



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

**Thomas S. Burack, Commissioner**



July 1, 2013

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

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into a loan agreement with Railroad Land Development, LLC, Keene, New Hampshire (Vendor Code #166143) in an amount not to exceed \$480,000 for remediation of environmental contamination, under the provisions of RSA 147-F:20, effective upon Governor and Council approval. Funding is 100% Federal.

Funding is available as follows:

	<u>FY2014</u>
03-44-44-444010-2017-301-500831	\$480,000

Dept. of Environmental Services, Brownfields SRF Loans, Loans

EXPLANATION

The Comprehensive Environmental Response, Compensation and Liability Act, as amended, established the Brownfields Revolving Loan Fund (RLF) Program to provide low interest loans to eligible municipalities and private entities, and grants for municipalities and non-profit organizations, for the cleanup of sites contaminated with hazardous substances and petroleum. The participation of DES in the RLF Program is authorized by RSA 147-F:20.

This loan agreement would permit Railroad Land Development, LLC to borrow up to \$480,000 from the state administered RLF Program for the purpose of financing the remediation of environmental contamination at the former B&M Railroad Property in Keene, New Hampshire. Specifically, the funds would be used for the construction of direct contact barriers (i.e., a cap) over urban fill/coal ash impacted soil that is present throughout the property.

With the availability of RLF funds to provide low interest loans not otherwise available or obtainable from traditional commercial lenders, there is a greater willingness by businesses and developers to take on the risk associated with remediation and subsequent redevelopment. A \$300,000 petroleum RLF loan was previously made to Railroad Land Development, LLC in February 2008. Redevelopment of the former B & M Railroad Property in Keene, New Hampshire that has taken place to date includes: a multi-story senior housing building that is being developed by Southwestern Community Services; a four-story mixed use condominium building that houses medical offices, commercial/retail space, and residential condominiums; a 100+ room, LEED-certified, full-service hotel; and a recently completed food cooperative. The remediation supported by the two loans is resulting in the creation of an estimated 125 jobs with hopes to generate a total of between 200 and 250 upon completion of the entire redevelopment, increased property values thus increasing property tax revenue, and the leveraging of at least \$50 million in private funds for the redevelopment of a property important to the vitality of the downtown Keene area.

DES Web Site: [www.des.nh.gov](http://www.des.nh.gov)  
P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095  
Telephone: (603) 271-2908 Fax: (603) 271-2181 TDD Access: Relay NH 1-800-735-2964



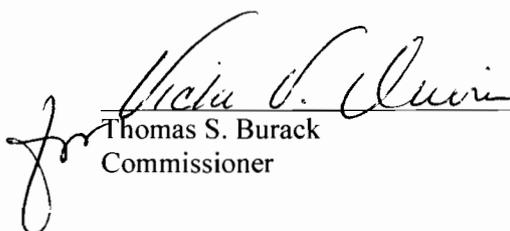
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Working under a Memorandum of Agreement (MOA), the New Hampshire Business Finance Authority (BFA) has assisted DES by reviewing the Railroad Land Development, LLC loan application and has made recommendations to DES regarding the advisability and risks of making the loan. The DES addressed BFA's comments with respect to risk by modifying the terms of the loan (i.e., modifying the repayment terms and obtaining additional collateral for securing the loan).

The RLF program continues to provide loans to municipalities, non-profit entities and private borrowers for the cleanup of Brownfield sites, thereby removing a significant barrier to redevelopment in New Hampshire – i.e., the lack of commercial financing for site remediation. If approved, this RLF loan will be the tenth such loan made by DES' RLF program with an aggregate amount in excess of \$3.5 million.

In the event that Federal funds become no longer available, general funds will not be requested to support this program.

We respectfully request your approval.

  
Thomas S. Burack  
Commissioner

Attachments: Closing Agenda  
Loan Agreement  
Promissory Note  
Mortgage and Security Agreement  
Collateral Assignment of Contracts, Plans and Permits  
Collateral Assignment of Leases and Rents  
Guaranty of Cypress St. Development, LLC  
Mortgage Deed of Cypress St. Development, LLC  
Collateral Assignment of Leases and Rents of Cypress St. Development, LLC  
Guaranty of Monadnock Economic Development Corporation  
Mortgage Deed of Monadnock Economic Development Corporation  
Collateral Assignment of Leases and Rents of Monadnock Economic Development Corporation



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

**Loan Agreement**

THIS LOAN AGREEMENT (the "Agreement", dated \_\_\_\_\_, 2013 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:

Railroad Land Development, LLC  
51 Railroad Street, Suite 101  
Keene, NH 03431  
(the "Borrower")

**FUNDAMENTAL PREMISES FOR THIS AGREEMENT**

A. Pursuant to New Hampshire Revised Statute Annotated ("RSA") 147-F:20, the State has established a revolving loan fund for financing hazardous waste remediation projects participating in the New Hampshire Brownfields Program within the state.

B. The Borrower desires to finance or refinance certain expenses for the remediation of environmental contamination on a portion of certain real property commonly referred to as the former B&M Railroad Property situated on Railroad Street and Cypress Street in Keene, New Hampshire, which is more particularly described in Exhibit A attached hereto (the "Premises").

C. The remediation includes construction of direct contact barriers (e.g., asphalt or concrete pavement, vegetated soil cap in combination with a marker barrier) for urban fill/coal ash impacted soil on a portion of the Premises as shown on the figure in Exhibit B and the establishment of Activity and Use Restrictions (AURs), if necessary (the "Project").

D. The Borrower certifies that they are not potentially liable under § 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the Premises or that, if they are, they qualify for a limitation or defense under CERCLA.

E. The Borrower certifies that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the Premises.

F. 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 Brownfields Cleanup Revolving Loan Fund in accordance with CERCLA 104(k).

### TERMS AND CONDITIONS OF THIS AGREEMENT

The State and the Borrower agree as follows:

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

"BCRLF" means the Brownfields Cleanup Revolving Loan Fund of the State of New Hampshire.

"Cypress" means Cypress St. Development, LLC

"Cypress Documents" means the Guaranty of Cypress, the Mortgage Deed of Cypress to the State of even date and the Collateral Assignment Leases and Rents of even date of Cypress to the State.

"Cypress Mortgage" means the Mortgage Deed of even date of Cypress to the State.

"Cypress Property" means Unit E of Railroad Street Condominium.

"Contractor" means the contractor who enters into the Remediation Contract.

"Environmental Report(s)" means an American Society for Testing and Materials (ASTM) E1527-05 or equivalent Phase I Environmental Site Assessment report for the Premises and an ASTM E1903-97 or equivalent Phase II Environmental Site Assessment (i.e., a site investigation that meets the requirements of New Hampshire Code of Administrative Rules Env-Or 600 *Contaminated Site Management*).

"Event of Default" has the meaning provided in Section 8.

"Guaranties" mean the Guaranties of even date of each of the Guarantors.

"Guarantors" mean Cypress and MEDC.

"Hazardous Materials" has the meaning provided in Section 10.1(a).

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

"Loan Proceeds" has the meaning provided in Section 2.

"MEDC" means Monadnock Economic Development Corporation.

“MEDC Documents” mean the MEDC Guaranty, the Mortgage Deed of even date of MEDC to the State, the Collateral Assignment of Leases and Rents of even date of MEDC to the State and the LLC Pledge Agreement of even date of MEDC to the State.

“MEDC Mortgage” means the Mortgage Deed of even date of MEDC to the State.

“MEDC Property” means the real property situated at 4 Forge Street, Keene, New Hampshire.

“Mortgage” means the Mortgage and Security Agreement of even date of the Borrower to the State mortgaging the Premises.

“Note” means the Borrower’s Promissory Note of even date in the principal amount of \$480,000 payable to the order of the State in the form attached hereto as Exhibit C.

