one installed to any building or trailer not placed on a permanent foundation, or to a garden or for other temporary use. The whole cost of installation from the nearest available main, and maintenance, shall be at the customer's expense.

**2. Winter Construction**

Ordinarily, no new service pipes or extensions of main will be installed during winter conditions (when frost is in the ground) unless the customer shall defray all extra expense occasioned by such installation.

**3. Maintenance of Plumbing.**

Customers shall maintain the plumbing and fixtures within their own premises [e.g. building, common areas and lawns] in good repair, free from leaks and protected from freezing, at their own expense. Failure to do so as soon as possible after a problem is detected may result in service disconnection. Any relocation of the service pipe on customer's premises due to

**NHPUC NO. 2-1 - Water**

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**Reseabrook-Abenaki Water Company, Inc.  
Carroll, NH**

change in grade, relocation of grade or otherwise shall be at the customer's expense. In no event shall the company be responsible for any damage done by water escaping from the customer-owned portion of the service line.

**4. Meters.**

a. Use of Meters. All water service will be metered. The initial meter will be provided to the developer or homeowner by the Company. Subsequent owners will not be charged for a meter.

b. Size of Meter. The size of the meter will be determined by the Company.

c. Meter Setting. The customer shall provide a clean, dry, warm and accessible place for the installation of the meter, as nearly as possible at the point of entrance of the service pipe to the building. Owners shall install in the following order: pressure reducing valve, backflow preventer and meter, as shown on Attachment A. Owner shall contact Company prior to purchasing a pressure reducing valve to ensure it meets the Company requirement for sufficient PPSI ("psi"). Once accepted by the Company, the meter and setting shall become the property of the Company. The Company reserves the right to charge customers for all expenses involved in water hook-ups. A meter, once set, will be relocated only at the customer's expense. No meter shall be installed if the percent error of registration is greater than that allowed by commission rules.

d. Customers shall also install a remote reader outside of their condo/home. This reader will be provided by, owned by and maintained by the Company ("maintained" defined as replacement once the unit is no longer functional). The installation must be done by a professional during construction. If any unit or subscriber does not have a reader installed within 120 days from written notification the Company will install one at owner's expense. If owner does not permit the Company to install reader then service may be turned off. Customers must keep outside remote readers accessible, including cleared of snow, landscaping and any other obstruction.

e. Meter Boxes. When the customer fails or neglects to furnish a suitable location for a meter inside his building or where, for other reasons, it is necessary or expedient to locate the meter in an underground box or vault, the customer shall bear the expense of same. Any relocation of such underground box or vault shall be at the customer's expense.

f. Testing and Repairs. The Company shall be responsible for all meter testing. Meter repairs or replacements necessitated by ordinary wear will be paid for by the Company; those caused by freezing, hot water or by other fault of the customer will be charged to the customer.

g. Auxiliary Meters. If additional or auxiliary meters are desired by the customer or required for showing subdivision of the supply, they shall be furnished, installed and maintained at the customer's expense.

h. The Company reserves the right to remove and to test any meter at any time and to substitute another meter in its place. In the case of a disputed account involving the question as to the accuracy of the meter, such meter will be tested by the Company upon request of the applicant. The fees for testing such meters will be: \$225.00 for a 5/8" meter, \$250.00 for a 1" meter or at market rate, whichever is greater. Any meter in excess of 1" will not be sent out for testing but will instead be tested in place. The cost will be \$500 for the first meter, \$300 for each subsequent meter tested on the same day at the same location - all costs for testing these meters will be a direct pass through to the customer. All fees are payable in advance of the test. In the event the meter so tested is found to have an error in registration in excess of three percent (3%)

NHPUC NO. ~~2-1~~ - Water

~~Rosebrook-Abenaki~~ Water Company, Inc.

~~Carroll, NH~~

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at any rate of flow within normal flow limits, to the prejudice of the customer, the fee advanced for testing will be refunded and the current bill rendered, based on the last reading of such meter. This correction shall apply to both over-and-under registrations.

i. The customer shall permit no one who is not an agent of the Company, to remove, inspect, or tamper with the meter or other property of the Company on his premises. The customer shall notify the Company, as soon as it comes to his knowledge, of any injury to, or any cessation in registration of the meter.

#### 5. Hot Water Tanks.

All customers having direct pressure hot water tanks or appliances must place proper automatic vacuum and relief valves in the pipe system to prevent any damage to such tanks or appliances should it become necessary to shut off the water on the street mains or service pipe. Service will be provided to such direct pressure installations only at the customer's risk and in no case will the Company be liable for any damage occasioned thereby.

#### 6. Restricted Use.

Customers shall prevent all unnecessary waste of water. They shall not allow it to run to prevent freezing or longer than necessary for proper use. When necessary to conserve supply, the Company may restrict or prohibit the use of hand hoses, lawn sprinklers and other non-essential water consuming equipment.

#### 7. Cross Connections.

No cross connection between the public water system and any non-potable supply will be allowed unless protected by a system specifically designed for this purpose and the connection is approved by the Company and by the State of New Hampshire. No connection capable of causing back-flow between the public water supply system and any plumbing fixture, device or appliance or between any waste outlet or pipe having direct connection to waste drains will be permitted. If the Company discovers such a connection, service will be discontinued immediately.

A protective device shall be installed wherever an approved cross connection of water systems exists and/or where a potential threat to the potability of the water system can be shown to exist. All such devices shall be located at the service entrance, and all water consumption within the premises shall pass through the protective device.

The Company reserves the right to (1) require periodic inspections of customers' building or premises to ensure that the plumbing has been installed in such a manner as to prevent the possibility of pollution of the potable water supply of the Company by the plumbing; (2) require the purchase and installation of approved protective devices located at the service entrance to the premises as may be required to protect the potable water supply from potential cross connections; (3) require periodic inspection, testing and necessary repair of all such protective devices, the frequency of which will be dependent upon the degree of potential hazard, and (4) terminate service upon failure to comply with any of the above requirements.

No interconnections with other systems shall be made unless said secondary source satisfies in all respects RSA Chapter 149 and other State laws and regulations pertaining thereto.

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**Rosebrook-Abenaki Water Company, Inc.**  
**Carroll, NH**

If a business' water usage alters the content of the water drawn off the Company system so that it could potentially contaminate the water purity if it flowed back into the system, the Company will require a cross connection backflow preventer. Examples include the following but not limited to: soda foundations, coffee makers connected to the water supply, ice makers, bars, spas and pools. The business owner shall pay the full cost of all necessary installations, inspections and repairs, which shall be arranged by the Company. A charge consistent with current testing costs to the Company will be made when a backflow preventer is tested since the Company merely serves as the agent to arrange for testing to be done. Reduced pressure type devices will be tested twice each year as required by NH Code of Administrative Rules, Env-WS 364 Backflow Prevention. Double check valves will be tested annually.

**8. Tampering.**

All exterior valves, grates, shutoffs, standpipes, hydrants, meters, and all other Company property shall not be opened, or closed, or tampered with in any way by any person other than an authorized employee of the Company or as authorized by the Company.

(1) Valves must not be paved over in roadways.

(2) Shut offs must be accessible, clear of trees, bushes and mulch and a distance of not less than 4 feet from the building.

(3) There shall be no shrubbery, fencing or rocks that obscure a clear path to all hydrants.

(4) Bypasses are prohibited except where approved by the Company. If necessary to have one, owner must install in a location specified by the Company.

**9. Company Liability**

a. The Company will not be responsible for any damage by shutoffs in the mains or service pipes because of shortage of supply, repairs or construction or for other reasons beyond the control of the Company.

b. The Company will not be responsible for damage caused by dirty water which may be occasioned by periodic cleaning of pipes, reservoirs or standpipes, or the opening or closing of any gates, valves or hydrants, or any other cause due to no lack of reasonable care on the part of the Company.

c. The Company will not be responsible for indirect or consequential damages caused by a lack of water or by leaks in the Company's mains, pipes or fittings.

**10. Landscape Repairs on Condominium Property**

The Company will replace or repair landscaping or paving required by the Company's repairs to mains, piping and fittings located on condominium property if the Company's actions necessitated those repairs. The Company will not be liable for those landscaping or paving repairs which were required as a result of homeowner or association damage or alterations. Landscaping replacements will be similar to those installed by the developer of similar units.

**11. Customer Responsibility**

Where there is more than one (1) occupant of a building supplied with water, the plumbing must be so arranged as to permit a separate service for each place of business or abode,

**NHPUC NO. 2-1 - Water**  
**Rosebrook-Abenaki Water Company, Inc.**  
**Carroll, NH**

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unless the owner of the premises makes application for service and thereupon assumes responsibility for payment of all charges for water service rendered to the property.

**12. Deposits.** The company policy will comply with section 1203.03 of the commission rules.

**13. Payment for Service.**

a. Bills for water service will be rendered quarterly in January, April, July and October for services rendered the previous quarter in accordance with the "Terms of Payment" specified in the applicable rate schedule. Bills may also be rendered monthly. Payments are due and payable ~~at the office of the Company~~ within thirty (30) days from the date the bill was rendered.

b. Disconnection for Non-Payment. Service may be interrupted or discontinued for nonpayment sixty (60) days or per current ruling from the date the bill was rendered provided a fourteen (14) day written notice has been given, per PUC 1203.11 of the commission rules.

c. Penalties and Charges. Interest shall be charged at eleven percent (11 %) on all bills where payment is not received by the Company within thirty days (30) of the due date printed on the bill, until payment is received.

d. Non-water Rates:

Shut-off certified notice - \$15.00

Service Re-Connection - \$100.00

Penalty for Non-sufficient funds - \$35.00

Pre-disconnection payment at premises - \$40.00

Service Connection Charge - \$100.00

Customer-requested meter testing - Depends on size of meter: see section 4.h.

Back-flow preventer testing - actual expense to Company

All non-water rates are subject to adjustment in order to recoup any cost to the Company.

**14. Applications for Service.**

Application for water service may be made by either the owner or non-owner occupant of the premises. If the rendering of service requires a new service pipe, and the application is made by the occupant of the premises, he must present to the Company a permit in writing from the owner of the premises authorizing the company or the Company's agent to enter the premises and do the necessary work. Whether or not a signed application for service is made by the customer and accepted by the Company, the rendering of service by the Company and its use by the customer shall be deemed a contract between the parties and subject to all provisions of the tariff applicable to the service.

**15. Disconnection of Service.**

Service may be disconnected without notice for any of the following reasons:

a. Non-payment (section 13b.)

b. Use of water for purposes other than described in the application.

c. Misrepresentation in the application.

d. Willful waste of water.

**NHPUC NO. ~~2-1~~ - Water**  
**~~Resebrook-Abenaki~~ Water Company, Inc.**  
**~~Carroll, NH~~**

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- e. Tampering with Company property or not maintaining customer's property to allow ease of access for Company personnel
- f. For vacancy as defined in PUC 1203.11.
- g. For cross-connecting the Company's service pipe with any other supply source (section 7).
- h. For not installing remote reader (section 4d)
- i. For any other activity which violates the terms of the tariff.

**16. Vacancy of Premises.**

Until the Company is notified in writing of a change in occupancy, the customer of record will be held responsible for all charges.

**17. Service Re-Connection Charge.**

A charge of one hundred dollars (\$100.00) will be made when service is re-established following disconnection for any reason.

**18. Right of Access.**

Any authorized Company representative shall have the right and be permitted access to customer's premises at any reasonable time to inspect the plumbing, fixtures, or appliances supplied with water; set, read, remove, replace or repair meters; enforce these Terms and Conditions.

**19. Penalty for Bad Checks.**

Whenever a check or draft presented for payment of service is not accepted by the institution on which it is written, a charge of thirty-five (\$35.00) or the actual administrative cost of recovery, whichever is greater, may be imposed.

**20. Collection Policy.**

Whenever the Company sends an employee to the customer's premises for the purpose of disconnecting service for non-payment and the customer tenders payment in full of the bill to prevent disconnection, a charge of forty dollars (\$40.00) will be imposed.

**21. Main Pipe Extensions|New Connections|New Construction**

Extensions of water mains, pipes and associated facilities to serve new customers will be made by the ~~developer~~ Company ~~of to~~ the proposed subdivision or development at the developer's sole cost and expense. The Company considers these items to be a necessary part of the overall construction costs without regard to which party arranges for the work to be performed. The developer shall also reimburse the Company for its costs to prepare agreements, review engineering plans, and inspect the new facilities.

- a. Construction plans and specifications for the proposed extension of mains and additions to valves, fittings, hydrants, pumps or other facilities shall be prepared by the ~~developer's professional engineer~~ Company in accordance with industry standards and local, state and federal regulations. The developer's plans and specifications are subject to review and approval by the Company's engineer. Reasonable modifications of the developer's plans requested by the Company shall be incorporated into the plans by the ~~developer~~ Company.

~~b. Prior to commencing to construct water facilities the developer will enter into a written contract with the Company in which the developer agrees:~~

~~(1) To transfer by bill of sale all water system facilities to the Company upon satisfactory inspection by the Company~~

~~(2) To allow the Company to inspect the constructed facilities during construction, and approve installation location and specifications prior to backfilling any trenches.~~

~~(3) To provide a one-year comprehensive warranty on constructed facilities once the facilities are transferred to the Company.~~

~~(4) To provide the Company with three sets of as-built plans.~~

~~(5) To allow no one except Company to approve hook ups for hydrants or homes, and to establish connection.~~

~~c. Except under unusual circumstances, the construction of main extensions will be carried on between April 15 and November 15 of each year.~~

~~d. Prior to receiving service, the Developer shall grant to the Company easements necessary and sufficient for the Company to repair and maintain the conveyed facilities up to and including individual unit exterior shut-off valves.~~

**REVISED EXHIBIT H**

NHPUC No. 2-1 -Water  
Rosebrook-Abenaki Water Company  
Carroll, NH

1st Revised Page 9  
Issued in lieu of Original Page 9  
Original Page 8

GENERAL SERVICE- METERED

Rate Schedule- "GM"

AVAILABILITY:

This schedule is applicable to all water service in the territory except municipal and private fire protection.

