



The State of New Hampshire  
**Department of Environmental Services**

**Robert R. Scott, Commissioner**



September 20, 2017

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Environmental Services to approve a loan agreement with Textiles Coated, Inc. d/b/a Textiles Coated International (VC#253921), Manchester, NH in the amount not to exceed \$5,000,000 to finance water system improvements subject to conditions as outlined in documents substantially in the form presented, effective upon Governor & Council approval. 100% Drinking Water and Groundwater Trust Fund.

Funding is available in the account as follows:

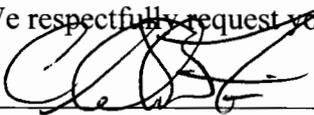
03-44-44-442010-3904-301-504059	<u>FY 2018</u>
Dept Environmental Services, DWGW Trust, Loans	\$5,000,000

**EXPLANATION**

The purpose of this loan agreement is to authorize Textiles Coated, Inc. d/b/a Textiles Coated International to borrow up to \$5,000,000 from the Drinking Water and Groundwater Trust Fund (Trust Fund) to finance an extension of a water line to an area of homes and businesses in Amherst, New Hampshire that have been impacted by contamination with perfluorinated compounds. The improvements include the extension of approximately 9,500 linear feet of water main and installation of new service connections for 102 properties located on Route 101A, Airline Drive, Eastern Avenue, Skyline Drive, Boston Post Road, Douglas Drive, and Hickory Drive in Amherst, New Hampshire.

The final loan amount will be based on the total funds disbursed, and may be less than \$5,000,000. The Department used the underwriting services of the Business Finance Authority to evaluate the borrower's credit and establish appropriate security for the loan. The loan agreement language has also been reviewed by the Attorney General's Office. The loan will be paid back over a period of 20 years at an interest rate of 2.424%. The Trust Fund was created in 2016, using \$276 million of MtBE trial judgement funds, and is authorized by RSA 485-F. The purpose of the Trust Fund is to provide sustainable, long-term funding to help address New Hampshire's drinking water and source water protection needs.

We respectfully request your approval.

  
\_\_\_\_\_  
for Robert R. Scott  
Commissioner

**CLOSING AGENDA**

**STATE OF NEW HAMPSHIRE  
DRINKING WATER AND GROUNDWATER TRUST FUND**

RE: LOAN TO TEXTILES COATED, INCORPORATED

DATE: \_\_\_\_\_, 2017

- |    |                                      |       |
|----|--------------------------------------|-------|
| 1. | State of New Hampshire               | “SNH” |
| 2. | Textiles Coated International        | “B”   |
| 3. | State’s Counsel: David Howe          | “DMH” |
| 4. | Borrowers’s Counsel: Devine Millimet | “BC”  |

<b>No.</b>	<b>Item:</b>	<b>Responsible Party:</b>
1	Certified Copy of Articles of Incorporation of Borrower	B
2	Certified Bylaws of Borrower	B
3	Certificate of Existence of Borrower	B
4	Certificate of Corporate Resolution of Borrower	B
5	Schedule of Costs (Budget) (Exhibit B)	B
6	Loan Agreement	SNH
7	Promissory Note (Exhibit C)	SNH
8	Security Agreement	SNH
9	Collateral Assignment of Contract, Plans & Permits	SNH
10	UCC Search	DMH
11	UCC-1 Financing Statement	DMH
12	Opinion of Borrower’s Counsel	BC
13	Certificate of Insurance	B
14	Governor and Council approval	SNH
15	Subordination of Officer Notes Payable and Shareholder Note Payable	DMH
16	399-B Disclosure	SNH

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**  
**Drinking Water & Groundwater Trust Fund**  
**Loan Agreement**

THIS LOAN AGREEMENT (the “Agreement”), dated \_\_\_\_\_, 2017 has two parties:

- (1) the State of New Hampshire (the “State”), whose address is c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095, and
- (2) the following person which is borrowing funds from the State:

Textiles Coated, Incorporated d/b/a Textiles Coated International  
200 Bouchard Street  
Manchester, NH 03103  
(the “Borrower”)

**FUNDAMENTAL PREMISES FOR THIS AGREEMENT**

A. Pursuant to New Hampshire Revised Statute Annotated (“RSA”) 6-D:1 the State has established the drinking water and groundwater trust fund for financing drinking water improvement projects within the State. Pursuant to New Hampshire Senate Bill 57 the State will make an appropriation from the drinking water and groundwater trust to address drinking water contamination in Amherst, New Hampshire.

B. The Borrower intends to borrow up to \$5,000,000 from the State pursuant to this Agreement to finance the extension of approximately 9,500 linear feet of water main and installation of new service connections for 102 properties located on Route 101A, Airline Drive, Eastern Avenue, Skyline Drive, Boston Post Road, Douglas Drive, and Hickory Drive in Amherst, New Hampshire.

C. The State has determined that the Borrower’s request for a loan financing the cost of the Project and made in accordance with this Agreement is eligible for funding from the Drinking Water and Groundwater Trust Fund in accordance with guidelines adopted pursuant to RSA 6-D:1.

## TERMS AND CONDITIONS OF THIS AGREEMENT

The State and the Borrower agree as follows:

1. Definitions. The following terms shall have the meanings indicated:

“Construction Contract” means the agreement between the Borrower and a contractor for construction of the Improvements.

“Contractor” means the contractor who enters into the Construction Contract.

“State” means the State of New Hampshire, Department of Environmental Services.

“DWGWT” means the Drinking Water and Groundwater Trust Fund under RSA 6-D:1.

“Engineer” means the engineer or construction supervisor who enters into the Engineering Contract and is approved by the State.

“Engineering Contract” means the agreement between the Borrower and an engineer for engineering the design of the Improvements or construction supervision services.

“Event of Default” has the meaning provided in Section 8.

“Hazardous Materials” have the meaning provided in Section 10.1(a).

“Improvements” mean the improvements to be constructed in accordance with the Plans.

“Legal Requirements” have the meaning provided in Section 10.1(b).

“Loan Proceeds” have the meaning provided in Section 2.

“Note” means the Borrower’s Promissory Note of even date herewith in the maximum aggregate principal amount of up to \$5,000,000 payable to the order of the State in the form attached hereto as Exhibit C.

“Pennichuck Agreement” means the agreement between the Borrower and Pennichuck Water Works, Inc. setting forth the terms and conditions of the Transfer of Improvements.

“Plans” mean the plans, specifications, drawings furnished and acceptable to the State in its reasonable discretion.

“Premises” means the various parcels of real estate upon which the Improvements are to be constructed, which are not owned or controlled by Borrower.

“Security Instruments” mean the Security Agreement of near or even date herewith

between the Borrower and the State, the Collateral Assignment of Contracts, Plans and Permits of near or even date herewith of the Borrower to the State and any other instruments now or hereafter securing the Note.

“Total Budget” means the budget for all costs of constructing and equipping the Improvements set forth in Exhibit B.

“Transfer of Improvements” means the transfer of title to the Improvements from Borrower to Pennichuck Water Works Inc. at the completion of the construction thereof pursuant to the terms and conditions of the Pennichuck Agreement.

2. State’s Agreement to Disburse Proceeds. Provided the terms, covenants and agreements hereof shall be observed and performed, the State agrees to make disbursements to the Borrower of, and the Borrower agrees to borrow from the State, an amount not to exceed the total principal amount of the Note (such disbursements made, from time to time hereafter, being hereinafter referred to as the “Loan Proceeds”).

3. Representations

3.1 Representations of Borrower. The Borrower represents and warrants as follows:

(a) Recitals. The Recitals set forth in Recital B at the beginning of this Agreement are true and correct;

(b) Plans. The Borrower will file the Plans with all governmental authorities having jurisdiction with respect to the Improvements;

(c) Approvals. The Borrower will obtain all necessary approvals of the Plans and all necessary permits for the construction of the Improvements from all governmental authorities having jurisdiction over the Improvements;

(d) [intentionally omitted];

(e) No Litigation. To the best of Borrower’s knowledge, no litigation or proceedings are pending or threatened against the Borrower except as disclosed in Schedule 3.1(e);

(f) Financial Statements. The balance sheets and financial statements of Borrower, which were submitted in connection with Borrower’s request for the loan contemplated herein, were prepared on a basis consistent with that of preceding periods and are complete and correct and fairly present the financial condition of the Borrower as of the applicable dates. The Borrower has no contingent obligations, liabilities for taxes or unusual forward or long-term commitments except as in the foregoing financial statements specifically mentioned. Since the date of such financial statements, there has been no material adverse change in the financial condition of the Borrower;

(g) Due Organization and Authority. The Borrower is a corporation duly organized

under the laws of the State of New Hampshire and is in in good standing under the laws of the State of New Hampshire. The Borrower has the power and authority to own its properties and to carry on business as now being conducted and is qualified to do business in every jurisdiction where such qualification is necessary and has the power to execute and deliver, and perform its obligations under this Agreement, the Note and the Security Instruments;

(h) No Conflict; No Required Approvals. The execution and delivery and performance by the Borrower of its obligations under this Agreement, the Note and each of the Security Instruments have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, or except as set forth in Schedule 3.1(h), any indenture, agreement or other instrument to which the Borrower is a party, or by which it is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Agreement, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower pursuant to, any such indenture, agreement or instrument. The Borrower is not required to obtain any consent, approval or authorization from, or to file any declaration or statement with, any governmental instrumentality or other agency in connection with or as a condition to the execution, delivery or performance of this Agreement, the Note or the Security Instruments except certain approvals of the Drinking Water and Groundwater Bureau of the New Hampshire Department of Environmental Services and certain local permits with respect to the construction of the Improvements;

(i) Bankruptcy. Any borrowings made by the Borrower under this Agreement do not and will not render the Borrower insolvent; the Borrower is contemplating the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidating of all or a major portion of its property, and the Borrower has no knowledge of any person contemplating the filing of any such petition against it, including the properties and assets reflected in its financial statements referred to herein;

(j) No Material Misstatement. No statement of fact made by or on behalf of the Borrower in this Agreement or in any certificate or schedule furnished to the State pursuant thereto, contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein or herein not misleading. There is no fact presently known to the Borrower that has not been disclosed to the State that materially affects adversely, nor as far as the Borrower can foresee, will materially affect adversely the property, business, operations or conditions (financial or otherwise) of the Borrower;

(k) Taxes. The Borrower has filed all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments;

(l) Enforceability. This Agreement, the Note and each of the Security Instruments, upon execution and delivery, will be the valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, and will not violate any other agreements or instruments to which the Borrower is a party or by which the Borrower is bound for which the Borrower has not obtained consent as of the date hereof;

(m) No Broker. The making of the loan contemplated hereunder or the State's acquisition of the Note or any of the Security Instruments will not subject the State to any claim for a brokerage commission; and

(n) Total Budget. Exhibit B attached hereto contains and will contain a complete and full enumeration of all costs (hard, soft and acquisition) that Borrower anticipates will be incurred in connection with the construction, the development and equipping of the Improvements and in connection with the starting up of the operation of the Improvements.