“Permitted Encumbrances” have the meaning provided in Section 4(a).

“Plans” means a Remedial Action Plan (RAP) that meets the requirements of New Hampshire Code of Administrative Rules Env-Or 600 *Contaminated Site Management*.

“Premises” mean the real property and real property interests described in Exhibit A attached hereto.

“Project” means the remediation project described in the recitals of this Agreement and contemplated by the Plans on the Premises and a portion of the common area of Railroad Street Condominium.

“Remediation Contract” means the agreement between the Borrower and a Contractor for completion of the Project.

“Security Instruments” mean the Mortgage, the Collateral Assignment of Leases and Rents of even date of the Borrower to the State and the Collateral Assignment of Contracts, Plans and Permits of even date of the Borrower to the State.

“State” means the State of New Hampshire by and through its Department of Environmental Services.

“Title Insurance Company” means a title insurance company satisfactorily furnishing a title insurance policy insuring the Mortgage.

“Total Budget” means the budget for all costs of completing the Project set forth in Exhibit D.

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 of Borrower. The Borrower represents and warrants as follows:
  - (a) Recitals. The Recitals set forth at the beginning of this Agreement are true and correct;
  - (b) Plans. It has filed the Plans with all governmental authorities having jurisdiction with respect to the Plans;
  - (c) Approvals. It has obtained all necessary approvals of the Plans and all necessary permits for the Project from all governmental authorities having jurisdiction over the Project;
  - (d) No Violation. The Project will not violate any zoning, environmental, subdivision or land use ordinance, regulation or law;
  - (e) No Litigation. No litigation or proceedings are pending or threatened against the Borrower or affecting the Premises or the Project that could affect the validity or priority of the lien of the Security Instruments or other security for the Note or that could affect the Borrower's ability to perform its obligations under this Agreement;
  - (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 in accordance with generally accepted principles of accounting applied 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 said dates. To the best of the Borrower's knowledge and belief, the Borrower does not have any 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 duly organized and validly existing New Hampshire limited liability company 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 to which it is a party;
  - (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 limited liability company action and will not violate any provision of law, any order of any court or other agency of government, or 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;

(i) Bankruptcy. Any borrowings made by the Borrower under this Agreement do not and will not render the Borrower insolvent; the Borrower is not contemplating either 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 delivery, will be the valid and binding obligations of the Borrower, enforceable 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;

(m) Total Budget. Borrower covenants and represents that Exhibit D attached hereto contains a complete and full enumeration of all costs (hard, soft and acquisition) that Borrower has incurred or that the Borrower anticipates will be incurred in connection with the Project; and.

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) Title. The Borrower shall have acquired good and marketable title to the Premises in fee simple and full possession thereof, free and clear of all liens and encumbrances except such encumbrances as are set forth in the title insurance policy insuring the Mortgage

(hereinafter referred to as the “Permitted Encumbrances”) and the lien of the State created by the Mortgage shall be insured by a mortgagee’s title insurance policy in form and substance satisfactory to the State and issued by the Title Insurance Company;

(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) Cypress Documents. Cypress shall have executed and delivered to the State each of the Cypress Documents, each of which shall be in form and substance satisfactory to the State;

(d) MEDC Documents. MEDC shall have executed and delivered to the State each of the MEDC Documents, each of which shall be in form and substance satisfactory to the State;

(e) Cypress Title. Cypress shall have acquired good and marketable title to the Cypress Property in fee simple and full possession thereof, free and clear of all liens and encumbrances except such encumbrances as are set forth in the title insurance policy insuring the Cypress Mortgage and the lien of the State created by the Cypress Mortgage shall be insured by a mortgagee’s title insurance policy in form and substance satisfactory to the State and issued by the Title Insurance Company;

(f) MEDC Title. MEDC shall have acquired good and marketable title to the MEDC Property in fee simple and full possession thereof, free and clear of all liens and encumbrances except such encumbrances as are set forth in the title insurance policy insuring the MEDC Mortgage and the lien of the State created by the MEDC Mortgage shall be insured by a mortgagee’s title insurance policy in form and substance satisfactory to the State and issued by the Title Insurance Company

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

(h) Appraisal. The State shall have received appraisals of the properties securing the loan satisfactory to the State;

(i) Environmental Report. The State shall have received an Environmental Report(s) with respect to the Premises satisfactory to the State;

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

(k) 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;

(l) 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 the Project before or as of the date hereof, together with the Borrower's written certification that it has complied with this paragraph 4(l); and

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

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. Cause the Project to be completed, with all reasonable dispatch, in accordance with the Project Schedule of Remediation attached hereto as Exhibit E, but in any event within twelve (12) 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 Project;

(b) Changes. Make no changes in or amendments to the Plans and authorize no change orders without first obtaining the written approval of the State and any governmental agency whose approval is required;

(c) Inspection. Permit authorized representatives of the State or Federal government to enter upon the Premises and the offices of the Borrower and inspect the Project at all reasonable times and examine all detailed plans, drawings and specifications and any books and records relating to the Premises and the Project and the financial condition of the Borrower. The Borrower shall maintain records relating to the use of the Loan Proceeds and the Project for a minimum of three years following completion of the Project;

(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 Project, 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) Intentionally left blank;

(f) Insurance. Maintain or cause to be maintained liability, casualty and/or builder's risk insurance on the improvements of the Premises and any material or equipment stored on the Premises, 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 default by the Borrower in so doing, the State may procure 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;

(g) Casualty. If the improvements situated on the Premises shall be damaged or destroyed by fire or any other casualty, and subject to the terms and conditions of the Mortgage, 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;

(h) No Purchase Money Security Agreements, Etc. Neither purchase nor install materials, equipment, fixtures, furnishings, or any other part of the Project 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;

(i) Expenses. Pay the State's extraordinary, reasonable out of pocket expenses (including attorneys' fees) that State incurs in the approval, making and administration of this loan;

(j) 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;

(k) Preserve Licenses. Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all laws and regulations applicable to it;

(l) 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;

(m) 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;

(n) 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 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;

(o) Records. Maintain records for a minimum of three (3) years following completion of the Project financed all or in part with loan funds. The Borrower shall obtain written approval from the State prior to disposing of records. The Borrower shall provide access to records related to this Agreement to authorized representatives of the State or Federal government;

(p) Construction Loan Notice. Within five (5) business days after execution of this Agreement post a notice provided by the State in a conspicuous place on the Premises and provide the State with written certification that the Borrower has complied with this Section 5(p);

(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 Agreement;

(r) Compliance with Certain Laws.

- (i) Use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k). These requirements include the prohibition on the use of loan funds for administrative costs found at CERCLA § 104(k)(4)(B);
- (ii) Conduct Project activities in accordance with the New Hampshire Code of Administrative Rules Env-Or 600 *Contaminated Site Management*.
- (iii) Comply with all applicable Federal and State laws and requirements;
- (iv) Comply with the prevailing wage requirements of the Davis-Bacon Act of 1931 construction, alteration or repair contracts funded in whole or in part with funds provided under this Agreement. The Borrower must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into construction, alteration or repair contracts; and
- (v) Comply with Federal cross-cutting requirements which include, but are not limited to: MBE/WBE requirements found at 40 CFR 33.301 and 33.302; OSHA Worker Health & Safety Standard (29 CFR 1910.120); the Uniform Relocation Act; National Historical Preservation Act;

Endangered Species Act; permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333); the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

(s) Intentionally left blank;

(t) Quality Assurance. If environmental samples are to be collected as part of the Project, comply with 40 CFR Part 31.45 requirements (or 40 CFR Part 30.54 requirements for nonprofit organizations) to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. The Borrower will develop a Quality Assurance Project Plan (QAPP) to support all environmental data operations in accordance with "*The EPA New England Planning and Documenting Brownfields Projects – Generic Quality Assurance Project Plans and Site-Specific QAPP Addenda*," March 2009;

(u) Community Relations and Public Involvement. Prepare a site-specific community relations plan that includes providing reasonable notice, the opportunity for public involvement and comment on the proposed cleanup options under consideration for the Premises; and

(v) Indemnification. Protect, indemnify, defend and hold harmless, the State, its officers, administrators, agents, servants, employees and all other persons or legal entities to whom the Borrower may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the Borrower as provided herein and caused in whole or in part by any act, error, or omission of the Borrower, its agents, servants, employees or assigns.