CHARACTER OF SERVICE:

Water is obtained from wells and will be transmitted by pumps to a storage tank and then transmitted by gravity flow to the individual service pipe at a pressure ranging from 40 to 200+ pounds per square inch.

RATES-QUARTERLY/MONTHLY

The rate for metered service shall include a quarterly or monthly charge per customer unit based upon the size of the meter, which shall include gallons used, as follows:

<u>Size of Meter</u>	<u>Quarterly Charge</u>	<u>Monthly Charge</u>
5/8"	\$29.72	<u>\$9.91</u>
1"	\$98.08	<u>\$32.69</u>
2"	\$318.01	<u>\$106.00</u>
3"	\$692.48	<u>\$230.83</u>
6"	\$2,772.88	<u>\$924.29</u>

Issued: January 9, 2014

Issued by: Nancy Oleson Donald Vaughan

Effective: January 1, 2014

Title: Operations Manager Chairman

Authorized by NHPUC Order No. 25,613 in DW 12-306 dated December 23, 2013, and NH PUC Order No. \_\_\_\_\_  
in DW 16- \_\_\_\_\_ dated \_\_\_\_\_.

NHPUC No. 2-1 -Water  
Rosebrook-Abenaki Water Company  
Carroll, NH

1st Revised Page 10  
Issued in lieu of Original Page 10  
Original Page 9

GENERAL SERVICE- METERED (continued)

Rate Schedule- "GM"

QUANTITY OF WATER USED

Per 1,000 gallons      \$5.33

MINIMUM CHARGE:

The minimum charge will be the quarterly or monthly charge per customer unit based upon the size of the meter.

TERMS OF PAYMENT:

Bills under this rate are net and will be rendered (quarterly) on April 1, July 1, October 1, and January 1 and are due and payable upon presentation. Bills may also be rendered monthly.

Issued:      January 9, 2014

Issued by:      Nancy OlesenDonald Vaughan

Effective:      January 1, 2014

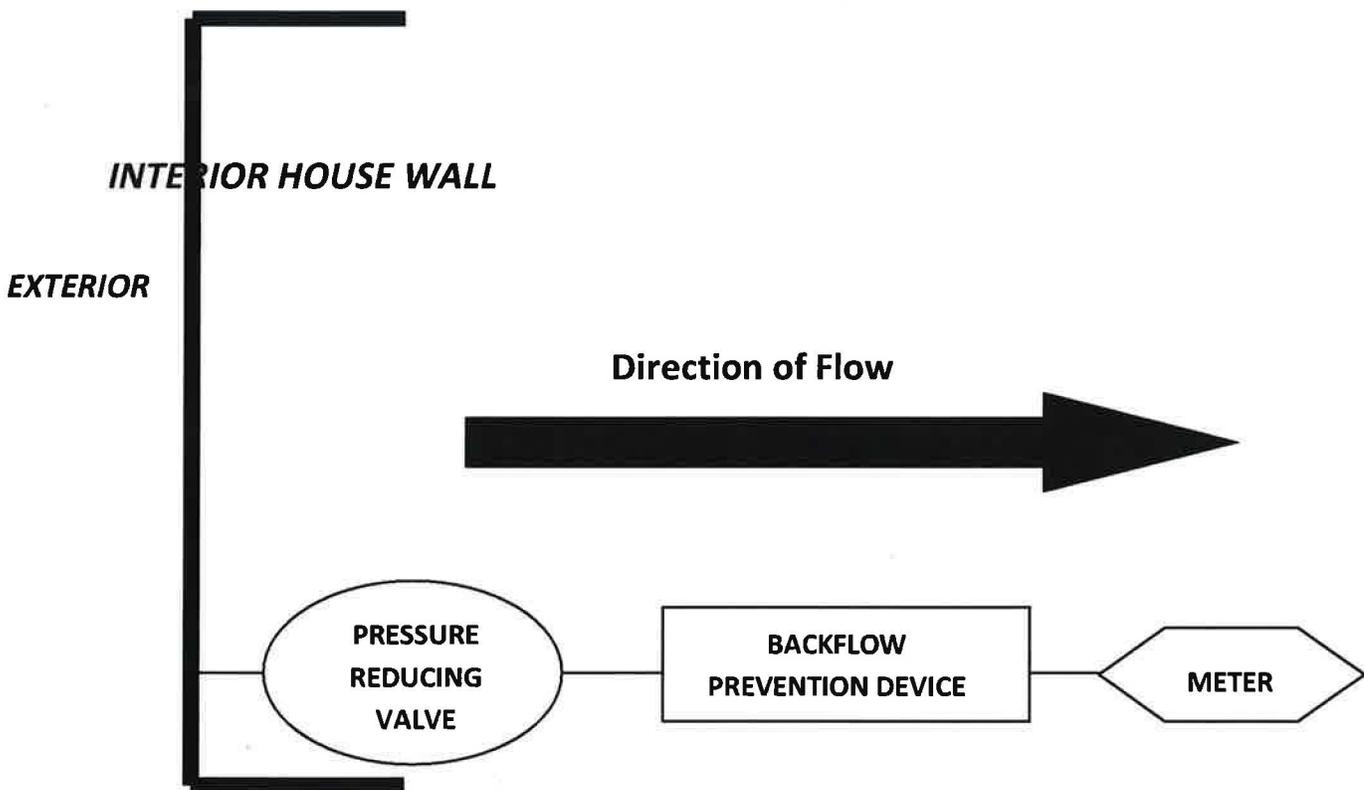
Title:      Operations ManagerChairman

Authorized by NHPUC Order No. 25,613 in DW 12-306 dated December 23, 2013, and NH PUC Order No. \_\_\_\_\_  
in DW 16- \_\_\_\_\_ dated \_\_\_\_\_.

NHPUC NO. 2-1 - Water  
Rosebrook-Abenaki Water Company, Inc.  
Carroll, NH

Original Page 1110

*Attachment A: INSTALLATION SEQUENCE*



# **ATTACHMENT F**

Schedule 1.1Purchased Assets**1.1(b) Net Plant, Property and Equipment**

All real property rights and interests of the Rosebrook Water Company, Inc. located in Coos, Grafton, and Carroll Counties, NH, including all improvements, appurtenances, and contract rights associated with and to the foregoing real estate, including, without limitation, all real property rights and interests described in the following:

1. Quitclaim Deed from Institutional Investors Trust and Bretton Woods Corporation to Rosebrook Water Company, Inc., dated January 18, 1980, and recorded in the Coos County Registry of Deeds at Book 627, Page 76, conveying exclusive rights and easements.
2. Easement Deed from Bretton Woods Sky Area Limited Partnership to Rosebrook Water Company, Inc., dated August 25, 1988, and recorded in the Coos County Registry of Deeds at Book 734, Page 217, conveying exclusive right and easement
3. Easement Deed from GS Phoenix, LLC to Rosebrook Water Company, Inc., dated December 3, 1996, and recorded in the Coos County Registry of Deeds at Book 869, Page 357, conveying perpetual rights and easements on multiple parcels.
4. Amendment to Easement Agreement and Partial Release of Easement between Rosebrook Water Company, Inc. And GS Phoenix, LLC, dated April 24, 1997, and recorded in the Coos County Registry of Deeds at Book 874, Page 642, pertaining to easements recorded in Book 627, Page 76 and Book 869, Page 357.
5. Easement Agreement for Waterline Easement between Rosebrook Water Company, Inc. and Bretton Woods Land Co., LLC, dated December 4, 2007, and recorded in the Coos County Registry of Deeds at Book 1237, Page 33.
6. Easement Agreement for Waterline and Reservoir Easement between Rosebrook Water Company, Inc. and CNL Income Bretton Woods, LLC, dated December 5, 2007, and recorded in the Coos County Registry of Deeds at Book 1237, Page 50.

See also Groups 304, 307, 311, 320, 331, 333, 334, 335, and 339 on the NH Asset Detail of Rosebrook Water Company, Inc. attached here to as Schedule 1.1(b) (cont.) and Schedule 1.1(c).

**1.1(c) Office Equipment, Vehicles, and Other Tangible Property**

See Groups 341, 343, 346, and 347 on the NH Asset Detail of Rosebrook Water Company, Inc. attached here to as Schedule 1.1(b) (cont.) and Schedule 1.1(c).

*See vol 874 pg 642*

## DEED OF EASEMENTS

**GS Phoenix, LLC**, a New Hampshire Limited Liability Company with a principal place of business at Route 112, Lincoln, New Hampshire (the "Grantor"), for consideration paid, hereby grants to **Rosebrook Water Company, Inc.**, a corporation organized under the laws of the State of New Hampshire with a principal place of business at Bretton Woods Resort, Carroll, New Hampshire (the "Grantee"), the following rights and easements:

1. The perpetual right and easement to construct, reconstruct, install, repair, replace and maintain pipes, mains, manholes, conduits, pumps, pump houses, storage tanks, hydrants, wells, trenches, and such other appurtenances (all collectively referred to as the "Water System") as may be reasonably necessary to provide water service to the residents of the Bretton Woods Resort, Grafton and Coos Counties, New Hampshire, on the property described in Exhibit A attached hereto and made a part hereof, consisting of premises owned by the Grantor and premises over which the Grantor may grant easements pursuant to Article XII of a Declaration of Covenants, Restrictions, Easements, Charges and Liens for Bretton Woods Resort Community, dated November 17, 1987, recorded at Book 719, Page 272 of the Coos County Registry of Deeds, and also dated December 30, 1988, and recorded at Book 1784, Page 173 of the Grafton County Registry of Deeds (the "Premises"), and to flow water through the Water System. The easement area will consist of the location of all existing portions of the Water System currently servicing the Bretton Woods Resort, and such additional area as may be necessary for the future installation of improvements to or expansion of the Water System. The Water System shall be the property of the Grantee. The location of future improvements to, or expansion of the Water System, shall be agreed to by the Grantor and Grantee, their successors or assigns.

2. The perpetual right and easement to enter upon the Premises with persons and equipment to install, operate, maintain and repair the Water System described in Paragraph 1 above, as may be reasonably necessary.

Grantee shall defend, indemnify and hold the Grantor harmless from any and all injury to person or property resulting from Grantee's exercise of the rights and easements granted herein.

The Grantee shall be responsible for repairing all of the Grantor's Premises disturbed by the Grantee's exercise of its easement rights to substantially the same condition as existed prior to the disturbance. The Grantee shall also be responsible for bearing all costs of maintenance and repair of the Water System. Grantee shall be responsible for obtaining all necessary governmental approvals for installation, maintenance and repair.

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See Vol. 721 p. 296  
" " 721 " 295  
" " 753 " 210  
" " 770 " 9

DEC. OF COVENANTS: SATTER COMPANIES OF NEW ENGLAND

DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS,  
CHARGES AND LIENS FOR BRETTON WOODS RESORT COMMUNITY

THIS DECLARATION made the 17<sup>th</sup> day of November, 1987, by The Satter Companies of New England, a New Hampshire general partnership, with a principal place of business at Route 112, Lincoln, Grafton County, New Hampshire, hereinafter called Declarant.

WHEREAS, Declarant owns, in fee simple, the real property described in Exhibit A attached hereto, and intends to create thereon, the first phase of a residential condominium project known as Mt. Washington Place at Bretton Woods; and

WHEREAS, Declarant contemplates the ultimate establishment, in phases, of a large resort community on certain lands described in Exhibit A and on other lands which Declarant now owns or may acquire in the future to be known as "Bretton Woods Resort Community" (the "Community") to consist of approximately two thousand (2,000) single-family residences in detached, cluster and/or multi-family structures of various types; commercial centers (e.g. hotels, ski area, golf course, restaurants, retail establishments); common roadways, recreational facilities, utilities and open spaces; and other facilities for the benefit of the Community; and

WHEREAS, Declarant wishes at this time to commence the development plan for the Community by providing for the development of fifty-eight (58) residential condominium units on a portion of the land designated as Phase I (Mt. Washington Place), and described in Exhibit A ("Existing Land") attached hereto; and

WHEREAS, Declarant desires to provide for preservation of the values and amenities in the Community and for the future creation and maintenance of common roadways, recreational facilities, utilities, open spaces, and other common facilities, and, to this end, desires to subject the real property described in Exhibit A, together with such additions thereto as may hereafter be made from the real property described in Exhibit B ("Additional Land") and Exhibit C (Common Property) and/or other real property, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each, every, and all of which is and are hereby declared to be for the benefit of said property and each and every present and future owner of any and all parts thereof; and

WHEREAS, Declarant deems it advisable, for the efficient preservation of the values and amenities in the Community, to create a Master Property Owners' Association to which shall be delegated and assigned the power and authority to maintain and administer the Community properties and facilities and to administer and enforce the covenants and restrictions governing the Community, and to collect and disburse all assessments and charges necessary for such maintenance, administration, and enforcement, as are hereinafter provided; and

WHEREAS, Declarant shall cause to be incorporated under the laws of the State of New Hampshire a voluntary corporation known and designated as Bretton Woods Property Owners' Association to perform the functions aforesaid, which are hereinafter more fully set forth.