3.2 Survival of Representations. Each of the foregoing representations and warranties shall survive the making of the loan hereunder, and the Borrower shall indemnify and hold harmless the State from and against any loss, damage or liability attributable to the breach thereof, including all fees and expenses incurred in the defense or settlement of any claim arising therefrom against the State.

4. Conditions Precedent. The State's obligation to advance any of the Loan Proceeds shall be subject to the satisfaction of the following conditions precedent:

(a) Insurance. The Borrower shall deliver an updated insurance certificate evidencing liability insurance listing the State as coinsured;

(b) Loan Documents. The Borrower shall have executed and delivered to the State the Note and each of the Security Instruments, each of which shall be in form and substance satisfactory to State;

(c) Construction Contract. The Borrower shall prepare or cause to be prepared a public bid offer for the Construction Contract, which shall be reviewed and approved by the State in its reasonable discretion. The Borrower shall receive authorization to award the contract from the State and enter into the Construction Contract with the Contractor in accordance with the requirements of such contract, and the Borrower shall have assigned its rights thereunder to State by an assignment in form and substance satisfactory to State;

(d) Engineering Contract. The Borrower shall have entered into an Engineering Contract and shall have assigned its rights thereunder to the State by an assignment in form and substance satisfactory to State;

(e) Assurances. The State shall receive written assurances from the Engineer and the Contractor that the State shall have the same rights as the Borrower to the continued use of the Plans, and all services related thereto for the construction of the Improvements;

(f) Plans. The Borrower shall have delivered a complete copy of the Plans to the State which Plans shall be satisfactory to the State in its reasonable discretion in all respects;

(g) Environmental Review. The State has received an environmental report and has been completed with respect to the Premises, or portions thereof, satisfactory to the State;

(h) Additional Instruments. The State shall have received such additional instruments, certificates, opinions, surveys and other documents as the State may reasonably request;

(i) No Event of Default. No Event of Default (as defined herein) nor any event which with the giving of notice or passage of time, or both, would constitute an Event of Default shall have occurred;

(j) Mechanic's Lien Waivers. The Borrower shall provide the State with mechanic's lien waivers executed by the Contractor and all subcontractors relative to all work performed on Improvements before or as of the date hereof, together with the Borrower's written certification that it has complied with this Section 4(j);

(k) UCC Search. The State shall have received a satisfactory report concerning liens and security interests affecting property of the Borrower;

(l) Consent from TD Bank. The Borrower shall have received the necessary consent from TD Bank, N.A. in connection with this Agreement and the Security Instruments, which shall be subordinate to the existing commercial loan facilities with TD Bank, N.A.;

(m) Consent of Landowners. The Borrower shall have received the necessary consents from the various owners of the Premises to the construction of the Improvements on their respective portion thereof; and

(n) Pennichuck Agreement. The Borrower and Pennichuck Water Works Inc. shall have entered into the Pennichuck Agreement setting forth the terms and conditions of the Transfer of Improvements.

5. Covenants of the Borrower. Until payment in full of all sums required to be paid by the Borrower under the Note and pursuant to the provisions of this Agreement or any Security Instrument, the Borrower shall:

(a) Construction. Enter into the Construction Contract, which shall be binding upon the Borrower and the Contractor and cause the Improvements to be constructed, equipped and completed, with all reasonable dispatch, but in any event within twenty (20) months from the date hereof, in accordance with the Plans and all laws, rules, regulations and requirements of governmental authorities having jurisdiction with respect to the Improvements;

(b) Changes. Make no significant changes in or amendments to the Plans without first obtaining the written approval of the State and any governmental agency whose approval is required. Minor changes on project work that are consistent with the objectives of the project and within the scope of this agreement do not require the prior approval of the State;

(c) Inspection. Subject to the State obtaining consent from the various owners of the Premises, permit the State and its representatives to enter upon the Premises and inspect the

Improvements and the Premises at all reasonable times prior to the Transfer of Improvements and examine all detailed plans, drawings and specifications and any books and records in the actual possession of Borrower relating to the Premises and the Improvements;

(d) Inadequate Loan Proceeds. If for any reason the amount of undistributed Loan Proceeds shall at any time be or become insufficient to pay for the completion of the Improvements, including: (i) all items set forth in the Total Budget, (ii) all incurred cost overruns and incurred costs for items not included in the Total Budget and (iii) all cost overruns and costs not included in the Total Budget that the State deems likely to be incurred, (regardless of how such condition may be caused) then prior to any further disbursement of Loan Proceeds, either (A) expend from funds other than Loan Proceeds an amount equal to such deficiency for amounts shown on the Total Budget, or (B) provide State with an unconditional and irrevocable letter of credit in an amount equal to such deficiency from a bank and in form and substance satisfactory to State;

(e) Insurance. During the period of construction of the Improvements until the Transfer of Improvements, maintain or cause to be maintained liability, casualty and/or builder's risk insurance (the latter to the extent commercially available and applicable) on the Improvements, and worker's compensation insurance with such companies, in such amounts and covering such risks as shall be satisfactory to the State and furnish such insurance policies to the State (premiums prepaid or, after failure of the Borrower to prepay the premiums or to procure such insurance policies, the State may procure any such insurance policies it deems satisfactory in its reasonable discretion at the expense of the Borrower), insuring the interests of the Borrower and the State, as their respective interests may appear and, upon request, certificates evidencing such insurance coverage shall be promptly delivered to the State;

(f) Casualty. Until the Transfer of Improvements, if the Improvements shall be damaged or destroyed by fire or any other casualty, proceed with the restoration thereof and diligently prosecute the work of restoration to completion, provided that the Loan Proceeds shall not be advanced to pay any part of the cost of such restoration;

(g) No Purchase Money Security Agreements, Etc. Neither purchase nor install materials, equipment, fixtures, furnishings, or any other part of the Improvements under purchase money security agreements, conditional sales contracts or lease agreements, or other arrangements wherein title to or a security interest in such property is retained or the right is reserved or accrues to anyone to remove or repossess any such property that is a part of the Improvements except in connection with the Pennichuck Agreement;

(h) Expenses. Pay the State's reasonable expenses (including reasonable attorneys' fees) that State incurs in the approval, making and administration of this loan if requested and itemized by the State, and in the enforcement of this Agreement, the Note and the Security Instruments;

(i) Cooperation. Cooperate fully with the State with respect to any proceedings before any court, board or governmental agency that may in any way affect the rights of the State hereunder or any rights obtained by the State under any of the Security Instruments and, in

connection therewith, permit the State, at its election, to participate in any such proceedings;

(j) Preserve Licenses. Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, licenses and permits and comply with all material laws and regulations applicable to it that noncompliance therewith, as far as the Borrower can reasonably foresee, would materially affect adversely the property, business, operations or conditions (financial or otherwise) of the Borrower;

(k) Taxes. Pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges or levies imposed upon it or upon its respective income and profits or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default; provided that the Borrower shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as the validity thereof shall be contested in good faith by appropriate proceedings and it shall have set aside on its books adequate reserves with respect to any such tax, assessment, charge, levy or claim, so contested; and provided, further, that payment with respect to any such tax, assessment, charge, levy or claim shall be made before any of its property shall be seized or sold in satisfaction thereof;

(l) Notice of Proceedings. Give prompt written notice to the State of any proceedings instituted against it by or in any federal or state court or before any commission or other regulatory body, whether federal, state or local, which, if adversely determined, would have an adverse effect upon its business, operations, properties, assets, or condition, financial or otherwise;

(m) Financial Statements. If requested by the State, furnish to the State such information regarding its operation, assets, business affairs and financial condition, as the State may reasonably request and in particular shall furnish to the State (i) within ninety (90) days of the close of each fiscal year during the term of the loan annual financial statements of the Borrower, prepared on a basis consistent with previous periods and certified by the Borrower as fairly presenting the financial condition of the Borrower and otherwise in form and content reasonably acceptable to the State and (ii) as soon as practical after filing with the Internal Revenue Service a copy of the executed federal income tax returns of each of the Borrower with all schedules thereto.

(n) [Intentionally left blank]

(o) [Intentionally left blank]

(p) [Intentionally left blank]

(q) Two Party Check Requirements. If any contract between the Borrower or its agent and any person furnishing services, material, supplies or other things shall provide that the disbursement of construction funds to pay such persons shall be by two-party check, the Borrower shall provide, or cause its agent to provide, the State with a copy of such contract.

(r) [Intentionally left blank]

(s) [Intentionally left blank]

6. Loan Disbursements.

6.1 Written Applications. Upon compliance with, and subject to, the provisions of this Agreement, and provided there shall exist no Event of Default and no condition or event which with the giving of notice or lapse of time would constitute such an Event of Default, the State shall, upon written application by the Borrower (made not less than fourteen (14) business days prior to the date of the requested disbursement under this Section 6 and made not more often than once a month), make disbursements to the Borrower from the Loan Proceeds in the amounts hereinafter specified, but not in any event to exceed in the aggregate the amount of the Loan Proceeds.

