



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

APR 11 2016 10:01 AM

April 11, 2016

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services to amend a loan agreement with the Brandywine Owners Association, Inc., (VC#259671-B001), East Kingston, NH by increasing the loan amount by \$33,000 from \$87,000 to \$120,000 to finance water system improvements under the provisions of RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. effective upon Governor & Council approval. The original loan agreement was approved on April 8, 2015, Item #54. 100% Drinking Water State Revolving Loan Fund (DWSRF) Repayment Funds.

Funding is available in the account as follows:

	<u>FY 2016</u>
03-44-44-441018-4791-301-500833	\$33,000
Dept Environmental Services, DWSRF Loan Repayments, Loans	

EXPLANATION

The purpose of this amendment is to authorize the Brandywine Owners Association, Inc. to modify their original loan agreement approved by Governor and Council on April 8, 2015 as Item #54. The Association had originally requested \$87,000 from the Drinking Water State Revolving Fund Program (DWSRF) to finance a project which includes water systems improvements such as replacement of well pumps and well redevelopment. The additional funds are necessary due to the cost of the necessary work being higher than expected. DES has sufficient funds at this time to meet the Association's request. This project will improve water system capacity and reliability.

There is currently a balance of \$37,483,081 in the DWSRF Repayment Account available for new loans. Attached is a tabulation of the Repayment Account showing the effect of this loan on the funds available.

We respectfully request your approval.


for Thomas S. Burack, Commissioner

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council

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DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION

DRINKING WATER STATE REVOLVING FUND

Supplemental information to Governor and Council request of the loan agreement(s) under RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. for the public water system(s) listed below.

This request will affect the balance of the loan funds as follows.

	<u>REPAYMENT</u>
Repayment Account (Balance as of 4/5/16)	<u>\$40,557,530</u>
Less Loans Previously Approved	<u>\$3,074,449</u>
Funds Available for Loans	\$37,483,081
 Amendment Being Requested	
Brandywine Owners Association, Inc. (Project #: 0702020)	(33,000)
 Net Change to Loan(s)	<u>(33,000)</u>
 Balance Available After G & C Approval	<u><u>\$37,450,081</u></u>

CLOSING AGENDA

**STATE OF NEW HAMPSHIRE
STATE DRINKING WATER REVOLVING LOAN FUND**

RE: AMENDMENT OF LOAN TO BRANDYWINE OWNERS ASSOCIATION, INC.
COMMUNITY WATER SYSTEM
EAST KINGSTON, NEW HAMPSHIRE
Project #0702020

DATE: _____

- | | | |
|----|-------------------------------------|-------|
| 1. | State of New Hampshire | “SNH” |
| 2. | Brandywine Owners Association, Inc. | “B” |
| 3. | State’s Counsel, David Howe | “DMH” |

No.	Item:	Responsible Party:
1	Articles of Agreement of Borrower	B
2	Bylaws of Borrower	B
3	Certificate of Existence of Borrower	B
4	Resolutions of Borrower	B
5	Amended Schedule of Costs (Budget) (Exhibit B)	B
6	First Amendment to Loan Agreement and Security Instruments	SNH
7	First Allonge to Promissory Note	SNH
8	First Amendment to Collateral Assignment of Association Assessments	SNH
9	Governor and Council approval	SNH
10	399-B Disclosure	SNH

**FIRST AMENDMENT TO LOAN AGREEMENT
AND SECURITY INSTRUMENTS**

This First Amendment to Loan Agreement and Security Instruments is made this _____ day of _____, 2016 between Brandywine Owners Association, Inc., a New Hampshire corporation with an address of 7 Brandywine Drive, East Kingston, New Hampshire 03827 (the "Borrower") and the State of New Hampshire with an address of c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (hereinafter the "Lender") for themselves and their successors and assigns.

RECITALS

A. The Lender has provided a loan of up to \$87,000 (the "Loan") to the Borrower as evidenced by a Promissory Note of the Borrower dated April 17, 2015 in the original principal amount of \$87,000 (the "Note") pursuant to a Loan Agreement dated April 17, 2015 between the Borrower and the Lender (the "Loan Agreement") to finance the improvements to the Borrower's water system for Brandywine Owners Association in East Kingston, New Hampshire;

B. The Loan is secured by certain Security Instruments (as defined in the Loan Agreement), including, without limitation, a Security Agreement dated April 17, 2015 between the Borrower and the Lender (the "Security Agreement"), a Collateral Assignment of Contracts, Plans and Permits dated April 17, 2015 between the Borrower and the Lender (the "Collateral Assignment of Contracts, Plans and Permits") and a Collateral Assignment of Association Assessments dated April 17, 2015 of the Borrower to the Lender;

C. The parties desire to increase the amount of the Loan to \$120,000 and are amending the Note pursuant to a First Allonge to Promissory Note of even date to increase its principal amount and amend other terms (the "Allonge"); and

D. The parties desire to amend the Loan Agreement and certain Security Instruments in accordance with this agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. Defined Terms. All capitalized terms used in this agreement shall have the meaning assigned to them in the Loan Agreement unless otherwise defined herein.