NOW, THEREFORE, Declarant declares that the real property described in Exhibit A and such additions thereto as may hereafter be made from Exhibits B and C or otherwise in accordance with the terms and requirements of this Declaration, is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and liens hereinafter set forth, under the name "Bretton Woods Resort Community".

ARTICLE I  
Definitions

1. Additional Land shall mean and refer to the real property described in Exhibit B attached hereto, exclusive of those portions thereof described in Exhibit A. Additional Land may be added to the Existing Land by annexation in accordance with the provisions of this Declaration.

2. Annexation shall mean and refer to the act of submitting a portion of the Additional Land or other real property to this Declaration by recording an appropriate amendment ("Annexation Amendment") to the Declaration in the Coos and Grafton County Registry of Deeds. Annexation converts such Additional Land or other real property into Existing Land.

3. Architectural Control Committee shall mean and refer to a committee appointed by the Declarant or the Board of Directors of the Association for the purposes set forth in Article VIII of this Declaration.

4. Articles shall mean and refer to the Articles of Agreement, including any amendments thereto, of the Association.

5. Assessment shall mean and refer to the amount assessed from time to time by the Association against each Owner of a Unit in accordance with this Declaration and By-Laws.

6. Associate Member shall mean and refer to a non-voting Member of the Association who is not an Owner of a Unit but may be provided with use of the Common Property as set forth in Article V.

7. Association shall mean and refer to the Bretton Woods Property Owners' Association, a New Hampshire voluntary corporation.

8. Board or Board of Directors shall mean and refer to the Board of Directors of the Association.

9. By-Laws shall mean and refer to the By-Laws, including any Amendments thereto, of the Association.

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10. Common Expenses shall mean and refer to all lawful expenditures made or incurred by or on behalf of the Association, together with all lawful assessments for the creation and maintenance of reserves pursuant to the provisions of the Declaration and By-Laws.

11. Common Property or Common Properties shall mean and refer to real property which may be submitted to this Declaration in the future and described in Exhibit C, including land, buildings and/or facilities acquired by the Association by purchase, gift, lease or otherwise, to be devoted to the common use and enjoyment of the Owners, as well as such other property, both real and personal, as may be otherwise duly acquired by the Association. Common Property or Common Properties may consist of unimproved or improved real property; recreational areas and facilities; parks, grass and/or landscaped areas; streets or roadways; street lighting; easements; utilities; furniture, furnishings, maintenance equipment and the like; and such other properties and/ or improvements which may be so designated.

12. Commercial Unit shall mean and refer to a Unit designed for non-residential purposes, including but not limited to such facilities as the Mt. Washington Hotel, the Bretton Woods Ski Area, the Bretton Woods Recreation Center, The Lodge at Bretton Woods, restaurants, retail establishments and other commercial space.

13. Community shall mean and refer to the resort community which Declarant contemplates establishing upon the Existing and Additional Land, and any additions thereto, to be known in its entirety as Bretton Woods Resort Community, or, where the context so requires, the land on which the Community is to be located, being the entirety of the real property described now or hereafter in Exhibits A, B and C and such other real property as may be added hereafter.

14. Contiguous shall mean and refer to real property adjacent to the Community, even though separated from the Community by streets, roads, highways, rivers, streams, rights of way, railroads, utility easements, or other intervening physical features or properties so long as the same are consistent with the general scheme of contiguity of development.

15. Crawford Ridge shall mean and refer to a residential condominium project to be constructed on certain of the land described in Exhibit B which may become a part of the Community.

16. Declarant shall mean and refer to The Satter Companies of New England, a New Hampshire general partnership, and its expressly designated successors and assigns as Owner or future owner of the Existing Land, Additional Land, Common Property or other land and the improvements thereon which may be submitted to this Declaration.

17. Declaration shall mean and refer to this document and all exhibits thereto, as amended from time to time.

18. Existing Land shall mean and refer to the real estate described in Exhibit A attached hereto, being the land submitted to the terms of this Declaration immediately upon recording hereof, and any additions to said Exhibit by amendment to the Declaration.

19. Hotel shall mean and refer to the existing "Mt. Washington Hotel" and related facilities located on a portion of the land described in Exhibit B ("Additional Land") which may become part of the Community as a Commercial Unit.

20. Institutional, as used in conjunction with "Lender", "Holder", "Mortgagee", or "First Mortgagee", shall mean and refer to a commercial or savings bank, a savings and loan association, a trust company, an established mortgage company, a private mortgage insurance company, an insurance company, a pension fund, any corporation, including a corporation of, or affiliated with, the United States government, or any agency thereof, the Veterans' Administration (VA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), federal credit union, and any other lender, authorized to do business in the United States of America and the State of New Hampshire, and generally recognized in the area as an institutional-type lender.

21. Lodge shall mean and refer to The Lodge at Bretton Woods, an existing motel and restaurant, which may become part of the Community as a Commercial Unit and is located on a portion of the land described in Exhibit B.

22. Lot shall mean and refer to any numbered plot of land on a Plan recorded in the Coos or Grafton County Registry of Deeds intended for the construction of Units thereon, with the exception of Common Property.

23. Manager, Management Agent or Managing Agent shall mean and refer to a professional management agent employed by the Association to perform such duties and services as the Board of Directors shall authorize in conformance with this Declaration.

24. Member shall mean and refer to each and every Owner of a Unit who belongs to the Association as provided in Article V.

25. Mt. Washington Place at Bretton Woods shall mean and refer to a residential Phase of the Condominium to be constructed in part on the land described in Exhibit A.

26. Phase shall mean and refer to a portion of the Community so designated on a plan or plans thereof recorded or to be recorded in the Coos or Grafton County Registry of Deeds and intended to be developed and/or annexed to the Existing Land.

27. Phase Property Owners' Association (PPOA) shall mean and refer to a sub-association to be established for each residential Phase by recordation of appropriate documents upon or before annexation. A PPOA may be a condominium unit owners' association, a home owners' association, or other appropriate property owners' association entity.

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28. Phase Under Development shall mean and refer to any residential Phase of the Additional Land intended to be submitted to this Declaration by a deed or other instrument recorded in the Coos or Grafton County Registry of Deeds prior to the formal annexation thereof.

29. Recreational Center shall mean and refer to one or more recreational facilities to be owned by Declarant and constructed on land described in Exhibit B and which may be leased to the Bretton Woods Property Owners' Association.

30. Residential Unit shall mean and refer to any single-family dwelling constructed within a Phase.

31. Rules and Regulations shall mean and refer to the provisions and limitations promulgated from time to time by the Board governing the use of Common Property and Units in accordance with the By-Laws.

32. Ski Area shall mean and refer to the existing "Bretton Woods Ski Area" described as a part of the Additional Land in Exhibit B which may become part of the Community as a Commercial Unit.

33. Subdeveloper shall mean and refer to a builder or developer, and its successors and assigns, to which a Phase has been conveyed subject to this Declaration.

34. Surplus shall mean and refer to the excess of all receipts of the Association from Members and Associate Members, plus any other income, over and above the expenses of the Association. Surplus shall be calculated annually, at the conclusion of the Association's calendar or other fiscal year.

35. Unit shall mean and refer to a portion of the Existing Land designed and intended for individual ownership.

36. Unit Owner shall mean and refer to the record owner or owners, whether one or more persons, firms, associations, corporations or other legal entities, of the fee simple title to a Unit, but notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure.

ARTICLE II  
The Development Plan

A. Overview. The Declarant contemplates development of the entire Community described on or to be added in the future to Exhibits A, B and C as a resort community comprised of approximately two thousand five hundred (2,500) acres and containing approximately two thousand (2,000) Residential Units and several commercial centers ("Commercial Units"), together with other improvements and amenities, including roadways, recreational facilities, utilities, open spaces,

and other common facilities. The Declarant intends to develop the residential areas in Phases, and may elect to develop a Phase itself or convey a Phase to a Subdeveloper, subject to the terms of this Declaration, whereupon the Phase shall be a Phase Under Development. Upon substantial completion of the improvements on that Phase and satisfaction of the other requirements hereinafter set forth, the Phase Under Development shall be annexed as herein provided and shall become part of the Existing Land. Each Phase Under Development shall be governed by a sub-association (PPOA) which shall be subject to the control of the Association with respect to matters impacting on other portions of the Community. The Declarant intends to develop the Common Property itself and to convey the same or portions thereof periodically to the Association, upon substantial completion thereof, by deed duly recorded in the Coos or Grafton County Registry of Deeds.

The Declarant may also bring other contiguous real property (including existing or new commercial facilities) within the plan of development for inclusion in the Community in accordance with the terms of this Declaration. In addition, other contiguous real property not owned by Declarant may be made subject to this Declaration and be included in the Community as hereinafter provided. The Community contemplated by this Declaration, including parcels of real estate to be annexed hereto, may include a wide diversity of housing types and styles.

**B. Reservation of Rights.** Declarant, for itself, its successors and assigns, reserves the following rights:

1. To withdraw the Additional Land, or any portion thereof, from the development plan, either by conveying the same without subjecting it to this Declaration in the deed of conveyance or by recording an appropriate amendment hereto in the Coos and Grafton County Registry of Deeds. Nothing herein shall bind the Declarant to develop any or all of the Additional Land, nor shall Declarant be required to obtain the consent of the Association or any other party prior to each withdrawal.

2. To develop any or all of the Additional Land, or any additions thereto, as, in the reasonable exercise of its discretion, it deems in the best interest of the entire Community, without regard to the relative location of any portion within the overall plan. Declarant shall not be required to follow any predetermined sequence or order of improvements and development. In the event additional real property is added to the Additional Land, Declarant shall have complete discretion to develop the same before or after completing development of the original Additional Land.

3. Without further consent of the Association, to bring within the scheme and operation of this Declaration, additional properties, provided that such additions shall be limited to lands contiguous to the Community, which lands shall be developed and/or annexed as part of this Community, subject to this Declaration.

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4. To terminate or amend this Declaration without further consent of the Association or any Unit Owner until such time as any Common Property has been conveyed to the Association.

5. Solely within its discretion to approve, deny or modify any architectural design or style, plans/specifications or any other aspect of development by any Subdeveloper.

6. Not to complete any Phase Under Development abandoned by its Subdeveloper, regardless of whether Declarant subsequently regains title thereto.

7. To amend this Declaration so as to add those terms and provisions required by a governmental mortgage holder, insurer or guarantor such as FNMA (Federal National Mortgage Association), FHLMC (Federal Home Loan Mortgage Corporation) or the VA (Veterans' Administration), in order to finance any Residential Unit.

The purchase of a Unit shall constitute consent by the purchaser to any amendments to the Declaration in furtherance of the above reservations.

C. Annexation Procedures.

1. Annexation by the Declarant or a Subdeveloper. Any Phase Under Development, other unannexed Phase, or any additional contiguous real properties now or hereafter owned by Declarant, may be annexed to the Existing Land and become a part thereof upon satisfaction of the following prerequisites:

(a) If applicable, all documents necessary to create an appropriate PPOA thereon must be recorded in the Coos or Grafton County Registry of Deeds prior to or simultaneously with the Amendment to the Declaration effectuating the annexation;

(b) All taxes and special assessments covering any period prior to the date of annexation relating to the real property to be annexed shall be paid or escrowed; and

(c) Mechanics lien affidavits or waivers shall be delivered to the association evidencing that no person who has rendered services or provided materials in regard to the construction of the improvements on the added property has any claim which may constitute a lien on any portion of the Community; or a title insurance policy shall be provided to the Association insuring against such liens.

2. Annexation by Others. The Owner or Owners of other contiguous real property to the Community may annex the same upon satisfaction of the following prerequisites:

(a) If the real property has more than one Owner, all such Owners (unless a lesser number is provided for in legal documents establishing the property) must vote unanimously to subject the entirety of their property to this Declaration and must execute the Annexation Amendment and obtain any necessary consent thereto from mortgagees of the real property;

(b) The Board of Directors of the Association must vote to approve the annexation;

(c) Where applicable, all documents necessary to create an appropriate PPOA thereon must be recorded in the Coos or Grafton County Registry of Deeds prior to or simultaneously with the Amendment effectuating the annexation;

(d) All taxes and special assessments relating to the real property to be annexed covering any period prior to the date of annexation shall be paid or escrowed; and

(e) Mechanics lien affidavits, waivers or indemnity agreements shall be delivered to the Association evidencing that no person who has rendered services or provided materials in regard to the construction of the improvements on the added property has any claim which may constitute a lien on any portion of the Community; or a total insurance policy shall be provided to the Association insuring against such liens.

3. No Requirement of Annexation. No provision of this Declaration shall be construed to require the Declarant or any other person or entity to annex any real property to the plan of this Declaration; nor shall any such provision prohibit any real property, whether or not included within the description contained in Exhibit B, from being subjected to another Declaration or scheme of development.