## 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 under this Agreement 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, 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 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 the 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)
  - (i) Invoices from suppliers of materials and labor for the remediation of the Premises;
  - (ii) Invoices from engineer or consultant for services provided for the Project;
  - (iii) An affidavit by Borrower that the work on the Project for which the disbursement is requested has been completed and the subcontractors and suppliers of materials and labor have been paid for their share of work or will be paid from the advance applied for, directly by Borrower, together with paid invoices representing the same to the extent already paid; and
  - (vi) Such other documentation, satisfactory to State, which will permit the Title Insurance Company to issue an endorsement covering the amount of the requested advance;
- (b) A completed itemized request for payment, signed by Borrower, in form approved by State and with such backup information as State may reasonably request;
- (c) A certificate of the inspecting engineer as may be selected by or be satisfactory to State, that all work performed at the Project site when the advance 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 Project in accordance with the Plans and the Total Budget;
- (d) The written endorsement of the title insurance policy issued by the Title Insurance Company, as of the date of the making of such advance, that there are no liens or other encumbrances on the Premises or Project (other than real estate taxes for the then current year, payment of which is not in default, the Permitted Encumbrances and the Security Instruments) nor any instruments of record under which such lien or encumbrance may be obtained;
- (e) A written certificate of the Borrower and the Contractor that they and each of them have received no affidavits or other notices in connection with the obtaining of a mechanic's lien by any contractor, subcontractor, materialman or laborer;
- (f) The Borrower's written certification that at least forty-eight (48) hours before the requested release of the advance the Borrower has posted a notice in a conspicuous place on the Premises of the anticipated funding date for the advance, together with a copy of such notice; and

(g) Any other documents that the State shall reasonably request the Borrower to provide to protect the priority of the lien of the Mortgage or other Security Instrument, 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, subcontractors or materialmen as may be required by the State or the Title Insurance Company.

6.5 Quality of Work. No disbursement shall be due unless all work usually done at the stage of remediation 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 each 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(q).

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 Project. Upon completion in full of the Project, the Borrower shall promptly deliver to the State:

(a) Completion Report. A Remedial Action Implementation Report that meets the requirements of New Hampshire Code of Administrative Rules Env-Or 600 *Contaminated Site Management*. The report shall be submitted to the State for review and approval within ninety (90) days following completion of the Project;

(b) Title Insurance. A written endorsement of the Title Insurance Company insuring the Premises and Improvements against mechanics' and materialmen's liens;

(c) 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 completion of the Project and the amount paid by the Borrower with respect to each; and

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

8. Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Agreement:

a) Title Insurance. The Title Insurance Company shall refuse to insure any advance made hereunder to be secured by the Mortgage as a valid lien on the Premises and the Improvements, subject only to the Permitted Encumbrances;

(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 Premises are conveyed or encumbered in any way without the written consent of the State;

(c) Encroachment or Violation. Any survey, report or examination discloses that any improvements constituting part of the Project or any portion thereof encroach upon or project over a street or upon or over adjoining property or violate any setback or other restriction, however created, or any zoning regulations or any building restriction of any governmental authority having jurisdiction with respect to the Project;

(d) Casualty. The improvements of the Project or the Premises are materially damaged or destroyed by fire or other casualty or cause and the insurance proceeds therefrom (subject to the terms of the Mortgage) are inadequate to rebuild or restore the improvements or the Premises to their condition immediately prior to such casualty;

(e) Failure to Construct. The Borrower or the Contractor does not complete the Project in accordance with the Plans;

(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 or either Guarantor, 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 Project and shall not be discharged within thirty (30) days of such filing or such greater period of time as shall be permitted by the terms of the Mortgage or other 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;

(i) Other Loan Documents. Any event of default under the Note, any Security Instrument, the MEDC Documents or the Cypress Documents, or any event which, with the giving of notice or passage of time, or both, would become an event of default under such instruments shall occur;

(j) Cessation of Work. Any cessation occurs at any time in progress of the Project for more than one (1) week except for strikes, riots, or other causes beyond the Borrower's control, or if any substantial change is made in the schedule for the Project from that provided in the Plans or this Agreement without the approval of the State;

(k) Voluntary Bankruptcy. The Borrower or either Guarantor 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 or either Guarantor by any court of competent jurisdiction, approving a petition seeking reorganization or approving the appointment of a receiver, trustee or liquidator of the Borrower or the Guarantor 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 death, dissolution, termination of existence, merger or consolidation (as applicable) of the Borrower or either Guarantor or a sale of assets of the Borrower or either Guarantor out of the ordinary course of business without the prior written consent of the State;

(n) Other Obligations to State. Default by the Borrower or either Guarantor in the payment or performance of any other obligations of the Borrower owed to the State, whether created prior to, concurrent with, or subsequent to the obligations arising out of this Agreement, provided such default continues after any applicable notice and expiration of any applicable grace period;

(o) Other Obligations. Default by the Borrower in any other obligation for borrowed money in excess of Twenty-Five Thousand Dollars (\$25,000.00);

(p) Judgment. Final judgment for the payment of money of more than Twenty-Five Thousand Dollars (\$25,000.00) 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) Insecure. The State shall deem itself insecure within the meaning of New Hampshire RSA 382-A: 1-309.

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. The Borrower acknowledges that if it fails to prosecute diligently within the time period required by this Agreement without cessation that is not permitted by this Agreement causing an Event of Default, the federal government may require the State to return to the federal government any remaining, undisbursed Loan Proceeds.

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 enter upon the Premises or the Project area and construct, equip and/or complete the Project 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 Project and any improvements on the Premises, all at the risk, cost and expense of the Borrower, (ii) to discontinue, at any time, any work with respect to the Project 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 Remediation Contract or related agreement made by the Borrower in any way pertaining to the Project 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 of the Project, all in the sole discretion of the State.

9.3 Completion of Project. In connection with completion of the Project undertaken by the State pursuant to the provisions of Section 9.2 (but without intending hereby to limit the powers and discretions conferred by said section), the State may engage builders, contractors, architects and engineers and others for the purposes of furnishing labor, materials and equipment for the Project; pay, settle or compromise all bills or claims which may become liens against the improvements of the Project or 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 Project, 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 foreclosure proceedings or other 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 or any Guarantor 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, 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. 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, both before and after any conveyance or foreclosure of the Premises, 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:

A. Any Hazardous Materials on, in, under or affecting all or any portion of the Premises or any areas surrounding the same before the Borrower is divested of title to the Property by conveyance or foreclosure or divested of possession of the Premises following an Event of Default;

B. The violation by the Borrower of any Legal Requirements with respect to the Premises or the Project; or

C. The enforcement of this Section 10 of the Agreement or the assertion by the Borrower of any defense to the obligations of an Indemnitor hereunder, whether any of such matters arise before or after foreclosure of any of the Mortgages or other taking of title to or possession of all or any portion of the Premises by the State, and specifically including therein, without limitation, the following to the extent they are a result of the matters described in clauses A or B above:

- (i) costs of removal of any and all Hazardous Materials from all or any portion of the Premises or the Project or any areas surrounding the same;
- (ii) additional costs required to take necessary precautions to protect against the release of Hazardous Materials on, in, under, or affecting, the Premises, the Project area or into the air, any body of water or wetland, any other public domain, or any surrounding areas;
- (iii) costs incurred to avoid the imposition of, or to discharge, any lien on the Premises or the Project area arising from any failure to comply with Legal Requirements;
- (iv) costs incurred to comply with all Legal Requirements relating to the Premises or the Project or any other collateral for the Loan, including without implied limitation, fines, penalties or other charges imposed by any lawful authority; and
- (v) costs and expenses incurred in ascertaining the existence or extent of any asserted violation of any Legal Requirements relating to the Premises or the Project area and any remedial action taken on account thereof including, without implied limitation, the costs, fees and expenses of engineers, geologists, chemists, other scientists, attorneys, surveyors and other professionals, and testing and analyses performed in connection therewith. The foregoing shall not apply to precautionary testing which is not in response to a specific identified potential release at the Premises or the Project area.