6.2 Amount of Disbursement. Each such disbursement for costs incurred by the Borrower shall be disbursed by the State from the Loan Proceeds in such a manner as to protect the priority of State's lien as required by New Hampshire Revised Statutes Annotated 447:12-a. The amount of each disbursement shall represent the total costs incurred by Borrower and approved by State in conformance with the Total Budget as of any such date of the disbursement application, in excess of funds required to be provided and expended by Borrower under the terms hereof as of the date of said advance application, less any amounts previously advanced by State from the Loan Proceeds.

6.3 Application Documents. Each application for disbursement of the Loan Proceeds, must be accompanied by the following unless waived by the State in writing:

(a) Invoices from engineer or consultant for services in accordance with the Engineering Contract, if any; or

(b) A completed disbursement request form signed by an authorized representative of Borrower with the contractor's payment estimate and invoices, in form approved by State and with such backup information as State may reasonably request;

(c) A certificate of the Engineer selected by or satisfactory to State, that all work performed at the site of construction as of the date the disbursement is requested has been performed in good and workmanlike manner, that all materials and fixtures usually furnished and installed at that time have been furnished and installed, all in accordance with the Plans, and that sufficient Loan Proceeds remain undisbursed to complete the Improvements in accordance with the Plans and the Total Budget;

(d) [Intentionally left blank;]

(e) A written certificate of the Borrower and the Contractor that each of them has received no affidavits or other notices in connection with the obtaining of a mechanic's lien by any contractor, subcontractor, materialman or laborer;

(f) [Intentionally left blank]

(g) Any other documents that the State shall reasonably request the Borrower to provide to protect the priority of the lien the Security Instruments, including without limitation, lien waivers of the Contractor or subcontractors.

6.4 Lien Releases or Waivers. In connection with any disbursement of Loan Proceeds, the State may require lien releases or affidavits from, or the submission of other appropriate forms by, the Borrower, the Contractor, subcontractors or materialmen as may be required by the State.

6.5 Quality of Work. No disbursement shall be made unless all work usually done at the stage of construction when the disbursement is requested is done in a good and workmanlike manner and without defects, and all materials and fixtures usually furnished and installed at that time are furnished and installed, but the State may disburse all or part of any installments before the same shall become due if the State believes it advisable so to do, and all such disbursements or payments shall be deemed to have been made pursuant to this Agreement.

6.6 No Acceptance. The making of any disbursement or any part of a disbursement shall not be deemed an approval or acceptance by the State of the work theretofore done or of materials theretofore furnished.

6.7 Two Party Checks. Disbursements may be made, at the election of the State, by checks payable to the Borrower and the Contractor jointly, and delivered, at the State's election, either to the Borrower or the Contractor or any subcontractor or vendor; provided, however, that disbursement shall be by check payable to the Borrower and any Contractor or subcontractor for which the Borrower or its agent has supplied the State with a copy of a contract as provided in Section 5(r).

6.8 Limited Duty. The Borrower agrees that the State shall assume no duty with respect to disbursement of the Loan Proceeds except to disburse upon the conditions as set forth in this Agreement and that any sums disbursed by the State in good faith and in reliance upon this Agreement, or the Security Instruments, shall be secured by the lien of the Security Instruments.

6.9 Deemed Disbursements. Any sum which, in accordance with any provision of this Agreement shall be payable by the Borrower to the State shall, at the election of the State, be deemed a disbursement by the State to the Borrower pursuant to the provisions of this Agreement, and shall be charged against the Loan Proceeds and secured by the Security Instruments.

7. Completion of Improvements. Upon completion in full of the Improvements, the Borrower shall promptly deliver to the State:

(a) Engineer's Certificate. A written certificate of the inspecting engineer or construction supervisor that the construction of the Improvements has been fully completed in a

good and workmanlike manner in accordance with the Plans;

(b) Project Costs. A certificate by the Borrower, in form and substance satisfactory to State, listing all categories of project costs and expenses in connection with the construction and completion of the Improvements and the amount paid by the Borrower with respect to each;

(c) Permits. A copy of the applicable certificates, licenses, consents and approvals issued by governmental authorities with respect to the Improvements; and

(d) Transfer of Improvements. A copy of all transfer documents executed by Borrower in connection with the Transfer of Improvements and required by the Pennichuck Agreement.

8. Events of Default. The occurrence of any of the following events, after the expiration of any applicable cure period and not otherwise waived by the State, shall constitute an "Event of Default" under this Agreement:

(a) [intentionally omitted]

(b) Assignment. The Borrower attempts to assign its rights under this Agreement or any advance made or to be made hereunder or any interest therein, or if the Improvements are conveyed or encumbered in any way without the written consent of the State except in connection with the Pennichuck Agreement;

(c) [intentionally omitted]

(d) Casualty. Prior to the Transfer of Improvements, the Improvements are materially damaged or destroyed by fire or other casualty or cause and the insurance proceeds therefrom are inadequate to rebuild or restore the Improvements to their condition immediately prior to such casualty;

(e) Failure to Construct. The Borrower or the Contractor does not construct the Improvements in accordance with the Plans, and such failure continues for sixty (60) days after notice thereof is given by the State to the Borrower;

(f) Misrepresentation. Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or any advances made hereunder, by or in behalf of the Borrower, shall prove to be false or misleading in any material respect;

(g) Mechanics' Liens. Any mechanics', laborers', materialmen's or similar statutory liens, or any notice thereof, shall be filed against the Premises and/or the Improvements and shall not be discharged within thirty (30) days of such filing or a greater time if such liens are being contested in good faith by appropriate proceedings with a stay of execution having been served or such greater period of time as shall be permitted by the terms of any Security Instrument;

(h) Other Defaults. The Borrower shall default in the due observance or performance of any covenant, condition or agreement to be observed or performed by the Borrower under this Agreement not otherwise specifically referred to in this Section 8, provided that such default shall continue for more than thirty (30) days after written notice of such default is delivered by the State to the Borrower;

(i) Other Loan Documents. Any event of default as defined in the Note or any Security Instrument, that has not been cured by the Borrower within the applicable cure period or waived by the State;

(j) Cessation of Work. Any substantial cessation occurs at any time in construction of the Improvements except for strikes, riots, actions by the Town of Amherst, actions by any of the owners of the Premises, or other causes beyond the Borrower's control, or if any substantial change is made in the schedule for the construction of the Improvements from that provided in the Plans or this Agreement without the approval of the State;

(k) Voluntary Bankruptcy. The Borrower shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of it or any of its property, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated as bankrupt or insolvent, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law;

(l) Involuntary Bankruptcy. A petition, order, judgment or decree shall be entered, without the application, approval or consent of the Borrower, as the case may be, by any court of competent jurisdiction, approving a petition seeking reorganization or approving the appointment of a receiver, trustee or liquidator of the Borrower, as the case may be, of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days;

(m) Dissolution, Etc. The dissolution, termination of existence, merger or consolidation (as applicable) of the Borrower, or a sale of substantially all of the assets of the Borrower out of the ordinary course of business without the prior written consent of the State;

(n) [intentionally omitted]

(o) Other Obligations. Default beyond any applicable notice and cure period by the Borrower in any other obligation for borrowed money in excess of One Hundred Fifty Thousand Dollars (\$150,000.00);

(p) Judgment. Final judgment for the payment of money of more than One Hundred Fifty Thousand Dollars (\$150,000.00) in excess of any insurance proceeds shall be rendered against the Borrower and shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed ; and

(q) [intentionally omitted].

9. State's Rights and Remedies Upon Default.

9.1 General State Rights. Upon the occurrence of any Event of Default, all obligations on the part of the State to make disbursements under this Agreement shall, if the State so elects, cease, and, at the option of the State (but subject to the terms and conditions set forth in the Note and any applicable Security Instrument), the Note shall become immediately due and payable, and the State shall thereupon be authorized and empowered to exercise any rights of foreclosure or as otherwise provided for the realization of any security for the Note covered by any of the Security Instruments; but the State may make any disbursements or portions of disbursements, after the occurrence of any such Event of Default, without thereby waiving its right to demand payment of the Borrower's indebtedness evidenced by the Note and secured by the Security Instruments and without becoming liable to make any other or further advances as hereinabove contemplated by this Agreement.

9.2 Possession. In addition to the remedies hereinabove provided by Section 9.1, upon the occurrence of any Event of Default, the State shall be authorized and empowered, at its election, (i) to construct, equip and/or complete the Improvements in accordance with the Plans, with such changes therein as the State may from time to time, in its sole discretion, deem appropriate, and to appoint watchmen to protect the Improvements, all at the risk, cost and expense of the Borrower, (ii) to discontinue, at any time, any work with respect to the Improvements commenced by it or change any course of action undertaken by it in connection therewith, and shall not be bound by any limitations or requirements of time, whether set forth herein or otherwise, and/or (iii) to assume the Construction Contract or related agreement made by the Borrower in any way pertaining to the Improvements and to take over and use all or any part or parts of the labor, materials, supplies and equipment contracted for by the Borrower, whether or not previously incorporated into the Improvements, all in the sole discretion of the State.

9.3 Completion of Improvements. In connection with any construction, equipping and/or completion of the Improvements undertaken by the State pursuant to the provisions of Section 9.2 (but without intending hereby to limit the powers and discretions conferred therein), the State may engage builders, contractors, architects and engineers and others for the purposes of furnishing labor, materials and equipment for the Improvements; pay, settle or compromise all bills or claims in connection with the Improvements which may become liens against the Improvements and the Premises or which have been or shall be incurred in any manner in connection with such construction, equipping and/or completion; and take such action or refrain from acting hereunder as the State may, in its sole discretion, from time to time determine.

9.4 Costs. The Borrower shall be liable to the State for all costs paid or incurred for the construction, completion and/or equipping of the Improvements, whether the same shall be paid or incurred pursuant to the provisions of Sections 9.2 or 9.3 or otherwise, and all payments made or liabilities incurred by the State hereunder of any kind whatsoever shall be paid by the Borrower to the State on demand, with interest at the rate specified in the Note to the date of

payment.

9.5 Cumulative Rights. Upon the occurrence of any Event of Default, the rights, powers, privileges and other remedies available to the State under this Agreement or at law or in equity may be exercised by the State at any time and from time to time, whether or not the indebtedness evidenced and secured by the Note and the Security Instruments shall be due and payable, and whether or not the State shall have instituted any action for the enforcement of its rights under the Note or any of the Security Instruments.