4. Form And Contents of Annexation Amendment. A form of Annexation Amendment to the Declaration is attached hereto as Exhibit D, for use by the person(s) and/or entity(ies) sponsoring the annexation ("Sponsor"). The Sponsor shall be the fee simple owner or owners of the real property to be annexed, except that a Phase Under Development may be annexed by the Declarant or Subdeveloper alone. The following shall be the general requirements for each Annexation Amendment, subject to adaptation to the particular annexation:

(a) The Annexation Amendment shall describe the real property to be annexed to the plan of this Declaration;

(b) The Annexation Amendment shall amend Exhibit A to this Declaration by adding a legal description of the land to be annexed; except that any portion of the land to be annexed as Common Property shall be added to Exhibit C and excluded from Exhibit A;

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(c) If the land to be annexed was not previously included in Exhibit B, the Annexation Amendment shall add the legal description of said land to Exhibit B, as well as A;

(d) A plan or plans of the land to be annexed, certified as accurate by a registered surveyor or registered engineer, will be recorded with the Coos or Grafton County Registry of Deeds prior to or simultaneously with the Annexation Amendment and appropriately referenced therein;

(e) The Annexation Amendment shall contain a certification that all prerequisites to annexation of said land as herein provided have been met, and, where applicable, shall reference the PPOA documents, for the annexed land;

(f) The Annexation Amendment shall be signed by all owners of the land to be annexed and by all individuals or entities whose approval is required under the appropriate prerequisites to annexation; and

(g) When applicable, the Annexation Amendment shall state the number of Units in the Phase being annexed.

5. Owners of Units in annexed land, upon recordation of the Annexation Amendment, shall have a right and non-exclusive easement of use and enjoyment in and to the Common Property and an obligation to contribute to the Common Expenses, and shall be full Members of the Association, subject to the provisions of Article IV.

6. Any Amendment recorded in accordance with the terms hereof shall be conclusive in favor of all persons who rely thereon in good faith. From and after recordation of any Amendment in accordance with the provisions hereof, the real property described therein shall be subject to the provisions of this Declaration and all other applicable Bretton Woods Resort Community documents, the jurisdiction of the Association pursuant to the terms of this Declaration, the By-Laws and the Articles.

ARTICLE III  
Common Properties

A. Declarant, by recordation of various plans, deeds and other instruments, including amendments to Exhibit C hereof, shall convey from time to time to the Association Common Property dedicated to the purposes as set forth in said instruments. Declarant covenants for itself, its successors and assigns, that any and all of said Common Property shall be subject to and bound by the terms of this Declaration, as it may be amended. Use and enjoyment of the Common Property shall be subject to this Declaration, the Articles and By-Laws of the Association and the Rules and Regulations adopted thereby.

B. Declarant shall retain legal title to portions of the Common Properties until such time as it has substantially completed initial improvements thereon and/or until such time as in its judgment, the Association is able to maintain the same. Declarant may convey any portion of the Common Property to the Association upon substantial completion of the improvements on that portion, without regard to the location of that portion within the overall plan. Declarant, however, notwithstanding any provisions herein, covenants for itself, its successors and assigns, that it shall convey to the Association, but subject to existing mortgages and encumbrances thereon, any and all Common Properties designated on recorded final subdivision plats of each Phase of the Community not later than five (5) years after annexation of each portion of Common Property is recorded in the Coos or Grafton County Registry of Deeds.

ARTICLE IV  
Members' Property Rights in the Common Property;  
Associate Membership

A. Subject to the provisions of this Declaration and the By-Laws, Rules and Regulations of the Association, every Member shall have a right and easement of enjoyment in and to the Common Properties, which easement shall be appurtenant to and pass with the title to every Unit; provided, however, that: no person may utilize any recreational facilities on Common Property unless he is an owner of a Residential Unit (or tenant or guest thereof), or an overnight guest at a Commercial Unit, and then only in accordance with Rules and Regulations adopted by the Board. In addition, each Member's right and easement of enjoyment in and to the Common Properties shall be subject to the following:

1. The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any Member (or tenant or guest thereof) for any period during which any assessment remains unpaid and/or any infraction of the Association's published Rules and Regulations continues, it being understood that any suspension for either non-payment of any assessment or a breach of the Association's Rules and Regulations shall not constitute a waiver or discharge of the Member's obligation to pay assessments.

2. The right of Declarant during the period of control to grant easements, dedicate or otherwise transfer all or any part of the Common Property (including, but not limited to roads and utilities) to any municipal, county, state, federal, or other public agency, or a public utility for purposes of maintenance, repair and preservation thereof; and thereafter, the right of the Board of Directors to do so, subject to such conditions as may be agreed upon and authorized by vote of at least sixty-seven percent (67%) of eligible voters present in person or by proxy at a meeting duly held, at which a quorum is present, in accordance with the By-Laws, provided that written notice of the proposed resolution authorizing dedication or transfer is sent to every Member simultaneously with notice of

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the scheduled meeting at which action is taken. A true copy of such resolution with a certificate of the result of the vote taken thereon certified by a duly authorized officer of the Association shall be conclusive evidence of authorization by the membership.

3. The right of Declarant to mortgage the Common Property prior to conveyance to the Association and to take such other actions as would be necessary to prevent foreclosure.

So limited, a Member's right and easement in and to the Common Property shall be enjoyed by such Residential Unit Member's family in residence, together with their tenants and guests, and by such Commercial Unit Member's overnight guests and such other persons as may be authorized by the Association.

B. Associate Members may be defined by the Declarant during its period of control of the Association and thereafter by the Board of Directors, and, as such, may be granted use of the Common Properties, including the recreational facilities located thereon, in consideration for payment of established fees. Such right of use, however, shall not be an easement, nor shall any such Associate Member have voting power, an interest in the Common Properties or any claim to any portion of insurance proceeds or condemnation awards received by the Association with respect to the Common Property.

ARTICLE V  
Membership and Voting Rights in the Association:  
Declarant's Superseding Voting Rights

A. All Owners of Units, upon becoming such, shall be deemed automatically to have become Members of the Association, and there shall be no other qualification for membership. Membership shall be appurtenant to, and may not be separated from, ownership of a Unit. Transfer of Unit ownership either voluntarily or by operation of law shall terminate the transferor's membership in the Association, and vest the same in the transferee.

B. Each Owner of a Residential Unit shall have one vote, including the Declarant for any substantially complete but unsold Residential Unit.

C. With respect to Owners of Commercial Units, the following voting power allocations are hereby established:

1. Any hotel, motel or other Commercial Unit providing accommodations for overnight guests shall have four-tenths (.4) of a vote for each room housing overnight guests.

2. Any restaurant shall have five-hundredths (.05) of a vote for each seat available to patrons, as specified in its legal seating capacity.

3. Any ski area shall have four-hundredths (.04) of a vote for the number of persons representing its peak hourly uphill lift capacity.

4. Any other type of Commercial Unit shall have one vote per one thousand (1,000) square feet of interior finished commercial space, excluding basements and attics.

D. The Declarant shall have one vote for every ten (10) acres of unimproved land which has been submitted to this Declaration as Existing Land.

E. Each Member who has paid all assessments due on his or her Unit by ten (10) days prior to a meeting of the Unit Owners, and who is otherwise qualified hereunder, shall be entitled to vote on matters affecting such Unit which are submitted to a vote at that meeting of Members.

F. When any Unit is owned by more than one person or entity in joint tenancy, tenancy in common, or any other manner of joint or common ownership or interest, such persons or entities collectively shall be entitled to cast the vote, and if such persons or entities cannot jointly agree as to how such vote shall be cast, no vote shall be allowed with respect to such Unit. Unless notified in writing to the contrary, the Association shall be allowed to assume that the vote(s) of any one owner is authorized by the other owner(s).

G. Notwithstanding the foregoing or anything contained in this Declaration to the contrary, Declarant shall have the sole and exclusive right to appoint all officers and directors of the Association, until the earliest to occur of the following:

1. Seven (7) years from the date of recording of this Declaration, provided that such period of control shall be automatically extended from year to year until such time as the Declarant has completed construction of one thousand five hundred (1,500) Residential Units; and provided further that such date of control shall not exceed fifteen (15) years from the date of recording of this Declaration; or

2. Declarant's written notice to the Association of its election to transfer control to the Association.

During the period of control as set forth herein, Members of the Association, otherwise qualified hereunder, shall have non-voting membership, unless the provisions of this sentence expressly are waived relative to a particular issue by a writing signed by the Declarant. Upon Declarant turning control of the Association over to the Members as provided herein, it shall file appropriate documents in the Coos and Grafton County Registry of Deeds. Thereafter, for as long as Declarant has any ownership interest in property described in Exhibit A, B or C, it shall continue to have the right to appoint one Member of the Board of Directors as provided for in the By-Laws.

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ARTICLE VI  
Covenants of Declarant, Association,  
and Owners for Improvements and Annual  
and/or Special Assessments; Liens Created Therefor

A. Residential Unit Owners. Each Owner of any Residential Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the common expense assessment due thereon to the Association, such assessments to be established and collected as provided herein and in the By-Laws. Each Residential Unit Owner shall be assessed on an equal basis. The covenant in this Article shall not constitute a guaranty or promise of any kind by Declarant to pay any such Unit Owner's assessment or other obligation, other than Declarant's obligations, if any, as an individual Residential Unit Owner. Common expense assessments, together with interest, costs, and reasonable attorney's fees for collection, if any, shall be a charge and continuing lien upon the Residential Unit against which each such assessment is made. The same shall be the personal obligation of the Owner of such Unit at the time each such assessment falls due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them, but shall remain a lien against the Unit involved until paid. Notwithstanding anything herein to the contrary, however, any lien on a Unit for delinquent assessments or other charges owed to the Association will be subordinate to a first mortgage on the Unit which was recorded before the delinquent assessment was due, and any sale or transfer of a Unit pursuant to a foreclosure or a deed in lieu of foreclosure of a first mortgage shall extinguish a subordinate lien for assessments or charges against the mortgaged Unit which accrued prior to such sale or transfer.

B. Commercial Unit Owners. Each owner of a Commercial Unit which is submitted to the Declaration shall be liable for common expense assessments. The Board, in its sole discretion, shall determine the amount of, and allocate as appropriate the common expense assessments chargeable against Commercial Unit Owners who shall be assessed based on their respective voting allocations as set forth in Article V. Such common expense assessments, together with interest, costs, and reasonable attorney's fees for collection, if any, shall be a charge and continuing lien upon the Commercial Unit against which each such assessment is made. The same shall be the personal obligation of the Owner of such Unit at the time each such assessment falls due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them, but shall remain a lien against the Unit involved until paid. Notwithstanding anything herein to the contrary, however, any lien on a Unit for delinquent assessments or other charges owed to the Association will be subordinate to a first mortgage on the Unit which was recorded before the delinquent assessment was due, and any sale or transfer of a Unit pursuant to a foreclosure or a deed in lieu of foreclosure of a first mortgage shall extinguish a subordinate lien for assessments or charges against the mortgaged Unit which accrued prior to such sale or transfer.

C. Annual assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of Members and Associate Members, and costs and expenses incident to operation of the Association, including, without limitation, maintenance, repair and replacement of the Common Properties and improvements located thereon, services furnished by the Association, management fees and payment of all taxes, utility fees and insurance premiums on the Common Property.

D. The Board of Directors shall fix and determine from time to time the sums necessary to pay Common Expenses and shall provide for the allocation of assessments therefor and the collection thereof in the manner set forth in the By-Laws.

E. The Association shall, within ten (10) days of the request therefor of any Owner, or of an Owner's mortgagee, furnish to such Owner or mortgagee a certificate in writing, signed by an officer of the Association, setting forth whether or not an owner is delinquent in payment of any assessments. Such certificate shall constitute conclusive evidence of the payment of any assessments therein stated to have been paid.

F. Declarant shall be responsible for all initial improvements on Common Property prior to conveying the same to the Association, which may include construction and/or installation costs of streets or roadways; street lighting; recreational facilities; landscaping and any other initial improvements to the Common Property. Notwithstanding anything to the contrary, Declarant shall not make the Association responsible for such initial construction and/or installation costs.

G. Except as otherwise provided for herein, the following properties described in this Declaration shall be exempt from assessments, charges and liens created herein:

1. All Common Property owned by Declarant or the Association;
2. All property on Existing Land which cannot be devoted to residential or commercial use because of municipal, state and/or federal prohibitions; and
3. All Additional Land.

H. Special assessments for capital improvements or restoration of Common Properties may be levied by the Board from time to time based on the allocations of voting power set forth in Article V. Furthermore, if any Member causes damage to the Common Properties which necessitates repair by the Association, or if the Association is required to expend monies to remedy violations of the covenants and restrictions in this Declaration or the published Rules and Regulations of the Association, then the Board may impose a special assessment upon that Member involved for the direct costs to the Association for performing such repairs or maintenance or for remedying such violations, including reasonable attorneys' fees. Such special assessment shall constitute a lien against the Member's Unit, but shall not be imposed without at least ten (10) days written notice and opportunity to be heard at a meeting of the Board.

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ARTICLE VII  
Board of Directors

The Association shall be governed by the Board of Directors as provided herein and in the By-Laws. Until the Declarant has transferred control of the Association as provided in Article V, the Board shall consist of from five (5) to nine (9) Directors appointed by the Declarant. During the period of control, Declarant shall appoint as Directors at least one, but no more than three (3) Residential Unit Owners from the various residential communities subject to this Declaration. After such transfer of control, the Directors shall be elected at large from the membership, except Declarant shall retain the right to appoint one such Director as long as it owns land or Units in the Community which it holds for sale in the ordinary course of business. The Directors shall be elected to serve three (3) year staggered terms, as provided in the By-Laws.

ARTICLE VIII  
Architectural Control Committee

A. Declarant reserves the right to appoint the Members of the Architectural Control Committee until the Declarant has notified the Board of Directors of its completion of construction of the final Residential Unit. Thereafter, the Board may either act as or continue the Committee.

B. No building, wall, fence, sign or other structure shall be commenced, erected or maintained upon the Existing Land or a Phase Under Development, nor shall any exterior addition to any existing structure or exterior change or alteration therein be made until the plans and specifications therefor showing the nature, kind, shape, height, materials, and location of the same, together with any landscaping plans related thereto, shall have been submitted to and approved in writing by the Architectural Control Committee.