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, the Security Instruments, the Cypress Documents or the MEDC Documents, 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 or the Guarantor 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.

12. Waiver of Breach. No failure by the State to enforce any provision hereof after any Event of Default shall be deemed a waiver of its rights with regard to the Event of Default or shall be deemed a waiver of the right of the State to enforce each and all provisions hereof upon any further or other Event of Default on the part of the Borrower.

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 heirs, executors, administrators, successors and assigns of the Borrower, as the case may be, 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 above 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 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, 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, any of the Security Instruments, any of the Cypress Documents or any of the MEDC Documents 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, any Guaranty or 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: \_\_\_\_\_  
Name: Thomas S. Burack  
Title: Commissioner

**RAILROAD LAND DEVELOPMENT, LLC**

By: MONADNOCK ECONOMIC DEVELOPMENT CORPORATION, Its Sole Member

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President  
Duly Authorized

**JOINDER OF GUARANTORS**

The undersigned, being the entities named as the Guarantors in the foregoing Loan Agreement, hereby join therein and agree to be legally and equitably bound by all of the terms, covenants, warranties, representations, conditions and thereof, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**MONADNOCK ECONOMIC DEVELOPMENT CORPORATION**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President

**CYPRESS ST. DEVELOPMENT, LLC**

By: MONADNOCK ECONOMIC DEVELOPMENT CORPORATION, Its Sole Member

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President

## EXHIBIT C

### PROMISSORY NOTE

\$480,000

Concord, New Hampshire  
\_\_\_\_\_, 2013

FOR VALUE RECEIVED, Railroad Land Development, LLC, a New Hampshire limited liability company with a principal place of business at 51 Railroad Street, Suite 101, Keene, New Hampshire 03431 (the "Maker"), promises to pay to State of New Hampshire with an address of c/o the Department of Environmental Services, 29 Hazen Drive, Concord, New Hampshire 03301, or its order (the "Payee"), the sum of Four Hundred Eighty Thousand Dollars (\$480,000) or such lesser amount as shall be advanced to the Maker by the Payee pursuant to a Loan Agreement of near or even date (the "Loan Agreement"), in lawful money of the United States, together with interest thereon at the annual rate of 2.45 percent (2.45%) (the "Interest Rate").

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

(a) Thirty-six (36) consecutive monthly installments of accrued interest only, commencing on the first day of the month after the earliest of (i) the month in which the Project (as defined in the Loan Agreement) is completed, as determined by the Payee, (ii) the month in which the total principal amount of the Note has been disbursed, and (iii) the first anniversary of the date of this Note (such earliest date being the "Payment Commencement Date");

(b) Two hundred four (204) consecutive equal monthly installments of interest and principal in the amount of Two Thousand Eight Hundred Seventy Nine Dollars and Twenty Two Cents (\$2,879.22), commencing on the first day of the month following the third anniversary of the Payment Commencement Date. If the Payee disburses less than the total principal amount of this Note to the Maker pursuant to the Loan Agreement, the amount of these payments shall be adjusted to amortize the actual outstanding principal balance of the Note as of the Payment Commencement Date over a term of 204 months; and

(c) On the twentieth anniversary of the Payment Commencement Date, all remaining principal and accrued interest shall be due and payable.

2. Prepayment. The Maker 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 the Maker 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 the Maker's obligations under this Note are satisfied in full.

3. Security. This Note is secured by a Mortgage and Security Agreement of near or even date of the Maker mortgaging certain real property of the Maker situated in Keene, New Hampshire and by other security instruments as defined in the Loan Agreement (collectively, the "Security Instruments"). The Note is also guaranteed by the Guaranties of even date of Cypress St. Development, LLC and Monadnock Economic Development Corporation (the "Guaranties").

4. Due Date. Late Payment. All payments of principal and interest shall be due on or before the due date specified above; provided, however, that the Maker shall not be deemed in default hereunder if payment is received by the Payee on or before 5:00 p.m. of the seventh day following the due date. The Maker 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. The Maker expressly agrees that the 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.

6. Default; Acceleration. The Maker 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 payment of any principal or interest installment due hereunder (or within such grace period as may be provided herein), b) the failure of the Maker to observe or perform any of the other obligations to the Payee under this Note, or c) an Event of Default under the Loan Agreement or a default under any Security Instrument now or hereafter securing this Note, either Guaranty or any instrument securing a Guaranty.

If the Maker 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.

Upon the occurrence of a default or acceleration of amounts due under the Note, interest shall accrue on the unpaid principal balance of the Note at the annual rate equal to Eight Percent (8%) plus the Interest Rate until the default is cured.

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, the Maker agrees to pay all costs and expenses of collection, including attorneys' fees, regardless of whether legal proceedings have been formally commenced.

8. Waiver of Presentment. The Maker 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, except such notices and demands expressly provided for herein.

9. Non-Forfeiture of Rights. It is agreed and understood that the waiver by the Payee 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 the Payee 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 the Payee or to the Maker, as the case may be, at the addresses above specified, or such other address as the Payee and the Maker may hereafter direct, in writing.

11. Binding on Successors, Etc. The obligation of this Note shall be binding upon the heirs, successors and assigns of the Maker herein and shall inure to the benefit of the successors or assigns of the Payee herein or any holder hereof.

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

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.

EXECUTED as of the day and year first above written.

**RAILROAD LAND DEVELOPMENT, LLC**

By: MONADNOCK ECONOMIC DEVELOPMENT  
CORPORATION, Its Sole Member

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President



## MORTGAGE AND SECURITY AGREEMENT

Railroad Land Development, LLC, a New Hampshire limited liability company with a principal place of business at 51 Railroad Street, Suite 101, Keene, New Hampshire 03431 (the "Mortgagor"), for consideration paid, grants to 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 "Mortgagee") with MORTGAGE COVENANTS, to secure: (i) the payment of Four Hundred Eighty Thousand Dollars (\$480,000.00) with interest and other charges as provided in the Mortgagor's Promissory Note of even date and any and all amendments, deferrals, extensions, renewals thereof and therefor (collectively, the "Note"), including without limitation, the future advances and re-advances evidenced by the Note; (ii) the payment of all other sums with interest thereon advanced in accordance herewith to protect the security and priority of this Mortgage and Security Agreement (the "Mortgage"); and (iii) the performance of all of the Mortgagor's agreements, obligations and covenants as contained in the Note, the Mortgage, a certain Loan Agreement of even date by and between the Mortgagor and the Mortgagee (the "Loan Agreement") and certain security instruments described with more particularity in the Loan Agreement (the "Security Instruments"), (the Note, the Loan Agreement and the Security Instruments are collectively the "Loan Documents") the following:

Certain tracts or parcels of land together with all buildings and improvements thereon and appurtenances thereto located in Keene, Cheshire County, New Hampshire, more particularly described in Exhibit A, attached hereto and made a part hereof (the "Premises"); together with all fixtures, machinery and all other tangible personal property intended for use in the building and other improvements on said premises, now or hereafter owned by the Mortgagor and now affixed or to be affixed, or now hereafter located upon said land, including all appurtenant easements;

Also conveying and granting hereby as part of the realty and as property mortgaged hereunder, all of the following articles now and hereafter on the above-described premises or used therewith: All plumbing, heating, lighting, refrigerating, ventilating, and air conditioning apparatus and equipment, elevators and elevator machinery, boilers, tanks, motors, sprinkler and fire extinguishing systems, alarm systems, screens, awnings, screen doors, storm and other detachable windows and doors mantels, built-in cases, counters, trees, hardy shrubs and perennial flowers, and other equipment, machinery, furniture and furnishings, fixtures, and articles of personal property now and hereafter owned by the Mortgagor and now and hereafter affixed to, placed upon or used in connection with the operation of said premises for commercial uses, and all other purposes whether or not included in the foregoing enumeration, together with cash proceeds and non-cash proceeds of all of the foregoing, all of which are covered by this Mortgage, whether or not such property is subject to prior conditional sales agreements, chattel mortgages or other liens, excepting inventory and personal property to be consumed or sold in the normal course of business of the Mortgagor. If the lien of this Mortgage on any fixtures or personal property is subject to a conditional sales agreement or chattel mortgage or security agreement covering such property, then in the event of any default hereunder all the rights, title and interest of the Mortgagor in and to any and all deposits made thereon or therefor are hereby assigned to the Mortgagee, together with the benefit of any payments now or hereafter made

thereon. There are also transferred, set over and assigned to the Mortgagee, its successors and assigns hereby all conditional sales agreements, leases and use agreements of machinery, equipment and other personal property of the Mortgagor in the categories hereinabove set forth and now and hereafter affixed to, placed upon or used in connection with the operation of said premises under which the Mortgagor is the lessee of, or entitled to use, such items, and the Mortgagor agrees to execute and deliver to the Mortgagee specific separate assignments thereof to the Mortgagee of such leases and agreements when requested by the Mortgagee; and nothing herein shall obligate the Mortgagee to perform any obligations of the Mortgagor under such leases or agreements, unless it so chooses, which obligations the Mortgagor hereby covenants and agrees to well and punctually perform.

As further security for payment of the indebtedness and performance of the obligations, covenants and agreements secured hereby, the Mortgagor hereby transfers, sets over and assigns to the Mortgagee:

(a) All rents, security deposits, issues and profits, revenues, royalties, bonuses, rights and benefits under any and all leases or tenancies now existing or hereafter created of the Premises or any part thereof, with the right to receive and apply the same to said indebtedness, and the Mortgagee may demand, sue for and recover such payments, but shall not be required to do so; provided, however, that so long as the Mortgagor is not in default hereunder, the right to receive and retain such rents, issues and profits is reserved to the Mortgagor. To carry out the foregoing, the Mortgagor agrees (1) to execute and deliver to the Mortgagee such conditional assignments of leases and rents applicable to the Premises as the Mortgagee may from time to time request, while this Mortgage and the debt secured hereby are outstanding, and further (2) not to cancel, accept a surrender of, reduce the rentals under, anticipate any rentals under, or modify any such leases or tenancies, or consent to an assignment or subletting thereof, in whole or in part, without the Mortgagee's written consent. Nothing herein shall obligate the Mortgagee to perform the duties of the Mortgagor as landlord or lessor under any such leases or tenancies, which duties the Mortgagor hereby covenants and agrees to well and punctually perform.

(b) All judgments, awards of damages and settlements hereinafter and as a result or in lieu of any taking of the premises or any interest therein or part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the improvements thereon or any part thereof, including any award for change of grade of streets. The Mortgagee may apply all such sums or any part thereof so received on the indebtedness secured hereby in such manner as it elects, or, at its option, the entire amount or any part thereof so received may be released. The Mortgagor hereby irrevocably authorizes and appoints the Mortgagee its attorney-in-fact to collect and receive any such judgments, awards and settlements from the authorities or entities making the same, to appear in any proceeding therefor, to give receipts and acquittances therefore, and to apply the same to payment on account of the debt secured hereby, whether then matured or not; and the Mortgagor will execute and deliver to the Mortgagee on demand such assignments and other instruments as the Mortgagee may require for said purposes and will reimburse the Mortgagee for its cost (including reasonable counsel fees) in the collection of such judgments and settlements.

Receipt of rents, awards, and any other monies or evidences thereof, pursuant to the provisions of the foregoing paragraphs (a) and (b) and any disposition of the same by the Mortgagee shall not constitute a waiver of the right of foreclosure by the Mortgagee in the event of default or failure of performance by the Mortgagor of any covenant or agreement contained herein or the Note, the Loan Agreement or the Security Document.

TO HAVE AND TO HOLD the aforegranted and bargained premises with all privileges and appurtenances thereof, to the said Mortgagee and its successors and assigns, to its and their use and behalf forever, and the said Mortgagor, for itself and its successors and assigns, does hereby covenant, grant and agree to and with the Mortgagee and its successors and assigns, that until the delivery hereof it is the lawful owner of the said granted premises seized and possessed thereof in its own right in fee simple, has full power and lawful authority to grant and convey the same in manner aforesaid, that the premises are free and clear from any encumbrance whatsoever, except as otherwise recited in Schedule A, that it and its successors shall warrant and defend the same to the said Mortgagee and its successors and assigns against the lawful claims and demands of any person or persons whatsoever, except as otherwise herein recited; and that it will not cause or permit any lien to arise against the premises that is superior to the lien of this Mortgage.

The Mortgagor further covenants and agrees with the said Mortgagee, its successors and assigns, as follows:

1. Payment and Performance. The Mortgagor shall pay the Note hereby secured and interest thereon as the same shall become due and payable, and also any other indebtedness that may accrue to the Mortgagee under the terms of this Mortgage, and to perform all other agreements set forth herein and in said Note, the Loan Agreement and the Security Instruments. The Mortgagor has no right of setoff with respect to the Note, and the Mortgagor must pay all sums due without deduction.

2. Insurance. The Mortgagor will keep the buildings, improvements and personal property now existing or hereafter erected or located on the Premises and the interests and liabilities incident to the ownership thereof insured against loss by fire and such other hazards, casualties and contingencies, and in manner, form and companies as may be required by the Mortgagee. In no event shall the amount of coverage be less than one hundred percent (100%) of the insurable value based on replacement cost, and in default thereof the Mortgagee shall have (in addition to other rights set forth herein) the right to obtain such insurance at the cost of Mortgagor, such cost to be secured hereby. Such policy shall be endorsed with the standard New Hampshire mortgagee clause with loss payable to the Mortgagee, as its interest may appear, and shall be deposited with the Mortgagee, and the Mortgagor shall deliver to the Mortgagee a new policy as replacement for any expiring policy at least fifteen (15) days before the date of such expiration; all such policies will contain a provision or endorsement that they may not be canceled without sixty (60) days written notice from the insurer to the Mortgagee; all amounts recoverable under any policy are hereby assigned to the Mortgagee. In event of a loss, the

amount collected may, at the option of the Mortgagee, be used in any one or more of the following ways: (1) applied upon the indebtedness then matured or unmatured; (2) used to fulfill any of the covenants contained herein as the Mortgagee may determine; (3) used to replace or restore the property to a condition satisfactory to the Mortgagee; or (4) released to the Mortgagor; the Mortgagee is hereby irrevocably appointed by the Mortgagor as attorney-in-fact of the Mortgagor to assign any policy in the event of the foreclosure of this mortgage or other extinguishment of the indebtedness secured hereby. The insurance carrier providing the insurance shall be a carrier qualified to write such insurance in the State of New Hampshire and shall be chosen by the Mortgagor subject to the approval of the Mortgagee. Additionally the Borrower shall maintain or cause to be maintained public liability insurance on the Premises in an amount acceptable to the Mortgagee (in no event less than \$1,000,000.00) from a carrier acceptable to Mortgagee. If the Premises are located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area it will keep the Premises insured against loss by flood for the term of the Note, in an amount at least equal to the outstanding principal balance of the Note or the maximum limit of coverage available for the Premises under the National Flood Insurance Act of 1968, whichever, is less.