9.6 Right of Set-Off. Any deposits or other sums at any time credited by or due from the State to the Borrower and any securities or other property of the Borrower at any time in possession of the State may at all times be held or treated as collateral security for the payment of the loan any and all liabilities of the Borrower to the State. Upon an Event of Default the State may apply or set-off such deposits or other sums or property against such liabilities.

9.7 Power of Attorney. For the purpose of carrying out the provisions and exercising the rights, powers and privileges granted by this Agreement, effective upon an Event of Default, the Borrower hereby irrevocably constitutes and appoints the State its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and do and perform any acts that are referred to herein in the name and behalf of the Borrower other than amend this Agreement, the Note or the Security Instruments. The power vested in said attorney-in-fact is, and shall be deemed to be, coupled with an interest and cannot be revoked.

## 10. Hazardous Materials Indemnification.

### 10.1 Definitions.

(a) The term “Hazardous Materials” shall mean and include asbestos, polychlorinated biphenyls (“PCB’s”), other carcinogens, oil and other petroleum products, and any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such under RSA Chapters 146-A, 146-C, 147-A and 147-B, CERCLA, or any other applicable federal, state or local laws, rules, codes or regulations or any judicial or administrative interpretation thereof; and

(b) The term “Legal Requirements” shall mean all federal, state or local laws, rules, codes or regulations, or any judicial or administrative interpretation thereof, including, without limitation, all orders, decrees, judgments and rulings imposed through any public or private enforcement proceedings, relating to Hazardous Materials or the existence, use, discharge, release, containment, transportation or disposal thereof.

10.2 Indemnification. At all times the Borrower shall at its sole cost and expense indemnify, exonerate, protect and save the State harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgment, suits, proceedings, costs, disbursements or expenses of any kind or nature whatsoever, including without implied limitation, attorneys’ and experts’ fees and disbursements, which may at any time be imposed upon, incurred by or asserted or awarded against the State and arising from or

out of the violation by the Borrower of any Legal Requirements with respect to the construction of the Improvements. Notwithstanding the foregoing, the State acknowledges that no portion of the Premises is owned or controlled by the Borrower, and this indemnification obligation shall not be effective if any of the Hazardous Materials located on any portion of the Premises in violation of the Legal Requirements was not specifically brought on to the Premises by the Borrower.

11. Assignments. The State may assign, negotiate or pledge all or any portion of its rights under this Agreement or any of its rights or security with respect to the Note and the Security Instruments, and, in case of such assignment, the Borrower shall accord full recognition thereto. The Borrower hereby consents to the State's delivery of any and all financial or other information concerning the Borrower to any assignee or participating lender. The Borrower shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the State.

13. General Provisions.

13.1 Captions. The captions in this instrument are for convenience and reference only and do not define, limit or describe the scope of the provisions hereof.

13.2 Number and Gender. Whenever the context so requires, reference herein to the neuter gender shall include the masculine and/or feminine gender, and the singular number shall include the plural.

13.3 Binding Effect. The terms, covenants, agreements and conditions contained herein shall extend to, include, and inure to the benefit of and be binding upon the respective successors and assigns of the Borrower and the successors and assigns of the State.

13.4 Notices. Any notice, demand, request or other communication given hereunder or in connection herewith shall be in writing and sent by certified mail, postage prepaid, return receipt requested, addressed to the party to receive the same at its address set forth herein or at such other address as such party may hereafter designate by notice given in like fashion. Any such notice, demand, request or other communication shall be deemed given when mailed as aforesaid.

13.5 Governing Law. This Agreement has been made in the State of New Hampshire, and the provisions thereof shall be governed by and construed in accordance with the law of the State of New Hampshire (excluding the laws applicable to conflicts or choice of laws).

13.6 Entire Agreement. This Agreement, together with any and all schedules and exhibits hereto and the Note and the Security Instruments, contains the full, final and exclusive statement of the agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings, representations or agreements, whether written or oral, with respect to such subject matter.

13.7 Amendment and Waiver. No amendment, modification, termination or waiver of any provision of this Agreement or the Note shall be effective unless it is in a writing executed by the State and in the case of an amendment, modification or termination also executed by the Borrower.

13.8 Consent to Jurisdiction. The Borrower hereby consents to the jurisdiction of all state and local courts of the State of New Hampshire and the United States District Court of the District of New Hampshire in connection with any suit to enforce any right of the State under the Note, this Agreement or any Security Instrument.

13.9 Joint and Several. If the Borrower consists of more than one person or entity, such persons and entities shall have joint and several liability hereunder.

13.10 Severability. If any provision or condition of this Agreement is prohibited or rendered invalid or unenforceable by a court of competent jurisdiction and venue, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Agreement.

13.11 References. All references herein to the Note and the Security Instruments shall be construed to refer to such instruments as they may be amended from time to time.

13.12 Sovereign Immunity. Nothing contained in this Agreement, the Note or the Security Instruments shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

IN WITNESS WHEREOF, the State and the Borrower have each duly caused this Agreement to be executed, by their respective officers, thereunto duly authorized, as of the day and year indicated above.

**THE STATE OF NEW HAMPSHIRE**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Robert R. Scott, Commissioner  
Department of Environmental Services

**TEXTILES COATED, INCORPORATED**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
John W. Tippet  
Chief Executive Officer

## **LIST OF EXHIBITS**

EXHIBIT A [INTENTIONALLY OMITTED]

EXHIBIT B THE TOTAL BUDGET

EXHIBIT C PROMISSORY NOTE

**Schedule 3.1(h)**

**No Conflict; No Required Approvals.**

The Borrower shall require the following consents:

1. Consent from TD Bank, N.A.
2. Consents from the various owners of the Premises (in order to construct the Improvements)

## EXHIBIT C

### PROMISSORY NOTE

\$5,000,000

Concord, New Hampshire  
\_\_\_\_\_, 2017

FOR VALUE RECEIVED Textiles Coated, Incorporated, a New Hampshire corporation with principal place of business at 200 Bouchard Street, Manchester, New Hampshire 03103 (“Borrower”), promises to pay to 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, or its order (“State”), the sum of up to Five Million Dollars (\$5,000,000) or such lesser amount as shall be disbursed from time to time to Borrower by State pursuant to a Loan Agreement of near or even date by and between Borrower and State (the “Loan Agreement”), in lawful money of the United States, together with interest thereon at the annual rate of one percent (1%) until June 1, 2019 (“Interest Rate Change Date”) and commencing on the Interest Rate Change Date at the annual rate of 2.424% (the interest rate at any given time, the “Applicable Interest Rate”) until paid in full as set forth herein. Capitalized terms used but not defined herein have the meaning given to them in the Loan Agreement.

1. Payments. The interest and principal of this Note shall be paid as follows:

(a) Commencing on the first day of the sixth month after the Interest Rate Change Date, interest only shall be paid in six (6) consecutive monthly installments on the first day of each month.

(b) Commencing with the first day of the twelfth month after the Interest Rate Change Date (the “Conversion Date”), the principal and interest of the Note shall be paid in Two Hundred and Forty (240) consecutive equal monthly installments of principal and interest on the first day of each month with the installment amount calculated to amortize the principal balance of the Note over the 240 month period at the Applicable Interest Rate; provided, however, that Borrower shall have the option to elect prior to the first installment payment under paragraph 1(a) to have the interest accruing prior to the Interest Rate Change Date be capitalized and added to the principal amount of the Note rather than paid in the first installment of interest to be paid pursuant to paragraph 1(a); so long as the sum of the principal balance of the Note plus interest accruing prior to the Interest Rate Change Date (such sum being the “Capitalized Amortization Amount”) shall not exceed \$5,000,000, and if the sum of unpaid principal plus interest accruing prior to the Interest Rate Change Date exceeds \$5,000,000, such excess amount of interest shall be due and payable with the first payment of interest pursuant to paragraph 1(a) above. If Borrower elects to have such interest capitalized, then the Capitalized Amortization Amount shall be paid in Two Hundred Forty (240) consecutive equal monthly installments of principal on the first day of each month, commencing with the first day of the twelfth month after the Interest Rate Change Date, with interest with the installments calculated to amortize the Capitalized Amortization Amount over such 240 month Period at the Applicable Interest Rate.

2. Prepayment. Borrower shall have the right to prepay any or all sums due under this Note without penalty. Prepayments shall be applied first to accrued interest and then to principal. Partial prepayments of principal shall be applied against the outstanding principal balance; provided, however, that Borrower shall continue to make principal payments in the amounts specified above and on the dates specified above, with interest on the outstanding principal balance recomputed accordingly, until Borrower's obligations under this Note are satisfied in full.

3. Security. This Note and the Loan Agreement are secured by a Security Agreement of near or even date herewith between Borrower and State, which provides a security interest in personal property of the Maker and other security instruments (collectively with such Security Agreement the "Security Instruments") described in the Loan Agreement.

4. Due Date; Late Payment. All payments of principal and interest shall be due on or before the due dates specified above; provided, however, that Borrower shall not be deemed in default hereunder if payment is received by State on or before 4:00 p.m. of the seventh day following the due date. Borrower agrees to pay a late charge of five percent (5%) of the amount of any payment due under this Note that is not paid within seven (7) days of its due date.

5. Applicable Interest. Borrower expressly agrees that the Applicable Interest Rate specified in this Note shall be the applicable interest rate due (i) on amounts outstanding during the term hereof and (ii) with respect to any amount outstanding on and after the maturity date hereof. The interest payable on this Note shall be calculated on the basis of an annual rate of interest applied to twelve thirty-day months over a three hundred sixty (360) day year.

6. Default; Acceleration. Borrower shall be in default of this Note, and all principal and accrued interest thereon shall immediately become due and payable, without notice or demand, upon the occurrence of any of the following events: (a) failure to make prompt payment of any principal or interest installment due hereunder (or within such grace period as may be provided herein), (b) the failure of Borrower to observe or perform any of the other obligations to State under this Note, and the same remains unremedied for a period of thirty (30) days after the date of notice thereof to Borrower by State, (c) the occurrence of an Event of Default under the Loan Agreement, or (d) a default or event of default under any Security Instrument.

