



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

**Robert R. Scott, Commissioner**

October 26, 2020

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 amend a loan agreement (PO# 9005549) with the 2<sup>nd</sup> Stonehenge LLC, (VC# 306038-B001), Manchester, NH by increasing the loan amount by \$105,000 from \$420,000 to \$525,000 to finance water system improvements under the provisions of RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. effective upon Governor & Council approval. The original loan agreement was approved on June 19, 2019, Item #196. 100% Drinking Water State Revolving Loan Fund (DWSRF) Repayment Funds.

Funding is available in the account as follows:

03-44-44-441018-4791-301-500833  
Dept Environmental Services, DWSRF Loan Repayments, Loans

FY 2021  
\$105,000

**EXPLANATION**

The purpose of this amendment is to authorize the 2<sup>nd</sup> Stonehenge LLC to modify their loan agreement. The LLC had originally requested \$420,000 from the Drinking Water State Revolving Fund Program (DWSRF) to finance a project which includes connecting all of the Stonehenge Apartments buildings located in Londonderry to the Pennichuck Water Works water system through an interconnection. The original loan amount provided enough funding to bring the water main to the apartment complex however it was not enough to fund all of the remaining essential elements to complete the project. This request for additional funds will ensure that new water services into each apartment building, installation of water meters and backflow prevention in each building and final repaving will be completed. NHDES has sufficient funds at this time to meet the LLC's request. To date, a total of \$89,142 in loan funds has been disbursed. The current water system is unreliable with many leaks and interruptions in water service, and poor water quality requiring treatment for sediments, uranium and bacteria. This project will provide reliable drinking water for the homeowners.

There is currently a balance of \$30,053,527 in the DWSRF Repayment Account available for new loans. Attached is a tabulation of the Repayment Account showing the effect of this loan on the funds available.

We respectfully request your approval of this item.

  
Robert R. Scott, Commissioner

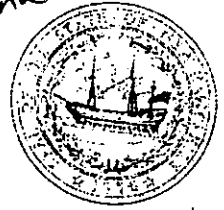
	<b>REPAYMENT</b>
Repayment Account (Balance as of 10/20/20)	\$30,303,527
Less Loans Previously Approved	\$250,000
Funds Available for Loans	\$30,053,527
 <b>Amendment Being Requested</b>	
2nd Stonehenge LLC (Project#: 1392130)	(105,000)
Net Change to Loan(s)	(105,000)
 <b>Balance Available After G &amp; C Approval</b>	 <b>\$29,948,527</b>



The State of New Hampshire  
Department of Environmental Services

Robert R. Scott, Commissioner

*Johanna*



May 21, 2019

APPROVED G & C

DATE 6/19/19  
ITEM # 196

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 the 2<sup>nd</sup> Stonehenge LLC (VC# 306038-B001), Manchester, NH in the amount not to exceed \$420,000 to finance water system improvements at the Stonehenge Apartments community water system in Londonderry subject to conditions as outlined in documents substantially in the form presented, under the provisions of RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. effective upon Governor & Council approval. 100% Drinking Water State Revolving Loan Fund (DWSRF) Repayment Funds.

Funding is available in the account as follows:

03-44-44-441018-4791-301-500833  
Dept Environmental Services, DWSRF Loan Repayments, Loans

FY 2019  
\$420,000

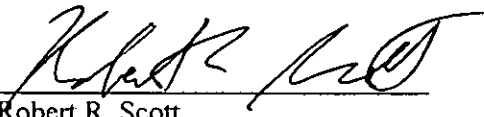
EXPLANATION

The purpose of this loan agreement is to authorize 2<sup>nd</sup> Stonehenge LLC to borrow up to \$420,000 from the Drinking Water State Revolving Loan Fund (DWSRF) to finance water system improvements at the Stonehenge Apartments community water system in Londonderry. The improvements include connecting all of the Stonehenge Apartment buildings to the Pennichuck Water Works water system through a direct connection to a new water main. The project will improve water quality and reliability of the water system.

The final loan amount will be based on the total DWSRF funds disbursed, and may be less than \$420,000. The loan interest rate may be adjusted downward if the DWSRF loan rate in effect upon project completion is less than the current rate of 2.704%. 2<sup>nd</sup> Stonehenge LLC is eligible for principal forgiveness under the 2018 DWSRF Intended Use Plan. The amount of principal forgiveness will be determined when the aggregate principal amount is established and the project is complete.

The DWSRF is authorized by RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. There is currently a balance of \$20,858,888 in the DWSRF available for new loans. Attached is a tabulation of the DWSRF showing the effect of this loan on the balance of the loan fund.

We respectfully request your approval.

  
Robert R. Scott  
Commissioner

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council

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DEPARTMENT OF ENVIRONMENTAL SERVICES  
WATER DIVISION

DRINKING WATER STATE REVOLVING FUND

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

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

	<u>REPAYMENT</u>
Repayment Account (Balance as of 5/14/19)	<u>\$20,858,888</u>
Less Loans Previously Approved	<u>\$0</u>
Funds Available for Loans	\$20,858,888
 New Loan Being Requested	
Stonehenge Apartments (2nd Stonehenge LLC) (Project#: 1392130)	(420,000)
 Net Change to Loan(s)	<u>(420,000)</u>
 Balance Available After G & C Approval	<u><u>\$20,438,888</u></u>

## **CLOSING AGENDA**

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

**RE: AMENDMENT OF LOAN TO 2ND STONEHENGE LLC  
STONEHENGE APARTMENTS COMMUNITY WATER SYSTEM  
LONDONDERRY, NEW HAMPSHIRE**

**Project #1392130**

**DATE: \_\_\_\_\_**

- |    |                                |       |
|----|--------------------------------|-------|
| 1. | State of New Hampshire         | "SNH" |
| 2. | 2 <sup>nd</sup> Stonehenge LLC | "B"   |
| 3. | State's Counsel, David Howe    | "DMH" |