3. Taxes and Assessments. The Mortgagor will pay, before the same become delinquent or any penalty attached thereto for nonpayment, all taxes, assessments and charges of every nature that may now or hereafter be levied or assessed, upon the Premises or any part thereof, or upon the rents, issues, income or profits thereof, whether any or all of said taxes, assessments or charges be levied directly or indirectly, and will pay, before the same become delinquent or any penalty attached thereto for the nonpayment, all taxes that by reason of nonpayment create a lien prior to the lien of the Mortgage; and will thereon submit to the Mortgagee such evidence of the due and punctual payment of such taxes, etc. as the Mortgagee may require, and the Mortgagor will also pay all taxes, assessments or charges that may be levied on the Note secured hereby, or on the interest thereon, excepting the federal income tax imposed under the laws of the United States of America or any future general income tax levied by the State of New Hampshire.

4. Maintenance of the Premises. The Mortgagor will keep protected in good order, repair and condition (reasonable wear and tear and casualty insured against excepted) at all times the buildings and improvements (including the Mortgagor's fixtures) now standing or hereafter erected or placed upon the Premises and any and all of the Mortgagor's appurtenances, apparatus and articles of personal property, including, but not limited to, furniture, furnishings and equipment, now or hereafter in or attached to or used in connection with said buildings or improvements, promptly replacing any of the aforesaid that may become lost, destroyed or unsuitable for use; will always maintain in good order and condition all the facilities, easements, works, and ways set forth in the description and easements of the Mortgage, whether located upon the premises hereby mortgaged or elsewhere; and will not commit or suffer any strip or waste of the Premises, or any violation of any law, regulation, ordinance or contract affecting the Premises, and will not commit or suffer any demolition, removal or material alteration of any buildings or improvements (including fixtures) on the Premises without the written consent of the Mortgagee. The Mortgagor shall maintain and preserve the parking areas, passageways and

drives now or hereafter existing on the Premises, and, without prior written consent of the Mortgagee, no building or other structure other than those designated on the project layout plans shall be erected thereon and no new buildings or additions to existing buildings shall be erected on the remainder of the Premises herein mortgaged without prior written consent of Mortgagee.

5. Actions of the Mortgagee. If the Mortgagor shall neglect or refuse to keep in good repair the property conveyed by this Mortgage and Security Agreement, to replace the same as herein agreed, to maintain and pay the premiums for insurance that may be required under Paragraph 2, or to pay and discharge all taxes, assessments and charges of every nature and to whomever assessed, as provided for in Paragraph 3, the Mortgagee may, at its election, cause such repairs or replacements to be made, obtain such insurance or pay said taxes, assessments and charges, and any amounts paid as a result thereof, together with interest thereon at the highest rate of interest specified in the Note secured hereby from the date of payment, shall be immediately due and payable by the Mortgagor to the Mortgagee, and until paid shall be added and become part of the principal debt secured hereby, and the same may be collected as a part of said principal debt in any suit hereon or upon the Note; or the Mortgagee, by the payment of any tax, assessment or charge, may if it sees fit if allowed by law, be thereby subrogated to the rights of the state, county, village and all political or governmental subdivisions. No such actions or advances shall be deemed to relieve the Mortgagor of any default hereunder or impair any right or remedy consequent thereon, and the exercise of the rights to make advances granted in this paragraph shall be optional with the Mortgagee and not obligatory, and the Mortgagee shall not in any case be liable to the Mortgagor for a failure to exercise any such right. Mortgagee shall have no responsibility with respect to the legality, validity and priority of any such claim, lien, encumbrance, tax, assessment and premium, and of the amount necessary to be paid in satisfaction thereof.

6. Tax and Insurance Escrow. The Mortgagor shall, upon written request therefor by the Mortgagee, which request may be withdrawn and remade from time to time at the discretion of the Mortgagee, pay to the Mortgagee on a monthly basis as hereafter set forth a sum equal to the municipal and other governmental real estate taxes, assessed against the Premises and all premiums next due for fire and other casualty insurance required of Mortgagor hereunder, less all sums already paid therefor, divided by the number of months to lapse not less than one (1) month prior to the date when said taxes and assessments will become delinquent and when such premiums will become due. Such sums as estimated by the Mortgagee shall be paid with monthly payments due under the Note, and such sums shall be held by the Mortgagee to pay said taxes, assessments and premiums before the same become delinquent. The Mortgagor agrees that should there be insufficient funds so deposited with the Mortgagee for said taxes, assessments and premiums when due, it will upon demand by the Mortgagee promptly pay to the Mortgagee amounts necessary to make such payments in full; any surplus funds may be applied toward the payment of the indebtedness secured by the Mortgage or credited toward future such taxes, assessments and premiums. If the Mortgagee shall have commenced foreclosure proceedings, the Mortgagee may apply such funds toward the payment of the mortgage indebtedness without causing thereby a waiver of any rights, statutory or otherwise, and specifically such application shall not constitute a waiver of the right of foreclosure hereunder.

The Mortgagor hereby assigns to the Mortgagee all the foregoing sums so held hereunder for such purposes.

7. Security Agreement and Financing Statement. The Mortgagor further covenants and agrees that the Mortgage shall constitute a security agreement and financing statement with respect to any and all machinery, equipment, chattels, articles of personal property, and fixtures described and included in the Mortgage, and all additions, accessions, substitutions and replacements thereto and therefor, together with the proceeds thereof, and all of which are hereinafter referred to as the collateral, and the Mortgagor hereby grants and conveys to the Mortgagee, its successors and assigns, a security interest therein. The Mortgagee warrants that for purposes of the Uniform Commercial Code its principal place of business is as stated in the first paragraph of this Mortgage and agrees that it shall not change such principal place of business without providing thirty (30) days advance written notice to the Mortgagee. Upon default of any term, condition or covenant of the Mortgage and acceleration of any indebtedness hereby secured, the Mortgagee may, at its discretion, require the Mortgagor to assemble the collateral and make it available to the Mortgagee at a place reasonably convenient to both parties to be designated by the Mortgagee. The Mortgagee shall give the Mortgagor notice, by registered mail, postage prepaid, of the time and place of any public sale of any of the collateral or of the time any private sale or other intended disposition thereof is to be made by sending notice to the Mortgagor at least ten (10) days before the time of the sale or other disposition, which provisions for notice the Mortgagor and the Mortgagee agree are reasonable; provided, however, that nothing herein shall preclude the Mortgagee from proceeding as to both real and personal property in accordance with Mortgagee's rights and remedies in respect of the real property. The Mortgagee shall have all of the remedies of a secured party under the Uniform Commercial Code as now in effect in the State of New Hampshire, and such further remedies as may from time to time hereafter be provided in New Hampshire for a secured party. The Mortgagor agrees that all rights of the Mortgagee as to said collateral and as to said real estate, and rights and interest appurtenant thereto, may be exercised together or separately and further agrees that in exercising its power of sale as to said collateral and as to said real estate, and rights and interests appurtenant thereto, the Mortgagee may sell the collateral or any part thereof, either separately from or together with the sale of the real estate, rights and interests appurtenant thereto, or any part thereof, all as the Mortgagee may in its discretion elect.