C. In rendering its decisions, the Architectural Control Committee reasonably shall evaluate the harmony and compatibility of proposed improvements and/or alterations with the surrounding structures and topography and shall act in accordance with other standards set forth in this Declaration, and the By-Laws, Rules and Regulations of the Association.

D. In the event the Architectural Control Committee fails to approve or disapprove any design and location within sixty (60) days after completion plans and specifications have been fully submitted to it or, in any event, if no suit or other proceeding to enjoin or prevent the structure, addition, change or alteration has been commenced within sixty (60) days after the completion thereof, approval will not be required and the provisions of this section shall be deemed to have been waived with respect to such structure, addition, alteration or change.

E. No trees or shrubbery shall be planted or maintained on any portion of the Existing Land or a Phase Under Development which abuts a roadway or other Common Property unless or until the plans shall have been submitted to the Architectural Control Committee, showing the location, area and height of the proposed planting and the materials to be used.

F. The provisions of this Article shall not apply to Declarant or to any Subdeveloper (who shall be solely governed by the Declarant under rights reserved in Article II, B.4.) in the building of new structures on land owned by Declarant or a Subdeveloper or with respect to initial clearing, grading and landscaping of such land.

ARTICLE IX  
Necessary Exterior Repairs by Association  
Occasioned by Neglect of Member of PPOA

Every Residential Unit Owner, by acceptance of title to the same, covenants that he, she or it will not permit the exterior of the Unit, or any improvements thereon, to be maintained other than in good repair and in a safe, neat and attractive condition. In addition, the PPOA documents for each Residential Phase must obligate the PPOA to maintain any common areas and/or common elements within the PPOA ("PPOA Common Area") in good repair and in a safe, neat, and attractive condition. Any Member who fails so to maintain the exterior of that Member's Residential Unit, or any PPOA which fails so to maintain the PPOA Common Area, to the point where, in the judgment of the Board of Directors, a condition has arisen constituting a hazard to persons or property or unsightliness tending adversely to affect the value or enjoyment of neighboring units, shall receive written notice from the Board specifying all conditions which violate the Member's covenants or PPOA's obligations as set forth herein, and grant the Member or PPOA a period of no less than twenty-one (21) days to correct each condition (provided, however, that the period allowed for correction shall be subject to reasonable extension if the conditions complained of can be corrected but the correction requires more time than provided in the notice, and the Member of PPOA begins to cure promptly within such period and thereafter diligently pursues completion). Notwithstanding the foregoing, such advance notice and grace period shall not be necessary in case of emergencies involving a reasonable perception of danger to life or property. If a Member or PPOA, so notified, has not rectified the condition or conditions cited within the time which the notice allows for the same, the Board shall have the right, but not the obligation, through its agents, employees or designees, to enter upon said Unit or PPOA Common Area for the purpose of painting, repairing, maintaining, and/or restoring the same, and improvements and landscaping thereon. Costs of such work shall be assessed against the Member or PPOA for whom the services have been performed. The assessment, in the case of a Member, shall be due in addition to all other Assessments and changes to which the Member and the Member's Unit are subject under Article VI, and shall be both a personal obligation of the Member and a lien against the Member's Unit as provided in Article VI. In the case of a PPOA, the

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assessment shall be both an obligation of the PPOA and a lien against the PPOA Units. Full payment from the Member or PPOA shall be due within thirty (30) days of presentation of an invoice for the work performed, and if the invoice or any portion thereof remains in default thereafter, it shall carry interest at the rate of eighteen percent (18%) per annum from the date of the invoice. In the event the Association has to take legal action to collect the sums due, the prevailing party shall be entitled to its reasonable costs and attorney's fees.

ARTICLE X  
General Restrictions on Residential Units

A. No obnoxious or offensive activities shall be carried on upon or within any Unit or proposed Unit, nor shall anything be done which may become an annoyance, nuisance or hazard to the neighborhood or to any portion of the Community.

B. No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Existing Land or of a Phase Under Development dedicated to residential use, other than common household pets, provided that the latter are not kept, bred or maintained for any commercial purpose. Where pets are permitted, they shall be leashed or otherwise under control at all times when outdoors. A PPOA may have a more restrictive rules relative to pets; and it may apply to the Board for a waiver to permit the keeping of horses within the PPOA, which the Board shall have the discretion to grant if it determines that the character of the PPOA is appropriate for the keeping of horses and that the same shall have no adverse impact on the Community.

C. No portion of the Community shall be used or maintained as a dumping ground for rubbish. Trash, garbage, and the like shall not be kept except in sanitary containers. All equipment for the storage or disposal of th same shall be keep in clean and sanitary condition.

D. Each owner of a Residential Unit shall maintain, clean and keep free from unsightly objects to the entry, portico, patio, deck, driveway, front yard, and back and side yards adjacent to his Unit.

E. No clothes lines or similar structures visible from the Common Property or other Units shall be permitted on the exterior of any Residential Unit.

F. With respect to Residential Units only, trailers, trucks, unlicensed vehicles, commercial vehicles or the like may not be permanently or continually parked by or under the authority of any Member on any driveway, elsewhere on the exterior of any Unit, or in an otherwise visible location on the Existing Land. Such vehicles may be kept within a Unit garage as long as the same fit in said garage and said garage contains a full garage door which is kept closed.

G. Recreational vehicles such as boats, campers, all terrain vehicles and snowmobiles, not more than twenty (20) feet in length may be stored temporarily on the exterior portion of a Residential Unit, subject to the Rules and Regulations of the Board, as long as said storage is not unsightly and is limited to no more than five (5) days.

H. All Residential Units shall be used for single or one-family occupancy [which term shall include groups of up to four (4) unrelated adults].

ARTICLE XI  
Miscellaneous Services Authorized

A. The Board of Directors shall perform or contract for, at its expense, proper management and maintenance of the Common Property and carry on certain services connected therewith, for the benefit of the Community and the Owners therein. Such maintenance and services may include, without limitation:

1. General landscaping and maintenance thereof including care for, spraying, trimming, protection, planting and replanting of trees and shrubbery on any streets or other public or quasi-public places or ways within the Common Property and maintenance of any grassy areas which are in streets, at intersections or in other public or quasi-public places;

2. General maintenance of any roads or other rights of way designated or conveyed as Common Property including removal of snow, ice, leaves and debris therefrom, repaving and repairs;

3. Maintenance and operation of any lighting and lighting fixtures along streets, parking areas, pedestrian ways, and such other paces within or adjacent to Common Property where lighting may be deemed advisable by the Association and not provided by a municipality;

4. Employment and compensation of qualified individuals for the purpose of providing such auxiliary police protection as the Association may deem necessary or desirable in addition to that rendered by government agencies;

5. Provision for shuttle bus services throughout the Community;

6. Provision and/or maintenance, where deemed necessary by the Association, of signs for marking streets, given directions, or warning of safely hazards;

7. Collection and removal of trash and garbage from the Common Property;

8. Maintenance of all recreation areas within the Common Property and as provided for in any lease of recreational facilities;

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9. Provision for the cleaning and maintenance of any streams and natural or artificial water courses or bridges over the same;

10. Provision and maintenance of trails and paths for recreational use;

11. Provision for fire service, if determined appropriate and authorized by state and local authorities; and

12. Provision for, independently or in cooperation with any other appropriate authority, person, firm or corporation, any other facilities, services, or amenities, useful or beneficial to the Members and/or Associate Members.

ARTICLE XII  
Easements

A. The Existing Land, Common Property and any Phase Under Development are subject to prior easements of record and to the following additional easements:

1. An easement for encroachments created by construction, settling and overhangs of the homes or other improvements as designed or constructed.

2. An easement upon, across, over and under the land for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, and a master or cable television antenna system. Any company providing any of said services shall have the right to install, erect and maintain all necessary cable, wires, pipes and other conduit underground and other necessary equipment at or below grade and to affix and maintain electrical, cable television and/or telephone wires, circuits, and other conduits on, above, across and under the roofs and exterior walls of any Unit and meters and shutoffs at or inside said Units, provided such rights shall be exercised without unreasonable interference with Units, and provided all such work undertaken is completed and any resulting damages promptly repaired.

3. An access easement to all police, fire protection, ambulance, and similar persons, companies or agencies performing emergency services.

4. For slope control purposes, Declarant and/or the Association reserves the right to grade and plant slopes and prevent the doing of any activity which might interfere with slope ratios approved and/or created by Declarant, or which might create erosion or sliding problems or change, constrict or retard drainage flow.

B. There is reserved to the Declarant until it shall have sold all Phases contained in the Community: (i) an easement over and through all parts of the Common Property to use the same in any manner in aid of sales, provided that such use does not interfere unreasonably with the rights of Unit Owners; and (ii) the right to use any and all units of any size in any location owned by the Declarant as model units or sales offices with the right to relocate the same from time to time. The Declarant expressly reserves the right to remove all improvements which are used by the Declarant as sales offices and model units which the Declarant may erect from time to time and which are not designated as a unit by the Declaration.

C. The Declarant expressly reserves a transferable easement without limitation or restriction to facilitate the development of the Existing Land, Common Property and Additional Land. Said easement shall consist of the right to use the roadways, utilities, walkways and all other parts of the Community in connection with the construction of improvements and for necessary access to Existing Land, Common Property and Additional Land. The Declarant specifically reserves the right and easement to make connection to such roadways, utilities, walkways and other parts of the Community as are necessary for such purposes.

D. The Community shall be subject to easements which are created hereby for the benefit of The Satter Companies of New England, its successors and assigns, which are or may become the Owners of certain lands contiguous to the Community, to allow ingress and egress on, over, and below the surface of the Community as maybe necessary to enable construction of structures on the land owned by The Satter Companies of New England, as well as construction and installation of access ways, utility services and other improvements deemed by The Satter Companies of New England, its successors and assigns, necessary and desirable in the development, use and maintenance of the land owned by them in accordance with site plans approved or to be approved by the necessary governmental authorities; provided, that such easements shall arise only if and when the said contiguous land becomes Additional Land and is added to Exhibit B by amendment to this Declaration; and such easements shall be appurtenant to and run with said contiguous land.

E. Declarant reserves the right to execute, acknowledge, deliver and record, with the approval of the Board of Directors of the Association, easements, rights of way, licenses and similar interests affecting the Common Property.

F. Notwithstanding anything contained herein, the Declarant shall have the right to own and rent any Residential Unit in the same manner as any other Owner, including Units which have been previously conveyed and later re-acquired by the Declarant.

G. The Board shall have the power (without submitting the same to the Unit Owners for approval) to authorize the officers of the Association to execute all and any easements authorized by the Declaration as it may deem desirable for the benefit of any other person or entity (including Unit Owners) over, under, above or

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through any of the Existing Land, Common Property or a Phase Under Development for such purposes and upon such terms as the Board in its sole judgment deems desirable. The officers of the Association shall be deemed to be Attorneys-in-Fact for all the Owners in executing such authorized easements; provided, however, that any such easements shall not interfere with the use and enjoyment of Unit Owners.

ARTICLE XIII  
Amendments to Declaration and By-Laws

A. Proposal of Amendments. Subject to subsections C and D below, Amendments to the Declaration and By-Laws may be proposed only by the Board or by petition signed by Unit Owners owning at least twenty-five percent (25%) of the Units. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

B. Method of Amendment. Except in cases for which the Declaration provides different methods of amendment or requires a larger majority, the Declaration and By-Laws may be amended only by the agreement of at least two-thirds (2/3rds) of those Members present, in person or by proxy, entitled to vote at any meeting of the Association at which a quorum is present, duly held in accordance with the provisions of the By-Laws. Notwithstanding the foregoing, no amendment which alters any exterior boundary of any Unit for which a certificate of occupancy has been issued, which permanently revokes a Unit Owner's right of enjoyment of the Common Properties, and/or permanently affects a Unit Owner's right to vote or obligation to pay Assessments, shall be effective without the written assent of that Unit Owner (except in the case of termination of the legal status of the Existing Land); and no amendment shall become effective which limits the rights granted to the Declarant by this Declaration or by the By-Laws, without the concurrence of the Declarant to such amendment.

C. Unilateral Amendment by Declarant. Notwithstanding anything to the contrary herein, until seven (7) years from the date of recording of this Declaration and for each such year thereafter until Declarant has completed construction of one thousand five hundred (1,500) Residential Units, but no later than fifteen (15) years from the date of recording of this Declaration, the Declarant shall have the unilateral right to amend this Declaration, as it deems appropriate for the protection and enhancement of the Community, and the Declarant shall not require or need the joinder of any Unit Owners; provided that no such amendment shall alter the boundaries of any unit conveyed to a Unit Owner, or revoke a Unit Owner's right of enjoyment of the Common Properties conveyed to the Association, or adversely affect a Unit Owner's right to vote or obligation to pay assessments under this Declaration.

D. Limited Opt-Out Provision. Notwithstanding anything to the contrary herein, in the event the Mt. Washington Hotel and related facilities are submitted to the provisions of this Declaration by Annexation Amendment, thereby becoming a Commercial Unit, said Unit

shall have a limited right, exercisable for five (5) years from the date of recording of such Amendment, to opt out from participation in the common services described in Article XI and payment of its share of common expenses related thereto; provided that such Unit shall then become a non-voting member of the Association with no further right of access to and use of Common Properties as defined herein, but which Unit shall remain subject to the other covenants, restrictions, easements and reservations of Declarant's rights hereunder.