If Borrower shall file a petition under any section of the Bankruptcy Code, shall make an assignment for the benefit of creditors, shall have a receiver appointed over its affairs who shall not be discharged within sixty (60) days from the date of appointment, or shall have filed against it a petition under a section of the Bankruptcy Code, or any debtor-creditor act, which petition shall not be dismissed within sixty (60) days of the date of filing of the same, then the balance of principal and interest remaining unpaid on this Note shall become due and payable forthwith without demand or notice.

7. Costs of Collection. If this Note is not paid in full when it becomes due, or if any payment required hereunder shall not be paid when due, or within such grace period as may be expressly provided herein, Borrower agrees to pay all reasonable costs and expenses of collection, including reasonable attorneys' fees, regardless of whether legal proceedings have been formally commenced.

8. Waiver of Presentment. Borrower hereby waives presentment, demand for payment, notice of dishonor, and all other notices or demands in connection with the delivery, acceptance, performance, default, or endorsement of this Note.

9. Non-Forfeiture of Rights. It is agreed and understood that the waiver by State of any particular default in the terms of this Note shall not constitute waiver of any further default and that acceptance of any payment after it is due shall not be deemed a waiver of the right to require prompt payment when due on all other sums and that acceptance of any payment after default shall not cure said default or operate as a waiver of any rights of State hereunder unless otherwise agreed in writing.

10. Payments, Notices. All payments due under this Note, and any notice required to be made hereunder shall be directed to State or to Borrower, as the case may be, at the addresses above specified, or such other address as State and Borrower may hereafter direct, in writing.

11. Binding on Successors, Etc. The obligation of this Note shall be binding upon the successors and assigns of Borrower herein and shall inure to the benefit of the successors or assigns of State herein or any holder hereof. Notwithstanding the preceding sentence, Borrower shall not assign this Note without the prior written consent of State.

12. Gender. Whenever the content so requires, reference herein to the neuter gender shall include the masculine and/or feminine gender, and the singular number shall include the plural.

13. References. All references herein to the Loan Agreement and the Security Instruments shall be construed to refer to such instruments as they may be amended from time to time.

14. Governing Law. The Note has been made in the State of New Hampshire, and the provisions hereof shall be governed by and construed in accordance with the laws of the State of New Hampshire (excluding the laws applicable to conflicts or choice of laws).

15. Jurisdiction. Borrower hereby consents to the jurisdiction of all state and local courts of the State of New Hampshire and the United States District Court of the District of New Hampshire in connection with any suit to enforce any rights of State under this Note.

16. Sovereign Immunity. Nothing contained in this Note, the Loan Agreement, any guaranty guarantying this Note or any Security Instrument shall be deemed to constitute a waiver of the sovereign immunity of State, which immunity is hereby reserved to State.

EXECUTED as of \_\_\_\_\_.

**TEXTILES COATED, INCORPORATED**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
John W. Tippet  
Chief Executive Officer  
Duly Authorized

## SECURITY AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017 between Textiles Coated, Incorporated, a duly organized corporation existing under the laws of the State of New Hampshire with a place of business at 200 Bouchard Street, Manchester, New Hampshire 03103 (sometimes hereinafter called the "Debtor"), 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 "Secured Party") for themselves and their successors and assigns.

### RECITALS

A. The Debtor and the Secured Party have entered into a Loan Agreement of near or even date (the "Loan Agreement"), which Agreement sets forth certain undertakings and obligations of the Debtor to the Secured Party.

B. Pursuant to the Loan Agreement, the Secured Party has agreed to extend credit to the Debtor in an amount not to exceed Five Million Dollars (\$5,000,000), in exchange for the Debtor's promissory note (the "Note") to the Secured Party.

C. To secure the obligations it has undertaken under the Loan Agreement and the Note and certain security instruments described in the Loan Agreement and to secure the payment of said sum to the Secured Party and to secure any other obligations of the Debtor to the Secured Party of every kind and description in connection with the Loan Agreement, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, due or to become due, or now existing or hereafter arising or acquired and whether by way of loan, discount, letter of credit, lease or otherwise (collectively the "Obligations"), the Debtor desires to create in the Secured Party a security interest in accordance with the terms of the Uniform Commercial Code, N.H.R.S.A. 382-A.

NOW, THEREFORE the Debtor agrees as follows:

1. Collateral. The Debtor, for valuable consideration received from the Secured Party, hereby grants to the Secured Party to secure all the foregoing Obligations a security interest in the following property (the "Collateral"):

(a) All the Debtor's goods, machinery, equipment, furnishings and fixtures, and personal property, including but not limited to such property located on the Debtor's premises at Textiles Coated International at 200 Bouchard Street, Manchester, New Hampshire and at 6 George Avenue, Manchester, New Hampshire, (collectively, the Debtor's "Business Premises") or used in connection with the Debtor's business conducted at said Business Premises, and in all inventory including, without limitation, all items held for sale or lease or furnished or to be furnished under contracts of service, or used or consumed in the Debtor's business (all hereinafter called the "Inventory"), and in contract rights with respect thereto and proceeds thereof, all whether now owned or hereafter acquired. The above collateral is now kept and, in

the absence of written notice from the Debtor to the Secured Party, will always be kept only at the Debtor's Business Premises.

(b) The Debtor, for valuable consideration received from the Secured Party, hereby also conveys to the Secured Party a security interest in all the Debtor's accounts, accounts receivable, contract rights, notes, personal property leases, mailing lists and customer lists, rents receivable, choses in action, drafts, acceptances, instruments, investment property, letter of credit rights, chattel paper, general intangibles, cash and all other forms of obligations due or to become due to the Debtor, whether now existing or hereafter arising and whether joint, several, or joint and several, and proceeds of any of the foregoing, arising from or relating to the Debtor's business.

Notwithstanding the foregoing, the Collateral shall not include the Improvements (as defined in the Loan Agreement) subsequent to the Transfer of Improvements in connection with the Pennichuck Agreement (each as defined in the Loan Agreement). The Secured Party, by virtue of this Agreement, in addition to any other security or collateral that it may hold, shall have a continuing security interest in said Collateral and in contract rights with respect thereto and proceeds of both, to secure payment and performance of the liabilities and obligations of the Debtor to the Secured Party hereunder.

2. Records and Audits. The Debtor will keep an accurate record of the Collateral, and all additions thereto, and removals therefrom, and of any of its accounts, accounts receivable, contract rights, leases, general intangibles, rents receivable, notes and choses in action, as they from time to time exist, and the proceeds received or receivable therefrom, and will deliver a copy of such records to the Secured Party at such regular intervals as the Secured Party reasonably may require. If the Secured Party deems itself insecure in its reasonable judgment, when requested by the Secured Party the Debtor shall, at the Debtor's own expense, cause a verification of the Collateral to be made by some independent appraiser approved by the Secured Party and an audit of the accounts receivable, contract rights and proceeds of both, to be made by some independent auditor.

3. Maintenance and Insurance. The Debtor agrees to keep the Collateral in good condition, deterioration resulting from normal use excepted, and also to keep it insured against loss from such hazards and in such amounts as the Secured Party may reasonably require and in such companies as the Secured Party may approve, in its reasonable discretion, payable in case of loss to the Secured Party (but subject to TD Bank, N.A.'s priority security interest) as its interest may appear, and the policies evidencing such insurance, or certificates thereof, shall, upon request, be deposited with the Secured Party.

4. No Liens. The Debtor represents and warrants that its title to the Collateral is free and clear of any liens or encumbrances except those listed in Schedule 4 and on the financial statements previously delivered by the Debtor to the Secured Party, and agrees to keep the Collateral free and clear of any future lien or encumbrance other than (a) the security interests, liens or mortgages, granted to the TD Bank, N.A.; (b) the security interests or liens granted to the Secured Party pursuant to the Loan Agreement; (c) deposits under Workmen's Compensation,

Unemployment Insurance and Social Security laws; or (d) liens imposed by law, such as carriers, warehousemen's or mechanic's liens and other liens incurred in good faith in the ordinary course of business and liens for taxes not yet due, unless it obtains the advance consent of the Secured Party for any such lien or encumbrance.

5. Sale and Use in the Ordinary Course. Until an Event of Default, the Debtor may sell or lease the Collateral in the ordinary course of business and may also use or consume any raw materials and supplies, the use and consumption of which is in the ordinary course of business in order to carry on the Debtor's business.

6. Lists of Accounts and Proceeds. Upon request of the Secured Party at any time after an Event of Default that is continuing, the Debtor will deliver to the Secured Party lists or copies of all accounts promptly after they arise and will deliver to the Secured Party, subject to TD Bank, N.A.'s priority security interest, promptly upon receipt, all rents and other proceeds received by the Debtor including proceeds of the accounts referred to above and proceeds of any insurance policies in the exact form in which they are received. The Secured Party in its discretion may apply cash proceeds to the payment of any obligations secured hereby or may release such cash proceeds to the Debtor for use in the operation of the Debtor's business.

7. Default. An "Event of Default" under this Agreement shall be deemed to have occurred upon the occurrence of any of the following events, after the expiration of any applicable cure period or unless waived by the Secured Party:

(a) if the Debtor fails to observe or perform any of the Debtor's agreements expressed herein, and such failure continues for thirty (30) days after notice thereof is given by the Secured Party to the Debtor;

(b) Any event of default as defined in the Note, the Loan Agreement or any Security Instrument, that has not been cured by the Debtor within the applicable cure period or waived by the State;

(c) upon the unauthorized sale, unauthorized removal of the Collateral from the locations specified in Section 1, or the theft, loss, damage or destruction of the Collateral and (i) the insurance proceeds therefrom are inadequate to rebuild or restore the Collateral to their condition immediately prior to such casualty, and (ii) such casualty materially affects adversely the property, business, operations or conditions (financial or otherwise) of the Debtor;

(d) [intentionally omitted]

(e) if the Debtor changes its name or state of organization without at least thirty (30) days prior notice.