<b>No.</b>	<b>Item:</b>	<b>Responsible Party:</b>
1	Certificate of Formation	B
2	Certificate of Existence of Borrower	B
3	Operating Agreement of Borrower	B
4	Certificate of Formation of Manager, 3 <sup>rd</sup> EG Holding LLC	B
5	Resolution of Manager of Borrower, 3 <sup>rd</sup> EG Holding LLC	B
6	Certificate of Existence of Manager	B
7	Amended Schedule of Costs (Budget) (Exhibit B)	B
8	First Amendment to Loan Agreement	SNH
9	First Allonge to Promissory Note (Exhibit C)	SNH
10	Guaranties of Newton Kershaw III, David Schleyer, Chris Schleyer, and Matt Menning	SNH
11	Limited Recourse Guaranties of investors	SNH
12	LLC Interest Pledge Agreements of investors	SNH
13	UCC-1 Financing Statements of investors	DMH
14	Governor and Council approval	SNH
15	399-B Disclosure	SNH

## **FIRST AMENDMENT TO LOAN AGREEMENT**

This First Amendment to Loan Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2020 between 2nd Stonehenge LLC, a New Hampshire limited liability company with a principal place of business at 440 Hanover Street, Manchester, New Hampshire 03104 (the "Borrower") and the State of New Hampshire with an address of c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (hereinafter the "Lender") for themselves and their successors and assigns.

### **RECITALS**

A. The Lender has provided a loan of up to \$420,000 (the "Loan") to the Borrower as evidenced by a Promissory Note of the Borrower dated June 27, 2019 in the original principal amount of \$420,000 (the "Note") pursuant to a Loan Agreement dated June 27, 2019 between the Borrower and the Lender (the "Loan Agreement") to finance the improvements to the Borrower's water system for Stonehenge Apartments in Londonderry, New Hampshire;

B. The Loan has been secured by certain Security Instruments (as defined in the Loan Agreement), including, without limitation, a Security Agreement dated June 27, 2019 between the Borrower and the Lender (the "Security Agreement"), a Collateral Assignment of Contracts, Plans and Permits dated June 27, 2019 between the Borrower and the Lender (the "Collateral Assignment of Contracts, Plans and Permits"), a Mortgage and Security Agreement dated June 27, 2019 of the Borrower to the Lender and a Collateral Assignment of Leases and Rents dated June 27, 2019 of the Borrower to the Lender;

C. The Borrower has requested that the Lender discharge the Security Instruments and that the Lender receive certain guaranties and pledge agreements to replace the Security Instruments.

D. The parties desire to increase the amount of the Loan to \$525,000 and are amending the Note pursuant to a First Allonge to Promissory Note of even date to increase its principal amount and amend other terms (the "Allonge"); and

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

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

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

2. Amendment of the Loan Agreement.

(a) The second sentence of Recital Paragraph B on the first page of the Loan Agreement is hereby amended by replacing "\$420,000" with "\$525,000":

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

"Note" means the Borrower's Promissory Note dated June 27, 2019 in the original principal amount of \$420,000 payable to the order of the State in the form attached hereto as Exhibit C, as amended by a First Allonge to Promissory Note dated \_\_\_\_\_ March 16, 2020 between the Borrower and the Lender."

(c) Section 1 of the Loan Agreement is hereby amended by adding the following definition of "Guaranty Instruments":

"Guaranty Instruments" mean the Guaranties of Newton Kershaw III, David Schleyer, Chris Schleyer, and Matt Menning, the Limited Recourse Guaranties of the investors of the Borrower and the LLC Interest Pledge Agreements of the investors of the Borrower.

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

(e) Section 8(i) is hereby amended by replacing "Security Instrument" with "Guaranty Instrument".

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

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

EXECUTED on the day and year first above written.

**BORROWER:**

**2nd STONEHENGE LLC**  
By Its Manager 3rd EG Holding LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Newton H. Kershaw, III  
Manager  
Duly Authorized

**LENDER:**

**THE STATE OF NEW HAMPSHIRE**

\_\_\_\_\_  
Witness

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



## FIRST ALLONGE TO PROMISSORY NOTE

Allonge made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 between 2nd Stonehenge LLC, a New Hampshire limited liability company with a principal place of business at 440 Hanover Street, Manchester, New Hampshire 03104 (the "Maker"), and the State of New Hampshire with an address of c/o Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (the "Payee") for themselves and their successors and assigns.

### RECITALS

A. Pursuant to a Loan Agreement dated June 27, 2019 between the Maker and the Payee (the "Loan Agreement"), the Payee agreed to provide a loan to the Maker of up to \$420,000, which is evidenced by the Promissory Note dated June 27, 2019, of the Maker in the principal amount of up to \$420,000 (the "Note");

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

C. The parties desire to increase the amount of such loan evidenced by the Note to up to \$525,000 and to modify the terms of repayment of the Note pursuant to the terms of this Allonge.

NOW THEREFORE, the parties agree as follows:

1. The Note is hereby amended as follows:

(a) The face amount of the Note as expressed in the top left corner of the first page of the Note is hereby increased from \$420,000 to \$525,000.

(b) The amount of "Four Hundred Twenty Thousand Dollars (\$420,000)" in the fifth and sixth lines of the first paragraph of the Note is hereby replaced with "Five Hundred Twenty Five Thousand Dollars (\$525,000)".

(c) The first paragraph of the Note is hereby amended by replacing "December 1, 2020" in Clause (ii) with "December 1, 2021".

(d) Paragraph 1(b) of the Note is hereby amended by replacing "\$420,000" in the eleventh and twelfth lines with "\$525,000".

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

Executed as of the day and year first above written.

**2<sup>nd</sup> STONEHENGE LLC**  
By Its Manager, 3<sup>rd</sup> EG Holding LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Newton H. Kershaw, III  
Manager  
Duly Authorized

**THE STATE OF NEW HAMPSHIRE**

\_\_\_\_\_  
Witness

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

**GUARANTY**

(Stonehenge Apartments #1392130)

THIS GUARANTY is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by  
\_\_\_\_\_ of \_\_\_\_\_ ("Guarantor"), to and with 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 ("State").