ARTICLE XIV  
Termination of the Community

A. Requirements for Termination. Subject to the Declarant's rights of unilateral termination described herein, the Community may be terminated only by the recorded agreement of seventy-five percent (75%) of Unit Owners, as provided by Article XV.

B. Distribution of Proceeds Upon Termination. Subsequent to termination, the entire Common Property shall be deemed to be owned in common by all of the Members. The Common Property shall be subject to an action for partition at the suit of any such Member or the holder of any lien on the Unit thereof, in which event the net proceeds of the sale, together with the net proceeds of any insurance paid to the Association, any PPOA, or to the Unit Owners in common, shall be considered as one fund and shall be divided among all of the Members in proportion to their voting power with any necessary adjustments for unpaid Assessments which accrued prior to termination.

ARTICLE XV  
Rights Related to Mortgages

A. Any holder, insurer or guarantor of a mortgage on a Residential Unit, upon written request to the Board or the Association identifying its name and address and the Unit number or address, will be entitled to timely written notice of:

1. Any condemnation or casualty loss which affects a material portion of the Existing Land or any Unit securing its mortgage;
2. Any delinquency in the payment of assessments or charges owned by an Owner of a Unit securing its mortgage which remains uncured for a period of sixty (60) days; or
3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

B. All taxes, assessments, and charges which may become liens prior to a first mortgage on any Unit under local law shall relate only to the individual Unit and not to the Common Property.

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aggrieved Unit Owner, as the case may be, shall have the rights of enforcement set forth herein, but failure by any of the same to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter. In the event of litigation or administrative proceedings to enforce these covenants and restrictions, and/or the Articles, By-Laws, and/or rules and regulations of the Association, or to recover damages, or to enforce any lien created hereunder, the prevailing party shall be entitled to recover court costs and reasonable attorney's fees.

D. Severability. Invalidation of any portion of this Declaration by judgment or court order shall not affect any other provisions hereof, which shall remain in full force and effect.

E. Gender and Plural. Use in this Declaration of male gender shall include the female gender, and use of the singular shall include the plural, and vice versa.

F. All Rights Vested Upon Conveyance. No covenant or restriction herein shall be construed as a condition subsequent or as creating any possibility of reverter.

G. Rule Against Perpetuities. In the event any court shall hereafter determine that any provisions herein shall violate the rule against perpetuities, then such provisions shall be deemed to remain in effect until the death of the last survivor of the now living descendants of Ronald Reagan, President of the United States of America, plus twenty-one (21) years thereafter.

H. Arbitration. Any dispute hereunder shall be first submitted to arbitration under the rules of the American Arbitration Association or its successor in effect at the time a demand for arbitration is made, unless such dispute involves emergency circumstances and the immediate need for a preliminary injunction or other equitable relief.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed the day and year first above written.

WITNESS:

THE SATTER COMPANIES OF NEW ENGLAND

THE SATTER COMPANIES, INC.

*Handwritten signature*

By:

*Handwritten signature of Patrick J. DiSalvo*

Patrick J. DiSalvo, President of The Satter Companies, Inc., General Partner

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AND

WITNESS:

SATTER HOLDINGS, INC.

Sandra J. Avery

By: Robert A. Satter  
Robert A. Satter, Vice-President  
of Satter Holdings, Inc.,  
General Partner

STATE OF NEW HAMPSHIRE  
COUNTY OF GRAFTON

The foregoing instrument was acknowledged before me this 17th  
day of November, 1987, by Patrick J. DiSalvo, President of The Satter  
Companies, Inc., General Partner of The Satter Companies of New  
England, on behalf of the partnership.

Sandra J. Avery  
Justice of the Peace/Notary Public

STATE OF NEW HAMPSHIRE  
COUNTY OF GRAFTON

The foregoing instrument was acknowledged before me this 17th  
day of November, 1987, by Robert A. Satter, Vice-President of Satter  
Holdings, Inc., General Partner of The Satter Companies of New  
England, on behalf of the partnership.

Sandra J. Avery  
Justice of the Peace/Notary Public

c/2703

EXHIBIT A

LEGAL DESCRIPTION OF EXISTING LAND

A certain tract of land together with any buildings and improvements thereon and all appurtenances thereto situated in the Town of Carroll, County of Coos, State of New Hampshire, more particularly bounded and described as follows:

Beginning at a point on the northeasterly sideline of the Mount Washington Base Road, so called, at the easterly sideline of land now or formerly of the Maine Central Railroad; thence turning and running along a curve to the left having a radius of 2930.93 feet a distance of 120.92 feet to a point at land now or formerly of George Curtin; thence turning and running N 73° 00' 31" E a distance of 188.01 feet along land of said Curtin to a point; thence turning and running along a curve to the left having a radius of 21.00 feet a distance of 55.81 feet along land now or formerly of Robert Wright, Sr. and Robert Wright, Jr. to a point; thence turning and running along a curve to the right having a radius of 123.00 feet a distance of 108.56 feet still along land of said Wright to a point; thence turning and running N 64° 23' 39" E a distance of 135.00 still along land of said Wright to a point; thence turning and running N 25° 36' 22" W a distance of 125.00 feet still along land of said Wright to a point; thence turning and running N 43° 15' 18" E a distance of 191.29 feet along land now or formerly of The Satter Companies of New England to a point at the southwesterly sideline of an unnamed road; thence continuing along the same course 60.50 feet along land of said Satter to a point at the northeasterly sideline of said road; thence turning and running N 43° 15' 18" E along said same course a distance of 168.18 feet still along land of said Satter to a point; thence turning and running S 55° 55' 30" E a distance of 691.03 feet still along land of said Satter to a point; thence turning and running S 36° 53' 47" E a distance of 487.90 feet still along land of said Satter to a point; thence turning and running S 15° 59' 47" W a distance of 227.00 feet still along land of said Satter to a point; thence turning and running S 15° 00' 03" E a distance of 212.86 feet still along land of said Satter to a point at the northerly sideline of an unnamed road; thence turning and running S 54° 39' 00" W a distance of 94.57 feet still along land of said Satter to a point at the southerly sideline of said unnamed road; thence turning and running S 54° 13' 42" W a distance of 380.43 feet still along land of said Satter to a point; thence turning and running N 38° 49' 27" W a distance of 288.29 feet along land now or formerly of Bretton Woods Acquisition Company to a point at the southerly sideline of unnamed road; thence turning and running along a

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curve to the right having a radius of 202.93 feet a distance of 112.48 feet along said road and land now or formerly of Bretton Woods Acquisition Company to a point; thence turning and running S 53° 45' 07" W a distance of 80.56 feet still along said road and land now or formerly of Bretton Woods Acquisition Company to a point; thence turning and running along a curve to the left having a radius of 25.00 feet a distance of 36.41 feet still along said unnamed road and land now or formerly of Bretton Woods Acquisition Company to a point at the northeasterly sideline of the said Base Road; thence turning and running N 29° 42' 10" a distance of 176.72 feet along said road to a point; thence turning and running N 29° 45' 56" W a distance of 165.68 feet along said road to a point; thence turning and running N 30° 01' 39" W a distance of 100.39 feet still along said road to a point; thence turning and running N 31° 35' 32" W a distance of 100.85 feet still along said road to a point; thence turning and running N 36° 33' 27" W a distance of 131.30 feet still along said road to a point; thence turning and running N 40° 38' 31" W a distance of 67.06 feet still along said road to a point; thence turning and running N 41° 57' 12" W a distance of 142.66 feet still along said road to a point; thence turning and running along a curve having a radius of 510.46 feet a distance of 288.56 feet still along said road to the point of beginning.

Being the same premises shown as Parcels 1 and 2 on a plan entitled "Phase I" of land owned by Bretton Woods Corporation, prepared by Cartographic Associates, Inc., dated January 21, 1987, and recorded at Coos County Registry of Deeds, at Pocket 10, Folder 4, Plan No. 9.

EXHIBIT B

LEGAL DESCRIPTION OF ADDITIONAL LAND

All land now or hereafter owned by Declarant situate in Bethlehem, Carroll and Crawford's Purchase, including, but not limited within the following perimeter description, but excluding that parcel of land situate in Carroll more particularly bounded and described in Exhibit A hereto.

A parcel of land in the Town of Bethlehem, County of Crafton, and the Towns of Carroll and Crawford's Purchase, both in the County of Coos all in the State of New Hampshire, bounded and described as follows:

Beginning at a 1" iron rod in the centerline of Base Road, said point of beginning being on the town line between the Towns of Carroll and Crawford's Purchase, said point of beginning having coordinates in the N.H. Plane Coordinate System of N 641824.04 and E 560752.45 thence running along the centerline of Base Road the following 19 courses; N 82° 23' 17" E for 653.62 feet; on a curve to the left with a radius of 1432.39 feet for 390.97 feet; N 66° 44' 57" E for 989.62 feet; on a curve to the left with a radius of 480.00 feet for 364.00 feet; N 23° 18' 00" E for 131.50 feet; on a curve to the right with a radius of 480.00 feet for 364.81 feet; N 66° 50' 44" E for 652.83 feet; N 84° 30' 30" E for 287.67 feet; on a curve to the left with a radius of 1,000.00 feet for 391.97 feet; N 62° 03' 00" E for 1,011.12 feet; N 60° 25' 18" E for 856.89 feet; on a curve to the right with a radius of 860.00 feet for 928.06 feet; S 57° 44' 54" E for 399.53 feet; on a curve to the right with a radius of 1,000.00 feet for 352.43 feet; on a curve to the right with a radius of 500.00 feet for 228.28 feet; S 11° 23' 49" E for 850.35 feet; on a curve to the left with a radius of 890.00 feet for 519.10 feet; S 44° 48' 55" E for 783.43 feet; on a curve to the left with a radius of 2,100.00 feet for 593.12 feet to a 1" iron rod in the centerline of Base Road at the northeasterly corner of the herein described property.

Thence S 67° 31' 29" W for 539.98 feet to a 3/4" iron rod at the point where Strickney Road and the centerline of the Boston & Maine Corporation right-of-way intersect. Thence along the southerly side and 16-1/2 feet from the centerline of Strickney Road the following 26 courses; S 67° 31' 29" W for 329.03 feet; S 74° 20' 30" W for 463.16 feet; on a curve to the left with a radius of 435.00 feet for 152.39 feet; on a curve to the right with a radius of 200.00 feet for 125.95 feet; on a curve to the left with a radius of 485.00 feet for 252.98 feet; on a curve to the right with a radius of 435.00 feet for 83.45 feet; on a curve to the left with a radius of 435.00 feet for 187.04 feet; on a curve to the right with a radius of 215.00 feet for 194.37 feet; on a curve to the left with a radius of 160.00 feet for 92.03 feet; S 65° 40' 00" W for 114.60 feet; N 75° 45' 00" W for 103.22 feet; S 84° 30' 00" W for 239.20 feet; S 74° 54' 00" W for 235.20 feet; on a curve to the right with a radius of 150.00 feet for 160.97 feet; on a curve to the left with a radius of 300.00 feet for 183.19 feet; N 78° 36' 00" W for 366.09 feet; on a curve to the right with a radius of 215.00 feet for

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167.90 feet; on a curve to the left with a radius of 105.00 feet for 243.72 feet; on a curve to the right with a radius of 125.00 feet for 124.84 feet; on a curve to the left with a radius of 285.00 feet for 109.14 feet; S 48° 26' 00" W for 253.15 feet; S 66° 45' 00" W for 601.47 feet; S 61° 18' 20" W for 392.11 feet; S 81° 56' 33" W for 439.26 feet; S 75° 57' 38" W for 388.36 feet; S 74° 41' 03" W for 839.43 feet to a 3/4" iron rod which is 446.56 feet easterly of the Carroll-Crawford's Purchase town line.