8. Remedies. Upon an Event of Default, but subject to TD Bank, N.A.'s priority security interest, the Secured Party shall have all the rights and remedies of a secured party under the Uniform Commercial Code to the same extent as if they were expressly set forth herein in

addition to the remedies provided herein or in any other instrument or paper executed by the Debtor, as well as the right to sell all or part of the Collateral, pursuant to New Hampshire law. In such event the Debtor shall pay all the Secured Party's reasonable costs of repossession, collection, custody, storage, sale or other dispossession and delivery, (including reasonable attorneys' fees), all of which the Secured Party may deduct from the proceeds. If the Secured Party seeks to take possession of any or all of the Collateral by judicial process, the Debtor hereby irrevocably waives any requirement of bonds, surety or security, whether required by statute, court rule or otherwise, as an incident to such possession and waives any requirement for demand for possession before the commencement of any suit or action to recover with respect thereto.

9. Certain Remedies. The Secured Party may at any time after an Event of Default that is continuing notify the Debtor's account debtors, or persons otherwise indebted to the Debtor whose obligations are covered by this Agreement, that the Collateral has been assigned to the Secured Party and that payment shall be made directly to the Secured Party. Upon request of the Secured Party at any time after an Event of Default that is continuing, the Debtor will so notify such debtors and will indicate on all billings to such debtors that their accounts must be paid to the Secured Party. The Secured Party shall have full power to collect, compromise, endorse, sell or otherwise deal with the Collateral or proceeds thereof in its own name or in the name of the Debtor. The Debtor shall pay to the Secured Party on demand a collection charge on all accounts collected, that shall include all reasonable attorneys' fees and expenses, and all other reasonable expenses of like or unlike nature that may be expended by the Secured Party to obtain or enforce payment of any account either as against the account debtor, the Debtor or any guarantor or surety of the Debtor or in the prosecution or defense of any action or concerning any matter arising out of or connected with the subject matter of this Agreement, the obligations secured hereby, or the Collateral, or any of Secured Party's rights or interests therein or thereto, including, without limiting the generality of the foregoing any reasonable counsel fees or expenses incurred in any bankruptcy or insolvency proceedings. Notwithstanding the foregoing, the Security Party's rights hereunder shall be subject and subordinate to TD Bank, N.A.'s priority security interest.

10. Power of Attorney. The Debtor does hereby make, constitute and appoint any officer of the Secured Party as the Debtor's true and lawful attorney-in-fact, with power, in an Event of Default that is continuing, to endorse the name of the Debtor or any of the Debtor's officers or agents upon any notes, checks, drafts, money orders, or other instruments of payment (including payments payable under any policy of insurance on the Collateral) or Collateral that may come into possession of the Secured Party in full or part payment of any amounts owing to the Secured Party, to sign and endorse the name of the Debtor or any of the Debtor's officers or agents upon any invoice, freight or express bill, bill of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices, in connection with accounts, and any instrument or document relating thereto or to the Debtor's rights therein; to give written notice to such office and officials of the United States Post Office to effect such change or changes of address so that all mail addressed to the Debtor may be delivered directly to the Secured Party; granting upon the Debtor's said attorney full power to do any and all things necessary to be done in and about the premises fully and effectually as might or could be done,

and hereby ratifying all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the term of this Agreement and all transactions hereunder as long as the Debtor may be indebted to the Secured Party.

11. Cooperation; Secured Party Sales; No Waiver. The Debtor covenants that it will execute any documents requested by the Secured Party to perfect its security interest in the Collateral. When requested by the Secured Party following an Event of Default by the Debtor that is continuing, the Debtor shall cooperate in the Secured Party's repossession of the Collateral and will assemble the Collateral and make it available to the Secured Party at such place as the Secured Party shall designate which shall be reasonably convenient to both parties. The Secured Party, acting commercially reasonably, may dispose of the Collateral by public or private sale, upon the place where it is then located, and the Secured Party itself may acquire the Collateral at any such sale. The Debtor agrees that notice of ten (10) days prior to such sale shall constitute reasonable notice thereof, but that if the Collateral is perishable or threatens to decline quickly in value or is a kind customarily sold on a recognized market, the Secured Party may provide shorter notice or no notice of the sale. The Secured Party shall also have the right to remove the Collateral. No waiver of the Secured Party of any defaults hereunder shall constitute a waiver of any other default or of the same default upon a future occasion.

12. Reinstatement. If after receipt of any payment of, or the proceeds of any Collateral for, all or any part of the Obligations, the Secured Party is compelled to surrender or voluntarily surrenders such payment or proceeds to any person because such payment or application of proceeds is or may be avoided, invalidated, recaptured, or set aside as a preference, fraudulent conveyance, impermissible setoff or for any other reason, whether or not such surrender is the result of (i) any judgment, decree or order of any court or administrative body having jurisdiction over the Secured Party, or (ii) any settlement or compromise by the Secured Party of any claim as to any of the foregoing with any person (including the primary obligor with respect to any of the Obligations), then the Obligations or part thereof affected shall be reinstated and continue and this Agreement shall be reinstated and continue in full force as to such Obligations or part thereof as if such payment or proceeds had not been received, notwithstanding any previous cancellation of any instrument evidencing any such Obligation or any previous instrument delivered to evidence the satisfaction thereof or the termination of this Agreement.

13. Governing Law. This Agreement shall be governed by and be construed in accordance with New Hampshire law.

14. Amendment. This Agreement may be amended only by a written instrument executed by the parties.

15. Notice. Any demand, notice or request by either party to the other shall be sufficiently given if delivered to the party intended to receive the same, or if mailed by registered or certified mail addressed to such party at the address of such party stated above, or at such other address as may be stated in a notice delivered or mailed as herein provided.

16. Binding Effect. The covenants and agreements herein contained shall bind, and the benefits and advantages thereof shall inure to, the respective heirs, executors, administrators, successors and permitted assigns of the Debtor and the Secured Party.

17. Conflicting Provisions; References. In the event of any conflict between the terms, covenants, conditions and restrictions contained in this Agreement, the Note, the Loan Agreement and the Security Instruments, the term, covenant and condition or restriction that imposes the greater burden or obligation upon the Debtor shall control. The determination as to which term, covenant, condition or restriction is the more burdensome or imposes the greater obligation shall be made by the Secured Party in its sole discretion. All references herein to the Note, the Loan Agreement and the Security Instruments shall be construed to include such instruments as they may be amended from time to time. Wherever used the singular number shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders as the context requires.

18. Invalidity. In any case where any one or more of the provisions of this Agreement are held to be invalid, illegal or enforceable in any respect by a court of competent jurisdiction and venue, such invalidity, illegality or unenforceability shall not affect any other provisions hereof.

19. Sovereign Immunity. Nothing contained in this Agreement, the Loan Agreement, the Note or the other Security Instruments shall be deemed to constitute a waiver of the sovereign immunity of the Secured Party, which immunity is hereby reserved to the Secured Party.

Executed on the day and year first of written.

Debtor:

**TEXTILES COATED, INCORPORATED**

By: \_\_\_\_\_  
John W. Tippet  
Chief Executive Officer  
Duly Authorized

**THE STATE OF NEW HAMPSHIRE**

By: \_\_\_\_\_  
Robert R. Scott, Commissioner  
Department of Environmental Services

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**SCHEDULE 4**

**LIENS AND ENCUMBRANCES**

The Collateral is subject to no liens or encumbrances except the security interest of TD Bank, N.A and those liens and encumbrances contained in the Debtor's financial statements previously delivered to the Secured Party.

**COLLATERAL ASSIGNMENT OF  
CONTRACTS, PLANS AND PERMITS**

FOR VALUE RECEIVED, Textiles Coated, Incorporated, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 200 Bouchard Street, Manchester, New Hampshire 03103, ("Assignor"), hereby assigns to State of New Hampshire with a place of business at Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 ("Assignee"), all its right, title and interest in and to any contracts, written or oral (the "Contracts") relating to the design or construction of improvements on property of Assignor located in Manchester, New Hampshire as more particularly described in a certain Loan Agreement between Assignor and Assignee (the "Loan Agreement") (the "Project"), including any plans and specifications prepared in connection therewith (the "Plans") and all governmental approvals and permits (the "Permits").

In addition, the parties hereto agree as follows:

1. Security. This Assignment is made as additional security for the performance by the Assignor of all of its obligations under the Loan Agreement, Assignor's Promissory Note in the maximum aggregate principal amount of up to \$5,000,000 (the "Note") 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 the Assignee.

2. Representations. Assignor represents, warrants and covenants to Assignee that:

(a) Assignor is and shall be the owner of the Collateral (as defined in the Security Instruments) free and clear of any liens, security interests or encumbrances except the security interest of TD Bank, N.A. and the interests of Pennichuck Water Works Inc. in connection with the Pennichuck Agreement (as defined in the Loan Agreement); and

(b) The execution, delivery and performance of the Assignment by Assignor does not and will not conflict with any material contract, statute, rule, judgment, decree or order to which Assignor is subject except for contracts with TD Bank, the conflict with which has been waived as of the date hereof.

3. Default. Unless an event of default under the Note or the Loan Agreement or a Security Instrument shall have occurred and has not been cured by the Assignor or waived by the Assignee (an "Event of Default"), Assignor shall be entitled to enjoy and enforce all of its rights under the Contracts, the Plans and the Permits. If such an Event of Default shall occur and Assignee shall have given written notice to the other party to the Contracts of its intention to exercise its rights hereunder, then Assignee shall be entitled thereafter to enjoy and enforce all of the rights of the Assignor under the Contracts, the Plans and the Permits, and shall become bound to perform all future obligations of the Assignor thereunder. Unless and until such notice is given, Assignee shall not be obligated to perform any of the obligations of the Assignor under the Contracts, the Plans or the Permits.

4. UCC Rights and Remedies. Without limiting the other remedies provided herein or provided by law, upon an Event of Default Assignee shall have the rights and remedies of a secured party under the Uniform Commercial Code, as enacted in New Hampshire, with respect to the Collateral to the full extent provided by law. Assignor agrees that Assignee may file one or more UCC-1 financing statements in the appropriate filing offices at Assignor's expense to perfect Assignee's security interest in the Collateral and that Assignor shall take any and all actions reasonably requested by Assignee to perfect Assignee's security interest in the Collateral.