WHEREAS, contemporaneously herewith, subject to certain terms and conditions, State  
has agreed to loan to 2<sup>nd</sup> Stonehenge, LLC, a New Hampshire limited liability company  
("Borrower"), the principal sum of Five Hundred Twenty Five (\$525,000), which is to be repaid  
with interest in accordance with the terms of certain promissory note dated June 27, 2019  
issued by Borrower to State as amended by a First Allonge of even date between Borrower and  
State (as amended, the "Note") in said aggregate principal amount;

WHEREAS, Guarantor is a member of 3<sup>rd</sup> EG Holding LLC, the manager and a member of  
the Borrower;

WHEREAS, State has advised Guarantor that it will not engage in the aforesaid  
transactions unless, among other things, Guarantor guarantees all obligations of Borrower  
under the Note, including but not limited to the punctual payment of both principal and  
interest due and payable, as hereinafter set forth;

WHEREAS, Guarantor is willing and has agreed to guarantee the payment of the  
aforesaid obligations as hereinafter provided;

WHEREAS, Guarantor will benefit from the loan evidenced by the Note;

NOW THEREFORE, in order to induce State to engage in the aforesaid loan transaction  
and to make said loan to Borrower and in consideration of the premises stated above and for  
other good and valuable consideration, the receipt of which is hereby acknowledged,  
Guarantor agrees as follows:

1. Guarantor hereby unconditionally and irrevocably, guarantees: (i) the due and  
punctual payment in full (and not merely the collectability) of the principal of the Note and  
the interest thereon, when due and payable, according to the terms of the Note and the  
Loan Agreement dated June 27, 2019 between State and Borrower as amended by a First  
Amendment to Loan Agreement of even date between Borrower and State (the "Loan  
Agreement"); (ii) the due and punctual payment in full (and not merely the collectability) of  
all other sums and charges which may at any time be due and payable in accordance with,  
or under the terms of the Note; (iii) the accuracy of the representations and warranties  
made by Borrower in the Loan Agreement, and certain affidavits and certificates delivered  
by Borrower to State on or about the date hereof and (iv) the due and punctual

performance and observance of all of the other terms, covenants and conditions contained in the Note, the Loan Agreement or certain Security Instruments as defined in the Loan Agreement (collectively, the "Guaranteed Obligations").

2. Guarantor expressly agrees that State may, in its sole and absolute discretion, without notice to or further assent of Guarantor, and without in any way releasing, affecting or impairing the obligations and liabilities of Guarantor, hereunder: (i) waive compliance with, or any default under, or grant any other indulgences with respect to, the Note or the Loan Agreement; (ii) modify, amend or change any provisions of the Note (other than to increase the principal amount due under the Note); (iii) grant extensions or renewals of or with respect to the Note, and/or effect any release, compromise or settlement in connection therewith; (iv) make advances for the purpose of performing any term or covenant contained in the Note with respect to which Borrower shall be in default; (v) assign or otherwise transfer the Note, the Loan Agreement, or this Guaranty, or any interest therein; and (vi) deal in all respects with Borrower as if this Guaranty were not in effect. The obligations of Guarantor under this Guaranty shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of the Note or any security given therefor or in connection therewith or any other circumstances that might otherwise constitute a legal or equitable discharge of a surety or guarantor.

3. The liability of Guarantor under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon pursuit by State of any remedies it may have against Borrower or any other party with respect to the Note, whether pursuant to the terms thereof or otherwise. No exercise or nonexercise by State of any right given to it under this Guaranty, the Note, the Loan Agreement or the Security Instruments, and no change, impairment or suspension of any right or remedy of State shall in any way affect any of Guarantor's obligations hereunder or give Guarantor any recourse against State. Without limiting the generality of the foregoing, State shall not be required to make any demand on Borrower and/or any other party, or otherwise pursue to exhaustion its remedies against Borrower or any other party, before, simultaneously with or after, enforcing its rights and remedies hereunder against Guarantor. Any one or more successive and/or concurrent actions may be brought hereon against Guarantor, either in the same action, if any, brought against Borrower and/or any other party, or in separate actions, as often as State, in its sole discretion, may deem advisable.

4. Guarantor hereby expressly waives: (i) presentment and demand for payment and protest of nonpayment; (ii) notice of acceptance of this Guaranty and of presentment, demand and protest; (iii) notice of any default hereunder or under the Note, this Guaranty and the Loan Agreement and of all indulgences; (iv) demand for observance or performance of, and enforcement of, any terms or provisions of this Guaranty, the Note, and the Loan Agreement; and (v) all other notices and demands otherwise required by law that Guarantor may lawfully waive.

5. Any claim against the Borrower or any guarantor to which Guarantor may be or become entitled (including, without limitation, claims by subrogation or otherwise by reason of any payment or performance by Guarantor in satisfaction and discharge, in whole or in part, of his obligations under this Guaranty) shall be and hereby is made subject and subordinate to the prior payment or performance in full of the Guaranteed Obligations. Nothing herein contained shall be construed to give Guarantor any right of subrogation in and to the rights of State under the Note or any instrument or agreement securing the Note until all amounts owing to State under the Note have been paid in full.

In addition to any other security given by Guarantor to State, State is hereby authorized and empowered, at its option, to appropriate and apply to the payment and extinguishment of the Guaranteed Obligations, at any time after such liability becomes payable, any and all moneys or other property of Guarantor and any proceeds thereof (including proceeds of sales provided for below) now or hereafter in the possession of State for any purpose, including safekeeping or pledge for this or any other liability of Guarantor, and including any balance on deposit or otherwise for the account of, to the credit of, or belonging to Guarantor.

6. Any notice, demand, request or other communication given hereunder or in connection herewith (hereinafter "Notices") shall be deemed sufficient if in writing and sent by certified mail, postage prepaid, return receipt requested, addressed to the party to receive such Notice at its address first above set forth or at such other address as such party may hereafter designate by Notice given in like fashion. Notices shall be deemed given when mailed.

7. Any payments made by Guarantor under the provisions of this Guaranty shall, if made to State, be made at its address first set forth above, unless some other address is hereafter designated by State.