8. Books and Records. The Mortgagor shall maintain full and correct books and records showing in detail the earnings and expenses of the Premises; will permit the Mortgagee and its representatives to examine said books and records and all supporting vouchers and data any time from time to time upon request by the Mortgagee. The Mortgagor shall provide financial statements of the Premises to the Mortgagee at least annually.

9. Other Proceedings. If any action or proceeding be commenced, to which action or proceeding the Mortgagee is made a party by reason of the execution of the Mortgage or the Note that it secures, or in which it becomes necessary to defend or uphold the lien of the Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created hereby including attorneys' fees, shall be paid by the Mortgagor, together with

interest thereon from date of payment at the highest rate specified in the Note secured hereby, and any such sum, and the interest thereon, shall be immediately due and payable and be secured hereby, having the benefit of the lien hereby created, as a part thereof and of its priority.

10. Releases, Etc. Without affecting the liability of the Mortgagor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of the Mortgagee with respect to any security not expressly released in writing, the Mortgagee may at any time and from time to time, either before or after the maturity of the Note and without notice or consent:

(a) Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation.

(b) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof.

(c) Exercise or refrain from exercising or waive any right the Mortgagee may have.

(d) Accept additional security of any kind.

(e) Release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property mortgaged hereby.

11. Zoning and Other Law. If at any time the then-existing use or occupancy of the Premises shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, that the Mortgagor shall not cause or permit such use or occupancy to be discontinued without the prior written consent of the Mortgagee.

12. Leases. The Mortgagee must examine and approve (which approval will not be unreasonably withheld) in writing prior to execution, delivery and commencement thereof, all leases, tenancies and occupancies of the Premises entered into by the Mortgagor; and the Mortgagor at its cost and expense, upon request of the Mortgagee, shall cause any parties in possession of the premises under any such leases, tenancies and occupancies, not so approved, to vacate the premises immediately; and the Mortgagor acknowledges that the Mortgagee may from time to time at its option enter upon the Premises and take any other action in court or otherwise to cause such parties to vacate the premises; the costs and expenses of the Mortgagee in so doing shall be paid by the Mortgagor to the Mortgagee on demand thereof and shall be part of the indebtedness secured by the Mortgage as costs and expenses incurred to preserve and protect the security; such rights of the Mortgagee shall be in addition to all its other rights as the Mortgagee, including the right of foreclosure, for breach by the Mortgagor in the requirements of this paragraph.

13. Receipt of Rents, Etc. Receipt and disposition of rents, income of the Premises, insurance proceeds, eminent domain awards, or any other sums under the provisions of the Mortgage, the Note, the Loan Agreement, or the Security Instruments by Mortgagee shall not be a waiver or release of any rights of the Mortgagee, including but not limited to, the right of foreclosure or acceleration of the Note, whether such receipt or disposition shall be before or after exercise of any such rights.

14. Assignment. This Mortgage is not assignable or assumable by the Mortgagor and if all or any part of the Premises is sold or conveyed or if there are transfers of any interests in the Mortgagor, then the Mortgagee may, at its option, require immediate payment in full of all sums secured by this Mortgage.

15. No Junior Security Interests. The Mortgagor shall not, without the prior written consent of the Mortgagee, grant any other mortgage, lien or security interest in the Premises.

16. Default; Remedies.

(a) The Mortgagor shall be in default under this Mortgage upon the occurrence of an event of default under any of the Loan Documents, including the Loan Agreement and the expiration of the grace period as specified in the applicable Loan Document (herein called the "Events of Default"). Such Events of Default shall include without limitation, the following:

- (i) Default in the due and punctual payment of any payment of principal of or premium, if any, or interest on the Note and such default shall continue beyond the expiration of the applicable period of grace, if any; or
- (ii) Default in payment or performance under any of the obligations under the Loan Documents, and such default shall continue beyond the expiration of the applicable period of grace, if any; or
- (iii) Default in the due performance or observance of any covenant or provision of this Mortgage and such default shall continue beyond the expiration of the applicable period of grace, if any.

(b) Upon the occurrence of an Event of Default which has not been cured within any applicable remedy period or demand under any demand instrument, and at the option of the Mortgagee, (i) the Mortgagee may declare the obligations of the Mortgagor to the Mortgagee to be immediately due and payable, (ii) the Mortgagee may immediately take possession of the Premises by forcible entry if necessary without being guilty of trespass or other claim by the Mortgagor or other party in possession, and (iii) the Mortgagee may forthwith exercise all other rights and remedies provided herein, or in any of the other Loan Documents, or which may be available to the Mortgagee by law, including without limitation, the STATUTORY POWER OF SALE;

(c) Notwithstanding any other provision set forth herein and not in limitation thereof, this Mortgage is upon the STATUTORY CONDITIONS as well as the other terms and conditions hereof, for any breach of which the Mortgagee shall have the STATUTORY POWER OF SALE;

(d) All rights and remedies set forth herein shall be cumulative and concurrent, and may be pursued singly, successively, or together, at the Mortgagee's sole discretion, and may be exercised as often as occasion thereof shall occur; and

(e) If the Mortgagor, its successors or assigns, pays the Mortgagee, all amounts under the Loan Documents, complies with and performs all terms and obligations as set forth in the Note and the Loan Documents, pays all taxes, insurance premiums, escrow deposits and assessments on the Premises, to whomsoever laid or assessed, and shall not commit nor suffer any strip or waste of the Premises, nor default in any of the Mortgagor's covenants or obligations, nor commit any breach of any covenant herein contained, then the Mortgage shall be void; otherwise it shall remain in full force and effect.

17. Possession by Mortgagee.

(a) If the Mortgagee shall take possession of the Premises as permitted hereby, then in addition to, and not in limitation of, the Mortgagee's STATUTORY POWER OF SALE, Mortgagee may:

- (i) hold, manage, operate, and lease the Premises to the Mortgagor or to any other entity on such terms and for such period(s) of time as the Mortgagee may deem proper, and the provisions of any lease made by the Mortgagee pursuant hereto shall be valid and binding upon Mortgagor notwithstanding the fact that the Mortgagee's right of possession may terminate or this Mortgage may be satisfied of record prior to the expiration of the term of such lease;
- (ii) make such alterations, additions, improvements, renovations, repairs, and replacements to the Premises as the Mortgagee may deem proper;
- (iii) remodel such improvements so as to make the same available in whole or in part for business purposes;
- (iv) collect the rents, issues, and profits arising from the Premises, past due and thereafter becoming due, and apply the same, in such order of priority as the Mortgagee may determine, to the payment of all charges and commissions incidental to the collection of rents, the management of the Premises, and the obligations and all sums or charges required to be paid by the Mortgagor hereunder;

- (v) take any other action the Mortgagee deems necessary or appropriate in its sole discretion to preserve, protect, or improve the Premises;

(b) All monies advanced by the Mortgagee for the above purposes and not repaid out of the rents collected shall immediately and without demand be repaid by the Mortgagor to the Mortgagee, together with interest thereon at the same rate as provided in the Note, and shall be added to the principal indebtedness secured hereby; and

(c) The taking of possession and the collection of rents by the Mortgagee as described above shall not be construed to be an affirmation of any lease of the Premises or any part thereof, and the Mortgagee, or any purchaser at any foreclosure sale, may terminate any such lease at any time, whether or not such taking of possession and collection of rents has occurred.