2. Amendment of the Loan Agreement.

(a) The second sentence of Recital Paragraph B on the first page of the Loan Agreement is hereby amended by replacing "\$87,000" with "\$120,000":

(b) Section 1 of the Loan Agreement is hereby amended by replacing the definition of "Note" with the following:

"Note" means the Borrower's Promissory Note dated April 17, 2015 in the original principal amount of \$87,000 payable to the order of the State in the form attached hereto as Exhibit C, as amended by a First Allonge to Promissory Note dated _____, 2016 between the Borrower and the Lender."

(c) Exhibit C to the Loan Agreement is hereby amended by supplementing it with Exhibit C attached hereto.

3. Amendment of Security Instruments.

(a) Recital Paragraph B of the Security Agreement is hereby amended by replacing it with the following:

(b) The Secured Party has agreed to extend credit to the Borrower in the amount not to exceed One Hundred Twenty Thousand Dollars (\$120,000) in exchange for the Borrower's Promissory Note dated April 17, 2015, as amended by a First Allonge to Promissory Note dated _____, 2016 between the Borrower and the Lender (as amended thereby and from time to time hereafter, the "Note").

(c) Section 1 of the Collateral Assignment, Plans and Permits is hereby amended by replacing it with the following:

1. Security. This Assignment is made as additional security for the performance of all the Assignor's obligations under the Loan Agreement, Assignor's Promissory Note in the original amount of \$87,000 as amended by a First Allonge to Promissory Note dated _____, 2015 increasing the principal amount thereof to \$120,000 and certain security instruments as described in the Loan Agreement (the "Security Instruments"), each dated as of even date and delivered to or to be delivered to Assignee.

5. Representations. The Borrower represents and warrants that the representation and warranties set forth in Section 2 of the Loan Agreement are true and correct as of the date hereof.

6. Ratification. The Borrower ratify and confirm all of the terms, conditions, covenants and provisions of the Loan Agreement, the Security Instruments, as amended hereby, the Note as amended by the Allonge, which shall remain in full force and effect.

EXECUTED on the day and year first above written.

BORROWER:

**BRANDYWINE OWNERS ASSOCIATION,
INC.**

Witness

By: _____
Brett Cotoia
President
Duly Authorized

LENDER:

THE STATE OF NEW HAMPSHIRE

Witness

By: _____
Thomas Burack, Commissioner
Department of Environmental Services
Duly Authorized

FIRST ALLONGE TO PROMISSORY NOTE

Allonge made this _____ day of _____, 2016 between Brandywine Owners Association, Inc., a New Hampshire corporation with an address of 7 Brandywine Drive, East Kingston, New Hampshire 03827 (the "Maker"), and the State of New Hampshire with an address of c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (the "Payee") for themselves and their successors and assigns.

RECITALS

A. Pursuant to a Loan Agreement dated April 17, 2015 between the Maker and the Payee (the "Loan Agreement"), the Payee agreed to provide a loan to the Maker of up to \$87,000, which is evidenced by the Promissory Note dated April 17, 2015 of the Maker in the principal amount of up to \$87,000 (the "Note");

B. The parties have amended the Loan Agreement and certain Security Instruments (as defined in the Loan Agreement) pursuant to a First Amendment to Loan Agreement and Security Instruments of even date among the Maker, the Payee (the "Amendment Agreement") and a First Amendment of Mortgage and Security Agreement and Collateral Assignment of Association Assessments of even date between the Maker and the Payee (the "Mortgage Amendment"); and

C. The parties desire to increase the amount of such loan evidenced by the Note to up to \$120,000 and to modify the terms of repayment of the Note pursuant to the terms of this Allonge.

NOW THEREFORE, the parties agree as follows:

1. The Note is hereby amended as follows:
 - (a) The face amount of the Note as expressed in the top left corner of the first page of the Note is hereby increased from \$87,000 to \$120,000.
 - (b) The amount of "Eighty Seven Thousand Dollars (\$87,000)" in the fifth and sixth lines of the first paragraph of the Note is hereby replaced with "One Hundred Twenty Thousand Dollars (\$120,000)".
 - (c) The first paragraph of the Note is hereby amended by replacing "January 1, 2016" in Clause (ii) with "December 1, 2016".
 - (d) Paragraph 1(b) of the Note is hereby amended by replacing "\$87,000" in the eleventh and twelfth lines with "\$120,000".