8. All rights and remedies afforded to State by reason of this Guaranty, the Note and the Loan Agreement, are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies. No delay or omission by State in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by State unless in writing and duly executed. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of State, and no single or partial exercise of any right or remedy hereunder shall preclude further exercise of any other right or remedy.

9. The obligations of Guarantor to make payment in accordance with the terms of this Guaranty shall not be impaired, modified, changed, released, or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Borrower or its estate in bankruptcy or reorganization resulting from the operation of any

present or future provision of federal bankruptcy laws or other statute or from the decision of any court.

10. Guarantor hereby covenants and agrees that, if requested by State, Guarantor will, at Guarantor's expense, annually deliver to State within ninety (90) days of the end of each fiscal year audited financial statements of the Guarantor for such fiscal year in form and content satisfactory to State.

11. Guarantor agrees that if this Guaranty shall be enforced by suit or otherwise, or if State shall exercise or endeavor to exercise any of its remedies under the Note, the Guarantor will reimburse State, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

12. This Guaranty 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).

13. The terms, covenants, agreements and conditions contained herein shall extend to, include, and inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of Guarantor, as the case may be, and the successors and assigns of State. Notwithstanding the preceding sentence, Guarantor shall not be permitted to assign its rights and obligations hereunder without the prior written consent of State.

14. 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.

15. If more than one person executes this Guaranty or if the Guarantor consists of more than one person or entity, all such persons and entities shall have joint and several liability.

16. Guarantor 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 the State under this Guaranty.

17. All references herein to the Loan Agreement, the Note and this Guaranty shall be deemed to include such instruments as they may be amended from time to time.

18. If any provision or condition of this Guaranty is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Guaranty.

19. Nothing contained in this Guaranty, the Loan Agreement or, the Note 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, Guarantor has executed this Guaranty as of the day and year first above written.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name

## **LLC INTEREST PLEDGE AGREEMENT**

THIS AGREEMENT, given as of this \_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ ("Pledgor") to the State of New Hampshire with an address c/o the Department of Environmental Services, 29 Hazen Drive, Concord, New Hampshire 03301 (the "Lender").

### **W I T N E S S E T H**

Reference is made to the following facts:

Pledgor is a member of 2<sup>nd</sup> Stonehenge, LLC (the "Borrower" or the "Company"), a New Hampshire limited liability company, and therefore holds limited liability company interests of the Company. The Company is governed pursuant to an Amended and Restated Operating Agreement dated February 28, 2018 between the Company and its members (the "Operating Agreement"). Pursuant to a Loan Agreement dated June 27, 2019 as amended by a First Amendment Agreement of even date (as it may be amended from time to time, the "Loan Agreement"), the Lender is making a loan in the amount of \$525,000 (the "Loan") to the Borrower as evidenced by the Promissory Note of the Borrower dated June 27, 2019 of near or even date in the original principal amount of \$420,000, as amended by a First Allonge of even date between the Borrower and the Lender increasing the principal amount of the Note to \$525,000 (as it may be amended from time to time, the "Note," collectively with this Agreement, the Loan Agreement and any other agreements executed herewith or hereafter and as amended from time to time, the "Credit Documents") to finance certain water system improvements of real property of the Borrower situated in Londonderry, New Hampshire. Pledgor has guaranteed the obligations of the Borrower under the Note and the other Credit Documents pursuant to a Limited Recourse Guaranty of near or even date of the Pledgor to the Lender (the "Guaranty").

NOW THEREFORE, in consideration of Lender making the Loan to the Borrower evidenced by the Note, Pledgor hereby agrees as follows:

### **Section 1. Definitions.**

"Distribution" means (a) any distribution, direct or indirect, on account of any Company Interest or (b) any redemption, retirement, purchase or other acquisition by the Debtor, direct or indirect, of any LLC Interest, as the case may be.

"LLC Interests" means the interests of members of the Company in the Company and under the Operating Agreement.

Capitalized terms used and not otherwise defined in this Pledge Agreement have the meanings given to those terms in the Loan Agreement, and the rules of construction set forth therein govern this Pledge Agreement.



**Section 2. Pledge.** Pledgor hereby pledges to Lender and grants a security interest in the following property:

All of the Pledgor's right, title and interest in, to and under the following, whether now owned or hereafter acquired:

(a) All of the Pledgor's LLC Interests and interests, as a member of the Company, whether now owned or hereafter acquired, including, without limitation, all rights, privileges, authority and powers of the Pledgor as a member, whether now existing or hereafter arising, whether under the terms of the Operating Agreement, as such Operating Agreement may be amended, supplemented or modified from time to time, or at law, or otherwise; and the rights, if any, of the Pledgor under such Operating Agreement, as such Operating Agreement may be amended, supplemented or modified from time to time, to acquire additional interests as a member in the Company and rights to acquire the member interests in the Company, or at law, or otherwise;

(b) the Pledgor's interest, whether now owned or hereafter acquired, under any other agreement, now or hereafter in effect, with any other member in the Company, providing for the right of the Pledgor to acquire or exercise its rights with respect to the membership interest in the Company now or hereafter owned or held by any such other member in the Company; and

(c) all proceeds of any of the foregoing and all income, cash flow, revenues, issues, profits, losses, distributions, payments, proceeds and other property of every kind and variety due, accruing or owing to, or to be turned over to, or disbursed to the Pledgor by the Company in connection with the Pledgor's membership interests therein, including without limitation all rights of the Pledgor to Distributions and other distributions and payments made on or after the date hereof as provided in the Operating Agreement as such Operating Agreement may be amended, supplemented, or modified from time to time.

The property listed above, together with all additions or accessions thereto or substitutions therefor and proceeds thereof subject to the proviso of the preceding paragraph (all of the foregoing being hereinafter called the "Pledged Collateral"), is hereby assigned by Pledgor to Lender and shall constitute security for any and all obligations, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, of the Company to the Lender, which are incurred under the Credit Documents, as they may be amended or extended from time to time (all such obligations being hereinafter called the "Obligations").