Thence S 28° 02' 27" E for 2582.71 feet to an iron rod. Thence S 53° 16' 57" W for 500.00 feet to the Carroll-Crawford's Purchase town line; thence continuing S 53° 16' 57" W for 2088.76 feet to a New Hampshire Highway Department concrete bound on the easterly sideline of U.S. Route 302; thence S 40° 44' 46" W for 199.90 feet crossing U. S. Route 302 to a New Hampshire Highway Department concrete bound on the westerly sideline of Route 302; thence the following 6 courses on the westerly sideline of Route 302; N 49° 19' 52" W for 354.89 feet; N 51° 55' 53" W for 550.85 feet; N 39° 57' 11" W for 151.99 feet; N 49° 26' 19" W for 201.48 feet; N 49° 19' 28" W for 997.96 feet; N 49° 20' 31" W for 439.23 feet to a 3/4" iron rod; thence N 40° 41' 16" E for 62.97 feet to a 3/4" iron rod in the centerline of U.S. Route 302; thence N 45° 45' 50" W for 591.76 feet along the centerline of U. S. Route 302 to a 1" iron rod on the southerly property line of the Protestant Episcopal Church in New Hampshire; thence N 40° 25' 16" E for 310 feet more or less on the southerly property line of the Protestant Episcopal Church in New Hampshire to Crawford Brook; thence in the northerly direction by Crawford Brook for 220 feet more or less to a point on the southerly sideline of the Boston & Maine Railroad right-of-way; thence N 89° 42' 24" W for 158 feet more or less on the southerly sideline of the Boston & Maine right-of-way to a point; thence N 82° 57' 24" W for 204 feet on the southerly sideline of the Boston & Maine Railroad right-of-way to an iron pipe; thence S 54° 32' 36" W for 179.89 feet on the northerly property line of the Protestant Episcopal Church in New Hampshire to a point in the centerline of U. S. Route 302; thence N 51° 20' 00" W for 191.28 feet in the centerline of U. S. Route 302 to a point; thence N 55° 15' 00" W for 982.43 feet in the centerline of U. S. Route 302 to a point; thence N 65° 30' 00" W for 503.88 feet to a 3/4" iron rod in the centerline of U. S. Route 302; thence S 26° 17' 49" W for 6170.97 feet along the northerly boundary of property of the U. S. Forest Service and crossing the Maine Central Railroad right-of-way to a brass disc in a 3" iron pipe marked "Corner 51. T-15, 1972" at or near the height of land of the Rosebrook Range; thence N 62° 06' W for 2758.8 feet to a stake and stone; thence N 65° 07' W for 184.14 feet to a stake and stone; thence N 77° 07' W for 275.88 feet to a point; thence N 41° 31' W for 472.56 feet to a point on the summit of Mt. Rosebrook; thence N 8° 11' 04" E for 588.21 feet to a wood post

in a pile of stones at the corner of a tract formerly called the "Ski Area"; thence N 25° 46' 45" W for 782.20 feet to a U. S. Forest Service Disk marked "45/T-15, 1969"; thence N 2° 09' 24" W for 264.74 feet to a U. S. Forest Service Disk marked "44/T-15, 1969"; thence N 53° 50' 24" W for 1554.71 feet to a U. S. Forest Service Disk marked "43/T-15, 1969"; thence S 75° 14' W for 453.42 feet to a point; thence N 61° 21' W for 1133.22 feet to a point; thence N 5° 57' W for 1142.46 feet to a point; thence N 23° 07' E for 1624.26 feet to a point on the Carroll-Bethlehem town line, said point being at the southeasterly corner of Lot 11 in the first range of lots in the Town of Carroll and also being at the northwesterly corner of Lot 639, the ninth range of lots in the Town of Bethlehem; thence N 81° 29' E for 2581.26 feet along the aforementioned town line to the point at which it is intersected by the line of the former Nash and Sawyer's location line; thence N 80° 56' E for 877.14 feet to a point; thence N 9° 52' W for 1118.7 feet to a drill hole in a rock in the center of the Ammonoosuc River; thence in a general northwesterly and northerly direction in the center of the Ammonoosuc River for 1850 feet more or less to the former Nash and Sawyer's location line; thence N 80° 32' E for 530 feet more or less along the Nash and Sawyer's location line to a stake on the easterly bank of the former course of the said Ammonoosuc River; thence northerly and northwesterly along said bank and ditch or moat to the southwesterly corner of land supposed to be of James M. and Grace L. Brooks; thence N 29° 34' 55" E for 250 feet more or less by land supposed to be of said Brooks and crossing U. S. Route 302 to the northeasterly sideline of Route 302; thence northwesterly on the northeasterly sideline of U. S. Route 302 to the point at which it intersects the southwesterly sideline of the Maine Central Railroad right-of-way; thence southeasterly along the Maine Central Railroad right-of-way, which is 58 feet from and parallel to the railroad baseline of location, to a point on the Nash and Sawyer's location line; thence N 80° 25' 35" E for 58.50 feet to an iron pipe on the southwesterly sideline of the Maine Central Railroad right-of-way; thence in a southeasterly direction on a curve to the right with a radius of 5704.65 feet for 199.54 feet to an iron pipe opposite and 25 feet from railroad station 4339 + 67.13; thence S 58° 21' 25" E for 606 feet more or less on the southwesterly sideline of the Maine Central right-of-way to a point; thence N 31° 38' 35" E for 91.00 feet crossing the Maine Central Railroad right-of-way to the north-easterly sideline of said right-of-way; thence continuing N 31° 38' 35" E for 100.00 feet by said right-of-way to a rail bound; thence N 58° 21' 25" W for 586.40 feet on the northeasterly sideline of the Maine Central Railroad to a point on the Nash and Sawyer's location line; thence N 79° 50' 41" E for 5992.44 feet to an iron pipe in stones at the northeasterly corner of the grant formerly known as Nash and Sawyer's Location; thence S 27° 00' 50" E for 4050.63 feet on the town line between Carroll and Crawford's Purchase to the point of beginning. The herein described parcel contains 2,620 acres more or less.

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EXHIBIT C

LEGAL DESCRIPTION OF COMMON PROPERTY

No Common Property has yet been submitted to the provisions of this Declaration of Covenants, Restrictions, Easements, Charges and Liens as of the date of recording of said Declaration.

Received Nov. 19, 2:05 PM 1987  
Examined, ATTEST:

Charlotte LaCasse Register.

c/2802

# **ATTACHMENT G**



April 8, 2019

**Subject: Reconciliation of Rosebrook (Abenaki Water Co.) Pressure Reduction Initiative**

Pursuant to a PUC staff directive at the March 20<sup>th</sup>, 2019 technical session, Abenaki Water Company (AWC) was instructed to meet with representatives of Omni Mount Washington Hotel to further develop the above initiative. Subsequently, AWC and representatives of Omni met at the office of McLane Middleton on March 29<sup>th</sup>, 2019, to review the “scope” and “the best and most cost effective solution”, among other subjects.

The following report categorizes the initiative into the following:

- Scope of Work
- Phase I
- Phase II
- Phase III
- Additional Discussion
- Proposed Project Schedule

We are pleased to present this report and look forward receiving your comments and questions.

Very truly yours,

Donald Vaughan  
Abenaki Water Company

## **Project Scope of Work**

In describing the nature of work and goals of the proposed project, please refer to the report “Responses Pursuant to DW 17-165, Order No. 26,205; regarding Rosebrook pressure problem” which provides ample background to this overview.

In essence, the overall aim of the project is to reduce the existing water system pressure from that approaching 200 psi to a range between approximately 35 to 100 psi. The reasons behind this are several and include the following:

- Extreme high pressure constantly causes significant stress and strain on system components, particularly pumping equipment, various types of valves, chemical injection, and difficulty in operation in what otherwise would be routine maintenance activities.
- Operator safety is at risk with inordinately high pressures as well as the potential (and realized) increased liability to a variety of real estate assets.
- System improvements are made much more expensive and complicated due to the high pressure.

The scope of the pressure reduction project as it directly addresses the above bullet points will yield some of, and potentially all of, the following benefits depending on the options selected as described in phases of implementation.

- Maximum system wide pressure reduction to about 100 psi.
- Much improved system redundancy and service reliability to the Omni Mount Washington Hotel.
- Probable maintenance cost savings regarding mechanical water systems and sprinklers at commercial buildings
- Ability to monitor aquifer levels.
- Mitigation of water hammer by pressure reduction and main looping.
- Increased flexibility of system control by replacement of inoperative valves damaged due to high pressure. Installation of strategically located air release valves at system high points to minimize this potential factor related to water hammer.
- Abandonment and relocation of the 16” mains under the ski area base lodge.
- Looping of the hotel distribution system to reinforce fire flows presently provided through a single 8” service.
- Construction of a new water storage tank on the north side of Route 302 to further enhance fire flows to the hotel and the growth area of the system in general.

To realize all of the above benefits to Omni, as well as the 400 or so residential customers, AWC recommends phasing the construction to moderate financial impact. Horizons engineering recommends the following phasing schedule to be the most practical and cost effective and to which AWC concurs.

## **Phase I**

AWC regards this segment of the construction to be essential and the cornerstone of all subsequent system wide improvements. It will immediately reduce pressure at the source of supply (pumping components) to about 100 psi, create a safer working environment, allow for the ability to improve chemical injection, and greatly decrease wear and tear, among other conditions.

This phase includes installation of approximately 2,000 feet of dedicated 16" water main, PRV's, and the Rosebrook Townhouse Booster Station to reduce pressure at the well pump station and along the dedicated water main length; modification of well pumps as needed to reduce their pressure output; well yield assessment to prevent over-pumping and air intrusion into system piping including installation of water level monitoring; replacement of key valves at system high points; and installation of approximately 40 feet of water main along the Base Road to tie the existing 12" and 8" water main (feeding the Omni Mount Washington Hotel) together.

## **Phase II**

Includes installation of two additional booster pump stations and PRV's to allow separating the hydraulic grade line of the system into two zones (or one booster pump station and a connecting water main between the Rosebrook Town Homes and Crawford Ridge as discussed later in this letter); installation of approximately 350 feet of water main ( to provide a system loop) at the end of Dartmouth Ridge Road; installation/decommissioning of water main in the Bretton Woods base area to allow for abandonment of the main beneath the base lodge; and installation of the Omni Mount Washing Hotel water main loop.

### **Phase III**

Possible funding through the DWGW Trust Fund holds promise for the construction of key enhancements to the overall project. Phase III includes installation of an approximate 1 million gallon atmospheric storage tank and connecting water main. The tank would be located in the general vicinity of the Dartmouth Ridge homes. This location is centrally located in the system and would provide better fire flow to the Omni Mount Washington Hotel and development along Base Station road and around the Hotel campus. A second tank would also provide additional system redundancy by having additional storage to the north of Route 302 should a problem ever occur with the Route 302 water main crossing.

### **Drinking Water and Ground Water Trust Fund**

Recently, discussion has taken place regarding application to the New Hampshire DWGW Trust Fund and whether it would be a potential source of funding for some of the Phase II and Phase III desired improvements. We believe that improvements that focus on providing a potential for improvement in business, including the Omni Mount Washington Hotel, Bretton Arms, and Bretton Woods Ski Area, as well as providing a foundation for future commercial growth in the valley, are good candidates. As such, we believe the Base Lodge water main work, the Omni Mount Washington Hotel water main loop, and the new tank are good projects to include in a funding application. Such an application must be submitted by June 15, 2019.

## **Additional Discussion**

The major change to our previous recommendation for system pressure reduction has come about due to the recently identified need/goal to eliminate the existing 16" water main that is located under the Bretton Woods Ski Area Base Lodge slab that was not previously considered. Abandonment of the line will require that an alternate main feed line from the existing storage tank be provided. The most practical and cost-effective way to accomplish this newer goal is described as part of the following.

In order to meet the minimum project goal of reducing the pressure at the existing pump station, and setting the system up for future Phasing, a "dedicated" water main would be installed from the well pump station site to the proposed Rosebrook Townhouses Pump Station site. This dedicated water main would include approximately 2,000 feet of new 16" water main from the pump station (under the Ammonoosuc River) to the existing 16" main above the Base Lodge (see attached Overall Plan). This new 16" piping will function as a new (alternate) feed line for the system under Phase II, so that the existing 16" water main under the Base Lodge can be abandoned. The "dedicated" main would be comprised of both this new piping and the existing water main along Remick Lane and Rose Brook Lane to the proposed Rosebrook Townhouses Pump Station. A portion of this length of "dedicated" water main would have a pressure reduction to under 100 psi. Three PRV's would be installed along the length of the "dedicated" water main. This work would be included in Phase I. System fire flows would be improved as a result of this Phase I work.

As previously noted, Phase II of the project will create two distinct pressure zones (see Conceptual System Improvements for Pressure Reduction – Attachment 1 – Overall Plan) in the system with resulting pressures under the system wide 100 psi maximum desired. The project would include two additional booster pump stations and PRV's.

Additional pump stations will not cause a significant increase in electrical pumping costs, as the same amount of water will be lifted to the same elevation as it currently exists, requiring approximately the same amount of energy to do so.

It has been suggested that the proposed Crawford Ridge Pump Station may not be needed if a new water main was installed from the Rosebrook Townhomes area cross country to the Crawford Ridge area. The water main would be approximately 2,000 feet in length, located across the Bretton Woods Ski Area Land. This alternative option to provide service to the Crawford Ridge area will be examined during the preliminary design of the project. This alternative option could be found to be favorable depending on the availability of land for the Crawford Ridge Pump Station and/or the presence of ledge and other existing utilities across the Ski Area land. A hydraulic analysis of this option will be performed during the preliminary design effort.

Other important improvements that have been identified include addressing issues at the Bretton Woods Base Lodge and Omni Mount Washington Hotel. Failure of the existing 16" water main under the Base Lodge would likely cause serious water and

possibly structural damage to the facility. The Omni Mount Washington Hotel is currently served by a single, long, dead end 8" water main. Providing a water main loop to the Hotel will reduce the potential for water hammer, improve fire flows, and provide redundancy to this very important water system user. Installation of a second water storage tank on the north side of Route 302 would also provide many benefits to the system including improved fire flow capacity system wide and redundancy to keep the system mostly operational and in service in the event of a water main failure.

A color-coded summary of the revised desired improvement is provided on the attached Conceptual System Improvements for Pressure Reduction – Attachment 1 – Overall Plan. At this time the details of the proposed options such as water main alignments, pump station locations, etc. are preliminary and subject to revision during the design process.

## **Proposed Project Schedule**

Abenaki Water Company has indicated that they are seeking to begin design of Phase I and Phase II of this project. The potential timeline of the project is as follows:

Potential Timeline	
9/15/19	Complete design and permitting of Phase I and Phase II improvements.
12/31/19	Obtain necessary easements.
4/15/20	Bid and award contract of Phase I Improvements.
4/15/21	Obtain necessary easements, bid, and award contract for Phase II improvements.
12/31/21	Complete construction of Phase II improvements, complete design and permitting and obtain necessary easements for Phase III improvements.
4/15/22	Bid and award contract of Phase III improvements.
12/31/22	Complete construction of Phase III improvements.