2. The Note, as amended hereby, and the Loan Agreement and the Security Instruments, as amended by the Amendment Agreement and the Collateral Assignment Amendment are hereby ratified and confirmed and shall remain in full force and effect.

Executed as of the day and year first above written.

**BRANDYWINE OWNERS ASSOCIATION,
INC.**

Witness

By: _____
Brett Cotoia
President
Duly Authorized

THE STATE OF NEW HAMPSHIRE

Witness

By: _____
Thomas S. Burack, Commissioner
Department of Environmental Services
Duly Authorized

**FIRST AMENDMENT TO COLLATERAL
ASSIGNMENT OF ASSOCIATION ASSESSMENTS**

This First Amendment to Collateral Assignment of Association Assessments is made this _____ day of _____, 2016 between Brandywine Owners Association, Inc., a New Hampshire corporation with an address of 7 Brandywine Drive, East Kingston, New Hampshire 03827 (the "Assignor") and the State of New Hampshire with an address of c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (hereinafter the "Lender") for themselves and their successors and assigns.

RECITALS

A. The Assignee has provided a loan of up to \$87,000 (the "Loan") to the Assignor as evidenced by a Promissory Note of the Assignor dated April 17, 2015 in the original principal amount of \$87,000 (the "Note") pursuant to a Loan Agreement dated April 17, 2015 between the Assignor and the Assignee (the "Loan Agreement") to finance the improvements to the Assignor's water system for Brandywine Owners Association in East Kingston, New Hampshire;

B. The Loan is secured by, among other things, a Collateral Assignment of Association Assessments dated April 17, 2015 of the Assignor to the Assignee recorded at Rockingham County Registry of Deeds at Book 5611, Page 1267 (the "Collateral Assignment") with respect to certain property situated in East Kingston, New Hampshire;

C. The parties desire to increase the amount of the Loan to \$120,000 and are amending the Note pursuant to a First Allonge to Promissory Note of even date to increase its principal amount and amend other terms (the "Allonge"); and

D. The parties desire to amend the Loan Agreement and certain Security Instruments in accordance with this agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. Recital Paragraph A of the Collateral Assignment is hereby amended by replacing it with the following:

- A. The Assignor has executed and delivered to the Assignee the Assignor's Promissory Note dated April 17, 2015 in the principal amount of \$87,000, as amended by a First Allonge to Promissory Note dated _____, 2016 between the Assignor and the Assignee, increasing the principal amount such Note to \$120,000 (as amended thereby and from time to time hereafter, the "Note"), to evidence a loan to finance the construction of certain water system improvements situated on and in the real property and improvements of the subdivision known as Brandywine Drive (the "Subdivision") located in East Kingston, New Hampshire, more particularly described in Exhibit A attached hereto (the "Premises"). The Assignor is the association of the Subdivision.

EXECUTED on the day and year first above written.

ASSIGNOR:

**BRANDYWINE OWNERS ASSOCIATION,
INC.**

By: _____
Brett Cotoia
President
Duly Authorized

Witness

ASSIGNEE:

THE STATE OF NEW HAMPSHIRE

By: _____
Thomas Burack, Commissioner
Department of Environmental Services
Duly Authorized

Witness

DISCLOSURE OF FINANCE CHARGES
STATE DRINKING WATER REVOLVING LOAN FUND

Pursuant to New Hampshire RSA Chapter 399-B:2

To: BRANDYWINE OWNERS ASSOCIATION, INC.

Date: _____

Amount of Loan: \$120,000

Payable: As provided in the Note.

Finance Charges: 1% until the Interest Rate Change Date (as defined in the Note dated April 17, 2015 in the principal amount of \$87,000, as amended by a First Allonge to Promissory Note increasing the principal amount to \$120,000 (the "Note")), then lower of (A) 3.168% or (B) 80 percent of the established 11 General Obligations Bond Index published during the first week of October before the Interest Rate change Date (including a 2% administrative fee).

Late fee: 5% of each payment will be assessed if not paid within 7 days of its due date.

Above interest is based on the number of days elapsed over a 360 day year.

Recording and filing fees:	\$ 0
Environmental Site Assessment:	\$ 0

Acknowledged.

**BRANDYWINE OWNERS
ASSOCIATION, INC.**
Borrower

By: _____
Brett Cotoia
President