**Section 3. Representations and Warranties.** Pledgor represents and warrants to Lender as follows:

(a) Pledged Interests. The Pledged Interests are \_\_\_\_\_ units of the ownership interests of Company constituting \_\_\_ percent of the outstanding member interests in the Company and there are no ownership or equity interests in the Company, rights to acquire or

subscribe for any such interests, or securities or instruments convertible into or exchangeable or exercisable for any such interests held by Pledgor other than the Pledged Interests.

(b) Name, Address, and Records. The name of Pledgor set forth in the first paragraph of this Agreement is the true, correct and complete name of Pledgor. The legal address of Pledgor is set forth in the first paragraph of this Agreement. Pledgor keeps all records and documents relating to the Pledged Collateral at such address.

(c) Nature of LLC Interest. The LLC Interests are not dealt in or traded on securities exchanges or in securities markets; it is not represented by a certificate or certificates; no terms of any document relating to the LLC Interests provides that they are a security governed by Article 8 of the Uniform Commercial Code; and they are not held in a securities account by a securities intermediary.

**Section 4. Covenants.** Pledgor covenants (i) to deliver to Lender any instruments or securities from time to time issued by the Company and delivered to the Pledgor, (ii) not to sell, convey or otherwise transfer any or all of the Pledged Collateral, (iii) not to create or permit to exist any lien or encumbrance on the Pledged Collateral except for security interests granted hereby, and (iv) not to consent to the issuance of additional limited liability company interests in the Company in each of the last three cases without Lender's prior written consent.

**Section 5. UCC Filings and Further Assurances.** Pledgor agrees that Lender may file, from time to time, such financing statements under the Uniform Commercial Code and other notice filings and instruments as Lender may from time to time require. Lender may file a photocopy of this Agreement or a financing statement in such form and in such filing offices as it determines appropriate to perfect its security interest created hereunder.

Pledgor agrees to deliver to Lender upon receipt all proceeds of the Pledged Collateral other than distributions made not in contravention of the Loan Agreement. If no default has then occurred Lender may retain such proceeds as cash collateral for the Obligations until payment in full thereof.

Pledgor agrees to deliver to Lender from time to time such further documents, and to perform such other acts as Lender may reasonably request in order to perfect its security interest in the Pledged Collateral and to insure collection of amounts due on or with the Pledged Collateral and to insure collection of amounts due on or with respect to any Pledged Collateral, including all documents and acts that may be necessary in order for the Lender or its nominee to become a substituted partner of the Company. Lender shall not be deemed to be a member of the Company until election by the Lender to do so, and this assignment is an assignment of the Pledgor's interest in and rights to payment from the Company, and not a delegation of Pledgor's duties or an assumption of Pledgor's liabilities with respect to the Company.

**Section 6. Negative Covenants.** Pledgor covenants and agrees that, until the indefeasible payment in full of the Note and all amounts payable by Company under the Credit Documents, it

will perform and observe each of the following covenants, unless (and then only to the extent) compliance with such covenant has been waived pursuant to Section 16.

(a) Name and Address. Pledgor will not change his address or the location of his books, records and ledgers without having given Lender thirty (30) days' prior written notice.

(b) Mergers and Sales of Assets.

(i) Pledgor will not permit Company to merge or consolidate with any person, change its state of organization or liquidate or dissolve, or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions), a substantial portion of its assets (including receivables), whether now owned or hereafter acquired without the prior written consent of Lender, which will not be unreasonably withheld.

(ii) Pledgor will not sell, convey, exchange, dispose of, assign, transfer, pledge or encumber, or grant any option, warrant or right with respect to, any of the Pledged Collateral, or agree or contract to do any of the foregoing except as Pledgor may be required by the Operating Agreement.

(c) Liens. Pledgor will not, and will not permit any other person to, create, incur, assume or suffer to exist any lien or security interest upon or with respect to any of the Pledged Collateral other than Lender's lien pursuant to this Agreement.

(d) Membership Interests and Changes in Control. Except with the consent of the Lender, Pledgor will not (i) permit the Company to (i) cancel or change the terms of the LLC Interests or to represent them with certificates, (ii) authorize, create or issue any additional ownership or membership interests in Company, (iii) effect or permit any change of control of Company, (iv) approve or consent to the sale, conveyance, exchange, disposition, assignment, transfer, pledge or encumbrance of any ownership or membership interest in Company by any person or (v) amend the Operating Agreement.

#### **Section 7. Distribution and Voting Rights.**

(a) For so long as no Event of Default has occurred and is continuing, Pledgor will be entitled to exercise any and all voting and other consensual rights with respect to the Pledged Collateral for any purpose not inconsistent with the terms of the Credit Documents and to receive and retain any and all distributions and other payments in respect to the Pledged Collateral; provided, that any and all

(i) distributions paid or payable in respect of or in exchange for any Pledged Collateral (whether paid in cash, securities or other

property) in connection with a partial or total liquidation or dissolution of the Company, and

- (ii) property (whether cash, securities or other property) paid, payable or otherwise distributed in redemption of, or in exchange for, the Pledged Collateral,

shall be, and shall be forthwith delivered to Lender to hold as, Pledged Collateral and shall, if received by Pledgor, be received in trust for the benefit of Lender, be segregated from the other property or funds of Pledgor, and be forthwith delivered to Lender as Collateral in the same form as so received (with any necessary endorsement).

(b) Upon the occurrence and during the continuance of an Event of Default, all rights of Pledgor to exercise voting and other consensual rights with respect to the Pledged Collateral and to receive distributions and other payments in respect to the Pledged Collateral will cease, and all such rights will immediately become vested solely in Lender or its nominees. Upon the occurrence and during the continuance of an Event of Default, all distributions and other payments in respect of the Pledged Collateral received by Pledgor will be held in trust for Lender, and Pledgor will keep all such amounts separate and apart from all other funds and property so as to be capable of identification as the property of Lender and will deliver such amounts at such times as Lender may request to Lender in the identical form received, properly endorsed or assigned when required to enable Lender to complete collection thereof.