5. Amendment. Assignor shall not amend, modify or execute amendments to the Contracts, the Plans or Permits or change orders which would involve substantial changes in the cost or nature of the Project, without first obtaining the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed.

6. Governing Law. This Agreement shall be governed by and be construed in accordance with New Hampshire law.

7. Amendment. This Agreement may be amended only by a written instrument executed by the parties.

8. Notice. Any demand, notice or request by either party to the other shall be sufficiently given if delivered to the party intended to receive the same, or if mailed by registered or certified mail addressed to such party at the address of such party stated above, or at such other address as may be stated in a notice delivered or mailed as herein provided.

9. Binding Effect. The covenants and agreements herein contained shall bind, and the benefits and advantages thereof shall inure to, the respective successors and permitted assigns of Assignor and Assignee.

10. Conflicting Provisions; References. In the event of any conflict between the terms, covenants, conditions and restrictions contained in this Agreement, the Note, the Loan Agreement and the Security Instruments, the term, covenant and condition or restriction that imposes the greater burden or obligation upon Assignor shall control. The determination as to which term, covenant, condition or restriction is the more burdensome or imposes the greater obligation shall be made by Assignee in its sole discretion. All references herein to the Note, the Loan Agreement and the Security Instruments shall be construed to include such instruments as they may be amended from time to time. Wherever used the singular number shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders as the context requires.

11. Invalidity. In any case where any one or more of the provisions of this Agreement are held to be invalid, illegal or enforceable in any respect by a court of competent jurisdiction and venue, such invalidity, illegality or unenforceability shall not affect any other provisions hereof.

12. Sovereign Immunity. Nothing contained in this Agreement, the Loan Agreement, the Note, any guaranty guarantying the Note or the other Security Instruments shall be deemed to constitute a waiver of the sovereign immunity of the Assignee, which immunity is hereby reserved to the Assignee.

IN WITNESS WHEREOF, Assignee and Assignor, have executed this Assignment dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

In the presence of:

**STATE OF NEW HAMPSHIRE**

\_\_\_\_\_

By: \_\_\_\_\_  
Robert R. Scott, Commissioner  
Department of Environmental Services

**TEXTILES COATED, INCORPORATED**

\_\_\_\_\_

By: \_\_\_\_\_  
John W. Tippet  
Chief Executive Officer

## STANDBY AND SUBORDINATION AGREEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, and in consideration of the loans, advances, renewals or extensions now or hereafter made by **State of New Hampshire**, having an address of c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (the "Senior Creditor"), directly or indirectly, to or for the benefit of Textiles Coated, Incorporated, a New Hampshire corporation with a mailing address of 200 Bouchard Street, Manchester, New Hampshire 03103 (the "Debtor"), and \_\_\_\_\_, Trustee of the **John W. Tibbett Revocable Trust**, a New Hampshire resident having a mailing address of \_\_\_\_\_, \_\_\_\_\_, New Hampshire \_\_\_\_\_ (the "Subordinated Creditor"), the Debtor and Subordinated Creditor agree with the Senior Creditor as follows:

1. The Senior Creditor represents to the Subordinated Creditor that the Debtor is or shall be indebted to the Senior Creditor in the amount of \$5,000,000 (the "**Senior Debt**"), evidenced by promissory notes, loan agreements, mortgages, collateral assignments of leases and rents, commitment letter, and related agreements (collectively, the "**Loan Documents**"). The payment and performance of the Senior Debt is secured by, among other things, a blanket UCC security interest in all existing and after acquired assets of the Debtor, and all of the present and future goods, equipment, inventory, investment property, instruments, chattel paper, documents, letter-of-credit rights, accounts, deposit accounts, commercial tort claims and general intangibles of Debtor, wherever located, and the products and proceeds thereof (collectively, the "Collateral"). The Subordinated Creditor hereby subordinates all present and future indebtedness of the Debtor to the Subordinated Creditor (the "Subordinated Debt") to any and all indebtedness now or hereafter owing by the Debtor to the Senior Creditor whether as borrower or guarantor (the "Senior Debt") to the extent and in the manner hereinafter set forth, and the Subordinated Creditor agrees not to demand, accept or receive any payment in respect of the Subordinated Debt and no amount shall be paid, whether in cash, property, securities or otherwise, except as permitted in writing by the Senior Creditor.

2. The Subordinated Creditor agrees that, so long as any Senior Debt remains outstanding, the Subordinated Creditor will not institute any legal action or other proceedings for the collection of the Subordinated Debt. In no event, however, shall the Subordinated Creditor be permitted to accelerate the obligations due Subordinated Creditor from Debtor. If, prior to the satisfaction of the Senior Debt and unless otherwise permitted herein, the Subordinated Creditor receives any payment with respect to any of the Subordinated Debt or any security for or on account of the Subordinated Debt, the Subordinated Creditor shall forthwith deliver such payment or security to the Senior Creditor, in precisely the form received, except for such Subordinated Creditor's endorsement when necessary, for application on account of the Senior Debt and until so delivered, such payment or security shall be held in trust by the Subordinated Creditor as the property of the Senior Creditor. In the event of the failure of the Subordinated Creditor to endorse any instrument for the payment of money so received by the Subordinated Creditor, the Senior Creditor is irrevocably appointed attorney-in-fact for the Subordinated Creditor with full power to make such endorsement and with full power of substitution.

3. In order to carry out the terms and intent of this Subordination Agreement more

effectively, the Subordinated Creditor will do all acts and execute all further instruments necessary or convenient to preserve for the Senior Creditor the benefits of this Subordination Agreement.

4. No action which the Senior Creditor, or the Debtor with the consent of the Senior Creditor, may take or refrain from taking with respect to any Senior Debt, or any note or notes representing the same, or any collateral therefor, including a waiver or release thereof, modifications, renewal or any agreement or agreements (including guaranties) in connection therewith, shall affect this Subordination Agreement or the obligations of the Subordinated Creditor hereunder.

5. No waiver shall be deemed to be made by the Senior Creditor of any of its rights hereunder unless the same shall be in writing and then only with respect to the specific instance involved, and shall in no way impair or offset the rights of the Senior Creditor or the obligations of the Subordinated Creditor in any other respect or at any other time.

6. Indemnification. The Debtor hereby agrees to indemnify, hold harmless and defend the Senior Creditor, its officers, directors, employees and agents (collectively "Indemnitees") against and from (a) all claims, demands, issues, liabilities, costs, fees and expenses, including reasonable attorney's fees, imposed upon or arising against Indemnitees with respect to the enforcement, settlement, compromise, collection, foreclosure, if any; actual or attempted sale, or for the care of the Collateral, including insurance, or protection of the Senior Creditor's interests, by litigation or otherwise, on the Collateral, and (b) any and all liability, loss, damage and expense, including reasonable attorneys' fees, which it may or shall incur or which may be asserted under or in connection with any of the leases for the Collateral, or by reason of any action taken or reasonable expenses incurred or paid by the Senior Creditor under any of the Loan Documents (including without limitation any action which the Senior Creditor in its discretion may take to protect its interests in the Collateral). Senior Creditor shall give prompt notice to Borrower of any claims made against Senior Creditor.

Should the Senior Creditor incur any such liability as described herein, the amount thereof, together with interest thereon at the rate as set forth in the Loan Documents shall be payable by the Debtor to the Senior Creditor within fifteen (15) days of demand, or at the option of the Senior Creditor, the Senior Creditor may reimburse itself therefore out of any rents, issues or profits of the Collateral collected by the Senior Creditor.

7. The Subordinated Creditor will not transfer, sell or otherwise dispose of any of the Subordinated Debt except to a transferee who agrees to become a party hereto and with the prior written consent of the Senior Creditor, which consent shall not be unreasonably withheld.

8. The Debtor will render to the Senior Creditor upon demand and from time to time a statement of the account of the Debtor with the Subordinated Creditor, and will give the Senior Creditor access to the books of the Debtor in order that the Senior Creditor may make full examination of the state of accounts of the Subordinated Creditor and Debtor.

9. In the event of a breach by either the Debtor or Subordinated Creditor of any of the terms of this agreement, all such indebtedness of the Debtor to the Senior Creditor shall, without notice to or a demand upon either the Debtor or Subordinated Creditor, become immediately due and payable.

10. This Subordination Agreement shall be binding upon the Subordinated Creditor and the Debtor and their respective legal representatives, successors and assigns and shall inure to the benefit of the Senior Creditor and its legal representatives, successors and assigns (including without limitation any transferee of any Senior Debt). This Subordination Agreement shall be construed and enforced in accordance with and governed by the laws of the State of New Hampshire. This Subordination Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of the counterparts shall together constitute one and the same instrument.

11. The Subordinated Creditor, to the extent that it may lawfully do so, hereby consents to the service of process, and to be sued, in the State of New Hampshire and consents to the jurisdiction of the courts of the State of New Hampshire and the United States District Court for the District of New Hampshire, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts, for the purpose of any suit, action, or other proceeding arising out of any of his or its obligations hereunder or with respect to the transactions contemplated hereby, and expressly waives any and all objections s/he or it may have to the venue in any such courts.

12. In the event of a material default, as determined in the Senior Creditor's sole discretion, of any of the obligations owed to the Senior Creditor by the Debtor, Senior Creditor may provide written notice of said default to the Debtor and Subordinated Creditor of said material default. As of the date hereof, the Senior Creditor hereby permits Debtor to make payments to the Subordinated Creditor under the terms of all existing instruments evidencing the obligations referenced on Schedule A of Debtor in favor of the Subordinated Creditor, provided (a) the Debtor is in compliance with all obligations due Senior Creditor now or hereinafter existing, and as may be amended from time to time; and (b) payment of any Subordinated Debt would not trigger a default under any obligations due Senior Creditor now or hereinafter existing and as may be amended from time to time, including but not limited to the satisfaction of any and all financial covenants in the Loan Documents or any further modifications or amendments thereto. If the Debtor is not compliance with all obligations due Senior Creditor now or hereinafter existing, or; (b) payment of any Subordinated Debt would trigger a default under any obligations due Senior Creditor now or hereinafter existing and as may be amended from time to time, the Debtor may request a written waiver of this provision from the Senior Creditor requesting authority to make a particular payment to a Subordinated Creditor. Said request shall include the requested pay date and the amount of payment to be made. In such an event, the Senior Creditor, within thirty (30) days of receipt of such request, may provide written notice to the Debtor allowing the requested payment to the Subordinated Creditor if the Senior Creditor, in its sole discretion, determines that the payment to the Subordinated Creditor would not trigger a material default under the obligations owed by the Debtor to the Senior Creditor.

Executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

[TEXT ENDS HERE – SIGNATURE PAGE FOLLOWS]

*[Signature Page to Standby and Subordination Agreement]*

**SUBORDINATED CREDITOR:**

\_\_\_\_\_  
Witness

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

Trustee of the John W. Tibbett Revocable Trust

The undersigned Debtor hereby acknowledges notice of the within and foregoing Subordination Agreement and agrees to be bound by all of the terms, provisions and conditions hereof.

**TEXTILES COATED, INCORPORATED**

\_\_\_\_\_  
Witness

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

John W. Tibbetts:  
President

The foregoing Subordination Agreement is hereby accepted.

**STATE OF NEW HAMPSHIRE**

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

Robert R. Scott, Commissioner of  
Environmental Services

## STANDBY AND SUBORDINATION AGREEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, and in consideration of the loans, advances, renewals or extensions now or hereafter made by **State of New Hampshire**, having an address of c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (the "Senior Creditor"), directly or indirectly, to or for the benefit of Textiles Coated, Incorporated, a New Hampshire corporation with a mailing address of 200 Bouchard Street, Manchester, New Hampshire 03103 (the "Debtor"), and **John W. Tibbett**, a New Hampshire resident having a mailing address of \_\_\_\_\_, \_\_\_\_\_, New Hampshire \_\_\_\_\_ (the "Subordinated Creditor"), the Debtor and Subordinated Creditor agree with the Senior Creditor as follows:

1. The Senior Creditor represents to the Subordinated Creditor that the Debtor is or shall be indebted to the Senior Creditor in the amount of \$5,000,000 (the "**Senior Debt**"), evidenced by promissory notes, loan agreements, mortgages, collateral assignments of leases and rents, commitment letter, and related agreements (collectively, the "**Loan Documents**"). The payment and performance of the Senior Debt is secured by, among other things, a blanket UCC security interest in all existing and after acquired assets of the Debtor, and all of the present and future goods, equipment, inventory, investment property, instruments, chattel paper, documents, letter-of-credit rights, accounts, deposit accounts, commercial tort claims and general intangibles of Debtor, wherever located, and the products and proceeds thereof (collectively, the "Collateral"). The Subordinated Creditor hereby subordinates all present and future indebtedness of the Debtor to the Subordinated Creditor (the "Subordinated Debt") to any and all indebtedness now or hereafter owing by the Debtor to the Senior Creditor whether as borrower or guarantor (the "Senior Debt") to the extent and in the manner hereinafter set forth, and the Subordinated Creditor agrees not to demand, accept or receive any payment in respect of the Subordinated Debt and no amount shall be paid, whether in cash, property, securities or otherwise, except as permitted in writing by the Senior Creditor.

2. The Subordinated Creditor agrees that, so long as any Senior Debt remains outstanding, the Subordinated Creditor will not institute any legal action or other proceedings for the collection of the Subordinated Debt. In no event, however, shall the Subordinated Creditor be permitted to accelerate the obligations due Subordinated Creditor from Debtor. If, prior to the satisfaction of the Senior Debt and unless otherwise permitted herein, the Subordinated Creditor receives any payment with respect to any of the Subordinated Debt or any security for or on account of the Subordinated Debt, the Subordinated Creditor shall forthwith deliver such payment or security to the Senior Creditor, in precisely the form received, except for such Subordinated Creditor's endorsement when necessary, for application on account of the Senior Debt and until so delivered, such payment or security shall be held in trust by the Subordinated Creditor as the property of the Senior Creditor. In the event of the failure of the Subordinated Creditor to endorse any instrument for the payment of money so received by the Subordinated Creditor, the Senior Creditor is irrevocably appointed attorney-in-fact for the Subordinated Creditor with full power to make such endorsement and with full power of substitution.

3. In order to carry out the terms and intent of this Subordination Agreement more effectively, the Subordinated Creditor will do all acts and execute all further instruments necessary or

convenient to preserve for the Senior Creditor the benefits of this Subordination Agreement.

4. No action which the Senior Creditor, or the Debtor with the consent of the Senior Creditor, may take or refrain from taking with respect to any Senior Debt, or any note or notes representing the same, or any collateral therefor, including a waiver or release thereof, modifications, renewal or any agreement or agreements (including guaranties) in connection therewith, shall affect this Subordination Agreement or the obligations of the Subordinated Creditor hereunder.

5. No waiver shall be deemed to be made by the Senior Creditor of any of its rights hereunder unless the same shall be in writing and then only with respect to the specific instance involved, and shall in no way impair or offset the rights of the Senior Creditor or the obligations of the Subordinated Creditor in any other respect or at any other time.

6. Indemnification. The Debtor hereby agrees to indemnify, hold harmless and defend the Senior Creditor, its officers, directors, employees and agents (collectively "Indemnitees") against and from (a) all claims, demands, issues, liabilities, costs, fees and expenses, including reasonable attorney's fees, imposed upon or arising against Indemnitees with respect to the enforcement, settlement, compromise, collection, foreclosure, if any; actual or attempted sale, or for the care of the Collateral, including insurance, or protection of the Senior Creditor's interests, by litigation or otherwise, on the Collateral, and (b) any and all liability, loss, damage and expense, including reasonable attorneys' fees, which it may or shall incur or which may be asserted under or in connection with any of the leases for the Collateral, or by reason of any action taken or reasonable expenses incurred or paid by the Senior Creditor under any of the Loan Documents (including without limitation any action which the Senior Creditor in its discretion may take to protect its interests in the Collateral). Senior Creditor shall give prompt notice to Borrower of any claims made against Senior Creditor.

Should the Senior Creditor incur any such liability as described herein, the amount thereof, together with interest thereon at the rate as set forth in the Loan Documents shall be payable by the Debtor to the Senior Creditor within fifteen (15) days of demand, or at the option of the Senior Creditor, the Senior Creditor may reimburse itself therefore out of any rents, issues or profits of the Collateral collected by the Senior Creditor.

7. The Subordinated Creditor will not transfer, sell or otherwise dispose of any of the Subordinated Debt except to a transferee who agrees to become a party hereto and with the prior written consent of the Senior Creditor, which consent shall not be unreasonably withheld.

8. The Debtor will render to the Senior Creditor upon demand and from time to time a statement of the account of the Debtor with the Subordinated Creditor, and will give the Senior Creditor access to the books of the Debtor in order that the Senior Creditor may make full examination of the state of accounts of the Subordinated Creditor and Debtor.

9. In the event of a breach by either the Debtor or Subordinated Creditor of any of the terms of this agreement, all such indebtedness of the Debtor to the Senior Creditor shall, without notice to or a demand upon either the Debtor or Subordinated Creditor, become immediately due and payable.

10. This Subordination Agreement shall be binding upon the Subordinated Creditor and

the Debtor and their respective legal representatives, successors and assigns and shall inure to the benefit of the Senior Creditor and its legal representatives, successors and assigns (including without limitation any transferee of any Senior Debt). This Subordination Agreement shall be construed and enforced in accordance with and governed by the laws of the State of New Hampshire. This Subordination Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of the counterparts shall together constitute one and the same instrument.

11. The Subordinated Creditor, to the extent that it may lawfully do so, hereby consents to the service of process, and to be sued, in the State of New Hampshire and consents to the jurisdiction of the courts of the State of New Hampshire and the United States District Court for the District of New Hampshire, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts, for the purpose of any suit, action, or other proceeding arising out of any of his or its obligations hereunder or with respect to the transactions contemplated hereby, and expressly waives any and all objections s/he or it may have to the venue in any such courts.

12. In the event of a material default, as determined in the Senior Creditor's sole discretion, of any of the obligations owed to the Senior Creditor by the Debtor, Senior Creditor may provide written notice of said default to the Debtor and Subordinated Creditor of said material default. As of the date hereof, the Senior Creditor hereby permits Debtor to make payments to the Subordinated Creditor under the terms of all existing instruments evidencing the obligations referenced on Schedule A of Debtor in favor of the Subordinated Creditor, provided (a) the Debtor is in compliance with all obligations due Senior Creditor now or hereinafter existing, and as may be amended from time to time; and (b) payment of any Subordinated Debt would not trigger a default under any obligations due Senior Creditor now or hereinafter existing and as may be amended from time to time, including but not limited to the satisfaction of any and all financial covenants in the Loan Documents or any further modifications or amendments thereto. If the Debtor is not compliance with all obligations due Senior Creditor now or hereinafter existing, or; (b) payment of any Subordinated Debt would trigger a default under any obligations due Senior Creditor now or hereinafter existing and as may be amended from time to time, the Debtor may request a written waiver of this provision from the Senior Creditor requesting authority to make a particular payment to a Subordinated Creditor. Said request shall include the requested pay date and the amount of payment to be made. In such an event, the Senior Creditor, within thirty (30) days of receipt of such request, may provide written notice to the Debtor allowing the requested payment to the Subordinated Creditor if the Senior Creditor, in its sole discretion, determines that the payment to the Subordinated Creditor would not trigger a material default under the obligations owed by the Debtor to the Senior Creditor.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, 2017.

[TEXT ENDS HERE – SIGNATURE PAGE FOLLOWS]

*[Signature Page to Standby and Subordination Agreement]*

**SUBORDINATED CREDITOR:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
John W. Tibbett

The undersigned Debtor hereby acknowledges notice of the within and foregoing Subordination Agreement and agrees to be bound by all of the terms, provisions and conditions hereof.

**TEXTILES COATED, INCORPORATED**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
John W. Tibbetts:  
President

The foregoing Subordination Agreement is hereby accepted.

**STATE OF NEW HAMPSHIRE**

By: \_\_\_\_\_  
Robert R. Scott, Commissioner of  
Environmental Services