**PROPOSED ORDER OF IMPROVEMENTS**

- PHASE 1
- PHASE 2
- PHASE 3

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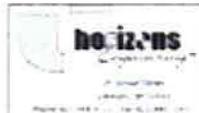
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**GENERAL NOTES**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION (DOT) STANDARD SPECIFICATIONS FOR HIGHWAYS AND BRIDGES, LATEST EDITION, AND THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL AFFAIRS (DEA) REGULATIONS FOR THE PROTECTION OF WATERSHEDS AND AQUATIC RESOURCES, LATEST EDITION.
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL AFFAIRS (DEA) REGULATIONS FOR THE PROTECTION OF WATERSHEDS AND AQUATIC RESOURCES, LATEST EDITION.
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL AFFAIRS (DEA) REGULATIONS FOR THE PROTECTION OF WATERSHEDS AND AQUATIC RESOURCES, LATEST EDITION.



DATE: 07/2017  
 SCALE: AS SHOWN



**NEW ENGLAND SERVICE CO.**  
**WATER & WASTE DIVISION**  
 WASTEWATER TREATMENT  
 CONCEPTUAL WATER SUPPLY  
 PLAN PRELIMINARY DESIGN  
 171000-01  
 171000-01

NO.	DATE	DESCRIPTION
1	07/2017	PRELIMINARY DESIGN
2	07/2017	CONCEPTUAL DESIGN
3	07/2017	PRELIMINARY DESIGN
4	07/2017	CONCEPTUAL DESIGN
5	07/2017	PRELIMINARY DESIGN
6	07/2017	CONCEPTUAL DESIGN
7	07/2017	PRELIMINARY DESIGN
8	07/2017	CONCEPTUAL DESIGN
9	07/2017	PRELIMINARY DESIGN
10	07/2017	CONCEPTUAL DESIGN

# ATTACHMENT H



Marcia A. Brown  
Attorney at Law

*Environmental Law* ▪ *Utility Law*

May 10, 2019

VIA ELECTRONIC DELIVERY

Christopher R. Tuomala, Esq.  
N.H. Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

D. Maurice Kreis, Esq.  
Office of the Consumer Advocate  
21 South Fruit Street, Suite 18  
Concord, NH 03301

Thomas B. Getz, Esq.  
McLane Middleton, P.A.  
11 South Main Street, Suite 500  
Concord, NH 03301

Paul Mueller  
Bretton Woods Property Owners Association  
4 Tiffany Drive  
Randolph, MA 02368

Lawrence Devito  
Rosebrook Association  
250 South St  
Tewksbury MA 01876

Paul Luongo

Re: Docket No. DW 17-165  
Abenaki-Rosebrook Summary of Discussions with Omni and  
Abenaki Request for Concurrence on Scope of Engineering and Phase II

Dear Staff and parties:

This letter is to update Staff and the parties on Abenaki Water Company, Inc.-Rosebrook Water Company, Inc.'s ("Abenaki" or "Company") discussions with Omni Mount Washington, LLC ("Omni") and request your concurrence on moving forward so that we may report to the Commission and proceed with certain phases of Abenaki's proposal and close out this phase of the procedural schedule.

As you know, the Commission approved procedural schedule concerning Abenaki's Step II and concluded with a technical session on March 20, 2019. Since that technical session, Abenaki and Omni have met to discuss resolution of Omni's concerns with Abenaki's engineer's proposal to address the extreme, high pressure within the water system. Those discussions have not produced any changes to Abenaki's goal of reducing system pressure. The discussions have also not changed Omni's position, its objection is largely focused on the storage tank and demonstration that the recommended plan is the most cost-effective approach to the problem. Omni however, is supportive of the Company's plans to apply for grant funds.

Given that it is May and Abenaki's costs for its engineering plans are to be submitted in September and, importantly, that Abenaki not lose this construction season, Abenaki requests, pursuant to section D, paragraph 6 of the settlement agreement, to amend the procedural schedule to allow Staff and the parties to file a recommendation concurring on the scope of its engineering plans, by May 24<sup>th</sup>.

### **History of Evaluation**

Since acquiring the Rosebrook water system in September 2016, Abenaki has reviewed the system's needs and priorities. These reviews are manifested in the January 7, 2019 compliance report filed by the Company in this docket as well as in Abenaki's responses to Staff 2-1, Tech 1-4 and Supplemental Tech 1-4. The first review (2016) was part of Abenaki's due diligence and Abenaki retained Horizons Engineering, Inc.'s ("Horizons") because of its ready historical understanding of the system. (Horizons had prepared a pressure reduction analyses in 2010 for the prior owner of the water system. See Abenaki's response to Staff 1-6.) Abenaki refined that analysis in 2017 and, most recently in 2018. See Horizons' Analysis and Recommendation Summary, dated September 5, 2018, submitted as Attachment 3 to Abenaki's January 7, 2019 compliance report.

Abenaki's assessment has not been done in isolation. Abenaki has been in regular contact with the New Hampshire Department of Environmental Services ("NHDES") over a number of years. The NHDES has made repeated requests that pressure be addressed, both before and after Abenaki acquired the system. The NHDES supports Abenaki's pressure reduction proposals, in particular, phases II, III, and IV. Abenaki and Horizons considered NHDES's comments in formulating the 2018 Analysis and Recommendation. This correspondence and support have been provided in the September 5, 2018 Horizons report and in response to Omni 2-3.

### **Plan Going Forward**

As discussed in the January compliance report, data responses, and at the March technical session, Abenaki plans to address the high pressure over the course of four phases. The phases are necessary to pace financings and avoid rate shock. Abenaki believes it has addressed the Commission's questions, which were: that Abenaki detail the solutions it considered before contracting with Horizons, the other possible options available to address the water pressure problems, provide the reasoning supporting the construction of the new water tank, and demonstrate that the phases are the best and most cost-effective solutions. Importantly, the NHDES supports Abenaki's solutions and understands that engineering designs must be developed first in order to finalize additional details of the proposal.

Phase I involves completing engineering design of the system improvements (2019). Phase II involves construction of a new transmission main and one booster pump station (2019-2020). This project will reduce the pressure at the well to 100 psi and reduce safety concerns associated with operating the wells at 200 psi.<sup>1</sup>

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<sup>1</sup> High pressure at the well pump house is of concern in light of the dangerous pipe break that occurred in 2011. See the Company's pressure reduction presentation filed with the  
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Phase III involves later construction of two additional pump stations and installation of pressure reduction valves (2021-2022). The phased approach is intended to build upon each other to address the high pressure in an integrated fashion. The Company has agreed to eliminate Phase IV (storage tank) from the current engineering services contract with Horizon's. The need or desire for a new tank can be revisited at some future time. The tank is not essential for the pressure reduction project.

### **Discussions with Omni**

Abenaki and Omni met and corresponded multiple times after March 20<sup>th</sup>. Notwithstanding those meetings and exchange of information, Omni is not prepared to support Abenaki's proposal. Omni maintains that its questions have not been resolved. . Omni is supportive, however, of Abenaki's application to the Drinking Water and Groundwater Trust Fund and will assist in the application, as appropriate.

### **Abenaki's Position**

Abenaki still believes that the phases set forth in the 2018 Horizons report are the best solution to the pressure problem. Action must be taken now. The reality of delaying addressing the high-pressure problem was made real on Easter Sunday, April 21<sup>st</sup>, when Omni suffered a break in its 8-inch service line. Due to the holiday weekend, Omni urged the Company to delay shutting off the service until Monday when it could effectuate repair of the line. The Company remained on site to monitor the leak and the impact of the leak on its water system until the repair.

This break illustrates how significantly the extreme high pressure compromises the water system and adversely affects customers. At the March technical session, Horizons and NHDES stated that service lines are prone to leaking under high pressure. The pressure within Omni's service line that Sunday was between 180 and 195 psi. This is extremely high considering Puc 604.03 requires normal operating pressures of not less than 30 psi and not more than 100 psi. (For service connections made prior to 1997, pressures are allowed to be between 20 and 125 psi.) . The phases proposed by Abenaki will address the high-pressure problem and, importantly, improve safety, and operations and maintenance.<sup>2</sup>

Abenaki shares Omni's concern that the recommended plan be the most cost effective option. It is Abenaki's plan to collaborate with Omni during the design phase. The Company will pursue any and all opportunities to reduce the overall project cost. The design phase is where we will identify and adopt cost effective options.

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Commission on June 20, 2018 as well as its response to Staff 2-1.

<sup>2</sup> The high pressure makes it difficult for Abenaki to conduct regular maintenance. As mentioned at the technical session, high pressure prevents regular exercise of valves and creates water hammer when hydrants are flushed. Many pumps for chemical injections won't operate above 150 psi.

The longer pressure reduction initiatives are delayed, the more Abenaki becomes increasingly concerned about damage liability, proper operation of the system and operator safety. Consequently, Abenaki will seek relief from liability due to high pressure in those parts of the system where pressure remains above 100 psi.

### Conclusion

In order to maintain its construction window, Horizons needs to commence its design work now, at a minimum, on the phase II transmission main and booster pump station. Abenaki seeks Staff and the parties' concurrence on phases I and II so that we may advise the Commission and move forward. The Company appreciates Staff and the parties' attention to this very important issue and seeks your reply as soon as possible.

Very Truly Yours,



Marcia A. Brown

cc: Randal Suozzo, NHDES

# **ATTACHMENT I**



*Bretton Woods*  
**LOSS PREVENTION DEPARTMENT**

**LT Peter T. Eakley, Ret.**  
**Director of Loss Prevention**

11 May 2019

Mr. Christopher Ellms  
Director of Ski Operations  
Omn Mount Washington LLC  
310 Mount Washington Hotel Road  
Bretton Woods, New Hampshire 03575

Sent Electronically

Dear Mr. Ellms:

The following are my thoughts and reflections after reviewing Ms. Marica A. Brown, Esquire letter of 10 May 2019 to various personnel (see attached letter) concerning the Abenaki Water Company, Inc. – Rosebrook Water Company Inc. (Water Company) and the high pressure problems experienced throughout the Omni Mount Washington LLC (Resort).

To preference my comments , I want to state that I am not an engineer, nor do I have any formal training in water delivery systems. What I do have is 25-years' experience as an emergency manager, law enforcement officer, counter-terrorism coordinator and volunteer firefighter of a suburban / urban community in northern New Jersey that was home to a large regional water company. In the course of my career I worked closely with this major utility in a number of important projects, including target hardening, protecting the infrastructure, and emergency repairs. During one major tropical storm, we lost water delivery to over 40,000 persons and I was forced to develop potable delivery systems and emergent fire protection for the municipality.

The point of this is to explain that although I am not an engineer, I have seen firsthand many public utility emergencies and understand implications and causes of said emergent conditions.

In particular I would like to focus attention on page 3 of 4 Subsection "Abenaki's Position", paragraphs one and two. Respectfully, Attorney Brown's written statement, is inaccurate and does not correctly portray the

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events on 21 April 2019. Ms. Brown was not on scene on 21 April 2019 or during the next two days of subsequent work on this emergency repair.

On 21 April 2019, although off-duty, once notified of the water main break and still not knowing the scoop of the incident, I responded to the Resort. I was among one of the first of senior management team on scene and had the opportunity to meet and talk with all stakeholders, including a representative of the Abenaki Water Company, Abenaki Water Company Management – via a joint phone conference from the scene, Twin Mountain Fire and Rescue, Bretton Woods Telephone Company, and contractors from A.B Excavating Inc.

At no time did any member of the Resort encourage or imply that the repair and shutting off the water should be delayed until Monday, 22 April 2019, this statement is completely inaccurate. In fact, the Water Company originally stated in the presence of not only Resort Management, but in front of the Twin Mountain Fire and Rescue Chief – Jeremy Oleson, that they would be turning off the water and could not start any repairs until Tuesday, 23 April 2019. This tactic of the water company would result in complete closure of the Mount Washington Hotel (a grand hotel) and the Mount Washington Golf Center, because of complete loss of water, including for sanitary and fire suppression systems.

Fire Chief Oleson expressed his concern and told the Water Company this would be unacceptable. What was compromised was that as various materials and heavy equipment was moved to the site, the water main was not turned off. This allowed the Resort to continue to serve meals at an Easter Brunch and make arrangements to move guests on the night of 21-22 April 2019 to other lodging locations. Once heavy equipment was on scene, the water was turned off and work started immediately.

After hours of excavation, the cause of the leak was found. Nobody on scene, including the Water Company representatives, ever concluded that the cause was from high pressure. The hole in the pipe could have been caused by a multitude of reasons, including ground settling / shifting , fatigued pipe, or the joint that feeds the caretakers house splitting. To conclude that this event was caused by high pressure is entering a conclusion with no supporting facts.

Finally, the statement that stated, *“The company remained on site to monitor the leak and impact of the leak on its water system until repair,”* is also not completely accurate. The Resort, after notification and with the consent of the Water Company arranged for parts, material, and certified personnel to fix the damage (after being told by the Water Company that they could not help until days later). The Water Company personnel that was on scene, was a passive observer and watched the repair company (A&B Excavating). Other than turning off and on the main valve (located on Base Road) with the requested assistance of Resort Engineering personnel, did little but, “watch the hole.” In addition, they did not maintain

an overnight vigil on the night on 21-22 April 2019, nor were they on scene when work restarted the morning on 22 April 2019.

I want to be clear, I am in not implying that there is not a pressure problem with the water system. From experience and observations, I concur that there is a pressure problem, but I do not believe that anyone can conclude the cause of the events of 21 April 2019.

If you have any additional questions or concerns, please feel free to contact me.

Sincerely yours,



Peter T. Eakley  
Director of Loss Prevention

CC: Mr. Joshua D. DeBottis – General Manager

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