**Section 8. Rights to Pledged Collateral.** The Lender is expressly granted the option to retain the Pledged Collateral or to transfer at any time to Lender's nominee any Pledged Collateral and to receive the income thereon and hold the same as security hereunder or apply it to the principal or interest due on any of the Obligations. The Lender may, at its option, whether or not the Obligations are due, demand, sue for, collect or make any compromise or settlement the Lender deems desirable with reference to the Pledged Collateral. The Lender shall not be bound to take any steps necessary to preserve any rights in the Pledged Collateral against prior parties.

**Section 9. Default/Remedies.** If (i) an Event of Default, shall occur under the Loan Agreement, (ii) a default shall occur in the performance of any covenant contained in this Agreement and such default continues for up to seven days, or if any representation made to Lender by the Pledgor in this Agreement proves to have been false in any material respect when made; the Lender may without notice or demand declare this Agreement to be in default and shall thereafter have, in addition to all other rights and remedies provided for herein or in the other Credit Documents or otherwise available to it, the rights and remedies of a secured party under the Uniform Commercial Code.

The Lender may in addition after such a default (i) register any of the Pledged Collateral in its name or the name of its nominee, (ii) exercise all voting rights with respect to the Pledged Collateral, (iii) become a substitute member of the Company, or cause its nominee to become

such a substitute member, (iv) exercise any other rights of a member of the Company, all without assuming any of the Pledgor's obligations as such a member and (v) notify the Company to make payments due Pledgor directly to Lender.

The Pledgor agrees that ten days notice of the time and place of any public sale, or of the date after which a private sale or other disposition of the Pledged Collateral shall take place, shall constitute reasonable notice. Notice from the Lender to the Pledgor shall be sent certified mail, return receipt requested to the Pledgor's address shown at the beginning of this Agreement.

The Pledgor agrees that if the Lender determines that a public sale of the collateral is impractical, Lender may sell the Pledged Collateral through one or more private sales to a limited number of offerees.

The proceeds of sale or other disposition of the Pledged Collateral shall be applied first to the Lender's costs and expenses (including reasonable attorneys' fees) incurred in collecting the Obligations and enforcing its rights under this Agreement, and then, to the Obligations in such order as Lender may determine. Pledgor shall remain liable for any deficiency subject to the terms of the Guaranty.

**Section 10. Waiver.** No delay or failure on the Lender's part in exercising any right or remedy hereunder shall operate as a waiver of such right or remedy or of any other right or remedy under this Agreement. No waiver of any right or remedy shall be effective unless in a writing signed by the Lender, and no waiver on one occasion shall be construed as a bar to or waiver of any such right or remedy on any other occasion.

**Section 11. Notice.** Pledgor waives presentment, notice, protest, notice of acceptance of this Agreement, notice of any loans made, extensions granted, collateral received or delivered or any other action taken in reliance thereon, all demands and notices in connection with the delivery, acceptance, performance, default, or enforcement of any note, invoice or other evidence of indebtedness for which any of the Pledged Collateral is pledged and all other demands and notices of any description, and assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of Pledged Collateral and to the addition or release of any party or person primarily or secondarily liable.

**Section 12. Termination.** This Agreement shall expire and terminate on the date of repayment to the Lender of all of the Obligations of the Company. Upon termination of this Agreement, the Pledged Collateral will be returned to Pledgor in its then existing form. If, at any time, all or part of any payment of the Obligations theretofore made by Pledgor or any other person is rescinded or otherwise must be returned by Lender for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of Pledgor or any other person), this Agreement shall continue to be effective or shall be reinstated, as the case may be, as to the Obligations which were satisfied by the payment to be rescinded or returned, all as though such payment had not been made.

**Section 13. Expenses.** Any reasonable payment made or expense incurred by the Lender (including, without limitation, reasonable attorneys' fees and disbursements) in connection with the exercise of any right under this Agreement shall be payable by Pledgor, on demand of the Lender and shall be secured by the Pledged Collateral.

**Section 14. Miscellaneous.** Lender shall have no obligation to preserve any rights with respect to the Pledged Collateral but may do so at its option. This Agreement may not be amended except by an instrument in writing signed by the Lender. No waiver of any provision of this Agreement shall be effective unless in writing, and each such waiver shall apply only to the specific instance for which it is given and shall not entitle the Pledgor to a further waiver in similar or other circumstance. This Agreement shall be binding upon the successors and assigns of the Lender. This Agreement shall be and is executed as an instrument under seal.

**Section 15. Assignment.** In the event of any assignment or transfer in accordance with the Loan Agreement by Lender of any instrument evidencing all or any part of the Obligations, the holder of such instrument shall, subject to the Loan Agreement, be entitled to the benefits of this Pledge Agreement.

**Section 16. Release of Liens.** Upon the indefeasible payment in full of the principal amount of and interest and premium, if any, on the Note and the satisfaction of all other Obligations, Lender agrees, upon the written request of Pledgor and at Pledgor's expense, to execute, record and file such instruments and perform such acts as are necessary to effect or evidence the release of the Collateral from the Lien and security interests of this Pledge Agreement and from any assignment or other security document entered into pursuant to this Pledge Agreement.

**Section 17. Severability.** Any provision of this Pledge Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of such or any other provision in any other jurisdiction.

**Section 18. No Waiver; Cumulative Remedies.**

(a) Lender shall not, by any act, delay, omission or otherwise, be deemed to have waived any right or remedy hereunder, and no waiver shall be valid unless in writing, signed by Lender, and then only to the extent therein set forth. No term or provision of this Pledge Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by Pledgor and the Agent.

(b) A waiver by Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that the Agent would otherwise have had on any future occasion. No failure to exercise or delay in exercising on the part of Lender any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof

of the exercise of any other right, power or privilege. The rights and remedies hereunder provided are cumulative, may be exercised singly or concurrently and are not exclusive of any right or remedy provided by law.

**Section 19. Successors and Assigns.** This Pledge Agreement shall be binding upon and inure to the benefit of Pledgor and Lender and their respective successors and permitted assigns.

**Section 20. Governing Law.** THIS PLEDGE AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW HAMPSHIRE.

**Section 21. References.** All references herein to the Guaranty and the other Credit Documents shall be deemed to include such instruments as they may be amended from time to time.

**Section 22. Execution in Counterparts.** This Pledge Agreement may be executed in counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart for each party hereto.

**Section 23. Conflicts, Etc.** To the extent that any provision of this Pledge Agreement is determined to conflict with any provision of the Loan Agreement, such provision of the Loan Agreement shall govern.

**Section 24. Descriptive Headings.** The descriptive headings of the several sections of this Pledge Agreement are inserted for convenience only and do not constitute a part of this Agreement.

**Section 25. Duration of Agreement.** This Pledge Agreement and the security interests and other liens created hereunder shall remain in full force and effect until the indefeasible payment and performance of all of the Obligations.

**Section 26. No Consequential Damages.** Pledgor agrees, regardless of cause, not to assert any claim whatsoever against Lender for loss of anticipatory profits or consequential damages.

**Section 26. Sovereign Immunity.** Nothing contained in this Agreement, the Loan Agreement, the Note, the Guaranty; any other guaranty guarantying the Note or the other Credit Documents shall be deemed to constitute a waiver of the sovereign immunity of the Lender, which immunity is hereby reserved to the Lender.

**Section 27. Jurisdiction.** Pledgor 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 the Lender under this Agreement.

IN WITNESS WHEREOF, each of Pledgor and Lender have executed this LLC Interest Pledge Agreement on the date first set forth above.

PLEDGOR:

\_\_\_\_\_  
Witness

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

LENDER:

**STATE OF NEW HAMPSHIRE**

\_\_\_\_\_  
Witness

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



## **LIMITED RECOURSE GUARANTY**

THIS GUARANTY is made this \_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (“Guarantor”), to and with the State of New Hampshire State with an address c/o the Department of Environmental Services, 29 Hazen Drive, Concord, New Hampshire 03301 (“State”).

## RECITALS

A. Subject to certain terms and conditions, State has agreed to loan to 2<sup>nd</sup> Stonehenge, LLC, a New Hampshire limited liability company ("Borrower"), the principal sum of Five Hundred Twenty-Five Thousand Dollars (\$525,000), which is to be repaid with interest in accordance with the terms of a certain promissory note dated June 27, 2019 issued by Borrower to State as amended by an Allonge of even date (as amended, the "Note") in said principal amount pursuant to a Loan Agreement dated June 27, 2019 between Borrower and State, as amended by a First Amendment Agreement of even date (as amended, the "Loan Agreement");

B. Guarantor is a member of Borrower;

C. Guarantor owns membership interests in Borrower (the “Property”);

E. Guarantor will benefit from Borrower's receipt of the loan evidenced by the Note;

F. State has advised Guarantor that it will not engage in the aforesaid transactions unless, among other things, (i) Guarantor guarantees all obligations of Borrower under the Note, including but not limited to the punctual payment of principal, interest and expenses to be paid, as hereinafter set forth, with recourse limited, to Guarantor's interest in the Property and (ii) Guarantor pledges the Property to secure its obligations under this Guaranty pursuant to a Pledge Agreement of even date of the Guarantor to the State (the "Pledge Agreement"); and

G. Guarantor is willing and has agreed to guarantee the payment of the aforesaid obligations as hereinafter provided.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, Guarantor agrees as follows:

1. Guarantor hereby unconditionally and irrevocably, guarantees: (i) the due and punctual payment in full (and not merely the collectability) of the principal of the Note and the interest thereon, when due and payable, according to the terms of the Note; (ii) the due and punctual payment in full (and not merely the collectability) of all other sums and charges which may at any time be due and payable in accordance with, or under the terms of the Note; (iii) the due and punctual performance and observance of all of the other terms, covenants and conditions contained in the Note and the Loan Agreement and the Security Instruments (as defined in the

Loan Agreement) and (iv) the accuracy of the representations and warranties in the Loan Agreement and the Security Instruments (collectively the "Guaranteed Obligations").

2. GUARANTOR'S LIABILITY HEREUNDER AND UNDER THE PLEDGE AGREEMENT SHALL BE LIMITED TO GUARANTOR'S INTEREST IN THE PROPERTY AND THE VALUE THEREOF AS THE SAME MAY BE REALIZED UPON EXERCISE OF THE RIGHTS AND REMEDIES UNDER THE PLEDGE AGREEMENT. IN ENFORCING PAYMENT BY GUARANTOR OF THE OBLIGATIONS GUARANTEED HEREUNDER, THE STATE SHALL HAVE RECOURSE ONLY TO THE PROPERTY AND TO ITS RIGHTS UNDER THE PLEDGE AGREEMENT AND TO NO OTHER ASSETS OF GUARANTOR OR GUARANTOR'S INTEREST IN ASSETS OTHER THAN THE PROPERTY, AND UNDER NO CIRCUMSTANCES SHALL GUARANTOR BE LIABLE TO THE STATE FOR ANY AMOUNT BEYOND THAT AMOUNT WHICH MAY BE REALIZED BY THE STATE UPON EXERCISE OF ITS RIGHTS AND REMEDIES UNDER THE PLEDGE AGREEMENT NOTWITHSTANDING THAT THE AMOUNT OF THE OBLIGATIONS GUARANTEED HEREUNDER MAY BE GREATER THAN THE AMOUNTS THAT ARE REALIZED.

3. Guarantor expressly agrees that State may, in its sole and absolute discretion, without notice to or further assent of Guarantor, and without in any way releasing, affecting or impairing the obligations and liabilities of Guarantor, hereunder: (i) waive compliance with, or any default under, or grant any other indulgences with respect to, the Note or any instrument or agreement securing the Note; (ii) modify, amend or change any provisions of the Note (other than to increase the principal amount due under the Note); (iii) grant extensions or renewals of or with respect to the Note, and/or effect any release, compromise or settlement in connection therewith; (iv) agree to the substitution, exchange, release or other disposition of all or any part of any collateral securing the Note; (v) make advances for the purpose of performing any term or covenant contained in the Note or any instrument securing the Note, with respect to which Borrower shall be in default; (vi) assign or otherwise transfer the Note and any other instrument or agreement securing the Note, including without limitation this Guaranty, or any interest therein; and (vii) deal in all respects with Borrower as if this Guaranty were not in effect. The obligations of Guarantor under this Guaranty shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of the Note or any security given therefor or in connection therewith or any other circumstances that might otherwise constitute a legal or equitable discharge of a surety or guarantor.

4. The liability of Guarantor under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon pursuit by State of any remedies it may have against Borrower or any other party with respect to the Note or any instrument or agreement securing the Note, whether pursuant to the terms thereof or otherwise. No exercise or nonexercise by State of any right given to it under this Guaranty, the Note or any instrument or agreement securing the Note, and no change, impairment or suspension of any right or remedy of State shall in any way affect any of Guarantor's obligations hereunder or give Guarantor any recourse against State. Without limiting the generality of the foregoing, State shall not be required to make any demand on Borrower and/or any other party, or otherwise pursue to

exhaustion its remedies against Borrower or any other party, before, simultaneously with or after, enforcing its rights and remedies hereunder against Guarantor. Any one or more successive and/or concurrent actions may be brought hereon against Guarantor, either in the same action, if any, brought against Borrower and/or any other party, or in separate actions, as often as State, in its sole discretion, may deem advisable.

5. Guarantor hereby expressly waives: (i) presentment and demand for payment and protest of nonpayment; (ii) notice of acceptance of this Guaranty and of presentment, demand and protest; (iii) notice of any default hereunder or under the Note or under any other agreement executed in connection with the Note and of all indulgences; (iv) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty or the Note, or any instrument or agreement securing the Note; and (v) all other notices and demands otherwise required by law that Guarantor may lawfully waive.

6. Any claim against Borrower or any guarantor to which Guarantor may be or become entitled (including, without limitation, claims by subrogation or otherwise by reason of any payment or performance by Guarantor in satisfaction and discharge, in whole or in part, of his obligations under this Guaranty) shall be and hereby is made subject and subordinate to the prior payment or performance in full of the Guaranteed Obligations. Nothing herein contained shall be construed to give Guarantor any right of subrogation in and to the rights of State under the Note or any instrument or agreement securing the Note until all amounts owing to State under the Note have been paid in full.

In addition to any other security given by Guarantor to the State, State is hereby authorized and empowered, at its option, to appropriate and apply to the payment and extinguishment of the Guaranteed Obligations, at any time after such liability becomes payable, any and all moneys or other property of Guarantor and any proceeds thereof (including proceeds of sales provided for below) now or hereafter in the possession of State for any purpose, including safekeeping or pledge for this or any other liability of Guarantor, and including any balance on deposit or otherwise for the account of, to the credit of, or belonging to Guarantor.

7. Any notice, demand, request or other communication given hereunder or in connection herewith (hereinafter "Notices") shall be deemed sufficient if in writing and sent by certified mail, postage prepaid, return receipt requested, addressed to the party to receive such Notice at its address first above set forth or at such other address as such party may hereafter designate by Notice given in like fashion. Notices shall be deemed given when mailed.

8. Any payments made by Guarantor under the provisions of this Guaranty shall, if made to State, be made at its address first set forth above, unless some other address is hereafter designated by State.

9. All rights and remedies afforded to State by reason of this Guaranty and the Note and any instrument or agreement securing the Note, or by law, are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or

remedies. No delay or omission by State in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by State unless in writing and duly executed. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of State, and no single or partial exercise of any right or remedy hereunder shall preclude further exercise of any other right or remedy.

10. The obligations of Guarantor to make payment in accordance with the terms of this Guaranty shall not be impaired, modified, changed, released, or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Borrower or its estate in bankruptcy or reorganization resulting from the operation of any present or future provision of federal bankruptcy laws or other statute or from the decision of any court.

11. Guarantor agrees that if this Guaranty shall be enforced by suit or otherwise, or if State shall exercise or endeavor to exercise any of its remedies under the Note, Guarantor will reimburse State, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees.

12. This Guaranty shall be construed in accordance with the laws of the State of New Hampshire.

13. This Guaranty shall inure to the benefit of, and be enforceable by, State and its successors and assigns, and shall be binding upon, and enforceable against, Guarantor and his personal representatives, heirs, and assigns.

14. If more than one person executes this Guaranty, the liability of all such persons hereunder shall be joint and several.

15. Guarantor 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 Guaranty.

16. Whenever the context so requires reference herein to the masculine gender shall include the feminine gender or the neuter or vice versa; and the singular shall include the plural and vice versa.

17. All references herein to the Loan Agreement, the Note and the Pledge Agreement shall be deemed to include such instruments as they may be amended from time to time.

18. If any provision or condition of this Guaranty is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Guaranty.

20. Nothing contained in this Guaranty, the Pledge Agreement, the Loan Agreement, the Note or any 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, Guarantor has executed this Guaranty as of the day and year first above written.

\_\_\_\_\_  
Witness

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

DISCLOSURE OF FINANCE CHARGES  
STATE DRINKING WATER REVOLVING LOAN FUND

Pursuant to New Hampshire RSA Chapter 399-B:2

To: 2<sup>nd</sup> STONEHENGE LLC

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

Amount of Loan: \$525,000

Payable: As provided in the Note.

Finance Charges: 1% until the Interest Rate Change Date (as defined in the Note dated June 27, 2019 in the principal amount of \$420,000, as amended by a First Allonge to Promissory Note increasing the principal amount to \$525,000 (the "Note")), then lower of (A) 2.704% or (B) eighty percent (80%) of the established market rate as determined in Env-Dw 1106.03 and 1106.04.

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

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

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

Acknowledged.

**2nd STONEHENGE LLC**  
By Its Manager 3rd EG Holding LLC

By: \_\_\_\_\_  
Newton H. Kershaw, III  
Manager