18. Foreclosure Pursuant to Power of Sale.

(a) Upon default, the Mortgagee or its legal representatives or assigns may on such terms and conditions as the Mortgagee deems appropriate in its sole discretion and pursuant to the POWER OF SALE, sell the Premises by public sale to the highest bidder as provided herein and in N.H. RSA 479:25-27a, as such statutes may be amended from time to time;

(b) If the Mortgagee invokes the POWER OF SALE, the Mortgagee may, without further demand upon the Mortgagor, sell the Premises or any estate therein, in one or more parcels, to the highest bidder for cash or other consideration acceptable to the Mortgagee at public sale to be held upon the Premises;

(c) If the Mortgagee seeks to enforce its rights and remedies hereunder, Mortgagor shall fully cooperate with Mortgagee in any foreclosure of the Premises scheduled by Mortgagee, including without limitation; (i) providing Mortgagee with any information concerning the Premises reasonably requested by Mortgagee, such as rental income information, taxes, water assessment charges and any maintenance costs associated with the Premises; (ii) arranging with the Mortgagee two (2) preview dates, each three hours in length, prior to the dates of any foreclosure sale; and (iii) granting the Mortgagee unlimited access to the Premises on the date of the foreclosure sale for one hour before and one hour after the foreclosure sale. In addition, the Mortgagor shall, without waiving its right to enjoin a foreclosure under RSA Chapter 479 or under the federal bankruptcy code, 11 U.S.C., Section 101, et seq, under no circumstances and in event in any way interfere with, any foreclosure sale of the Premises scheduled by the Mortgagee.

(d) The deed given by reason of such sale shall convey to the purchaser an indefeasible title to the Premises, discharged of all rights of redemption with respect to this mortgage by the Mortgagor and its successors or assigns, or any person claiming from or under it or them. The Mortgagee shall apply the proceeds of such sale first to all costs of notice and sale of the Premises including reasonable attorneys', accountants' and appraisers' fees, then to any and all accrued but unpaid interest due to the Mortgagee, and thereafter to the principal indebtedness evidenced by the Note and secured hereby, and to the other indebtedness secured

hereby. Any excess may be paid to others having a lien on the Premises not having priority over this Mortgage and if none, then to the Mortgagor. Mortgagor shall be liable for any deficiency;

(e) In the event of foreclosure, at the option of the Mortgagee, the interest of each of the Mortgagor and the Mortgagee herein may be sold as a single unit together with the collateral as may secure the Note or be secured by the Loan Documents; and

(f) If the provisions of the Uniform Commercial Code apply, any property or security given to secure the indebtedness secured hereby may be sold with or as a part of the Premises, or any part thereof, at one or more foreclosure sales, and any notice required under such provisions shall be fully satisfied by the notice provided to be given hereby in execution of the POWER OF SALE.

19. Appointment of Receiver. The Mortgagee may, at any time following an Event of Default hereunder which has not been cured within any applicable remedy period or demand under any demand instrument (subject to any limitations in the Loan Documents), apply to any court having jurisdiction for appointment of a receiver. That court shall promptly appoint a receiver of the Premises, who shall be authorized to receive and apply the income, profits, issues, rents and revenues from whatever source derived. The rents, profits, income, issues, and residues shall be applied by the receiver according to the lien of this Mortgage and the practice of the court. The appointment of the receiver shall be made by such court as an admitted equity in a matter of absolute right to the Mortgagee, and without references to the adequacy or inadequacy of the value of the Premises or to the solvency or insolvency of the Mortgagor or any co-borrower or guarantor of the obligations secured hereby.

20. 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.

21. 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 Mortgagor and Mortgagee.

22. Conflicting Provisions; References. In the event of any conflict between the terms, covenants, conditions and restrictions contained in this Mortgage, 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 Mortgagor 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 Mortgagee 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.

23. Invalidity. In any case where any one or more of the provisions of this Mortgage are held to be invalid, illegal or enforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof.

24. Homestead; Exemptions. This is not homestead property. Mortgagor, for the consideration aforesaid, hereby waives all rights of exemption in the Premises as the same are now or hereafter provided by virtue of the Bankruptcy provisions of the United States Code, including, without limitation, 11 U.S.C. §522.

*(Signature page follows)*

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

**RAILROAD LAND DEVELOPMENT, LLC**

By: MONADNOCK ECONOMIC DEVELOPMENT  
CORPORATION, Its Sole Member

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President

STATE OF NEW HAMPSHIRE  
COUNTY OF CHESHIRE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by John G. Dugan, President of Monadnock Economic Development Corporation, a New Hampshire corporation and sole member of Railroad Land Development, LLC, a limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

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

FOR VALUE RECEIVED, Railroad Land Development, LLC, a limited liability company duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 51 Railroad Street, Suite 101, Keene, New Hampshire 03431, (“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 implementation of environmental remediation on property of Assignor located in Keene, 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 original principal amount of \$480,000 (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 free and clear of any liens, security interests or encumbrances except \_\_\_\_\_; 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.

3. Default. Unless Assignor shall be in default under the Note or the Loan Agreement or a Security Instrument (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 statement 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 heirs, executors, administrators, 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, 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 \_\_\_\_\_, 2013.

In the presence of:

**THE STATE OF NEW HAMPSHIRE**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: Thomas S. Burack  
Title: Commissioner

**RAILROAD LAND DEVELOPMENT, LLC**

By: MONADNOCK ECONOMIC DEVELOPMENT  
CORPORATION, Its Sole Member

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President  
Duly Authorized



## COLLATERAL ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS made as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by Railroad Land Development, LLC, a New Hampshire limited liability company (the "Assignor"), having a place of business at 51 Railroad Street, Suite 101, Keene, New Hampshire, 03431, to 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 "Assignee");

### RECITALS

A. Concurrently herewith, the Assignor has executed and delivered to the Assignee a certain Promissory Note in the principal amount of \$480,000 (the "Note"), secured by a Mortgage and Security Agreement (the "Mortgage") with respect to the real property and improvements of the Assignor located in Keene, Cheshire County, New Hampshire, more particularly described in Exhibit A annexed hereto (the "Mortgaged Premises").

B. As additional security for the Note and the obligations of the Assignor thereunder and related documents, the Assignor has executed and delivered to the Assignee this Collateral Assignment of Leases and Rents.

NOW, THEREFORE, in consideration of Assignee making the loan evidenced by the Note, the Assignor, does hereby transfer, assign, deliver and grant a security interest to the Assignee in all of the right, title and interest of the Assignor in and to (1) all leases, subleases, tenancies and any other agreements, whether written or oral, now or hereafter existing with respect to any portion or portions of the Mortgaged Premises, (2) all rents and other payments of every kind due or payable and to become due or payable to the Assignor by virtue of the Assigned Leases, or otherwise due or payable and to become due or payable to the Assignor as the result of any use, possession or occupancy of any portion or portions of the Mortgaged Premises, and (3) all rights, title and interest of the Assignor in and to any and all guaranties of the Assigned Leases.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, for the purpose of securing (1) payment of the Note together with the interest thereon; (2) payment of all other sums, with interest thereon, to become due and payable to the Assignee hereunder, under the Mortgage or under any other instrument securing the Note; (3) performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein, or in the Note, the Loan Agreement of near or even date between the Assignor and the Assignee (the "Loan Agreement"), the Mortgage or any other Security Instrument (as defined in the Loan Agreement); and (4) payment of any other obligation of the Assignor to the Assignee now or hereafter existing, (said obligations are hereinafter collectively referred to as the "Obligations").

This instrument of assignment is delivered and accepted upon the following terms and conditions:

1. Assignor's License to Operate if no Default. So long as no Event of Default (as defined under the Obligations) or other default in the performance of the Obligations shall exist (hereinafter referred to as an "Event of Default"), the Assignor shall have a license to manage and operate the Mortgaged Premises and to collect, receive and apply for its own account all rents, issues and profits accruing by virtue of the Assigned Leases, and to execute and deliver proper receipts and acquittances therefor, provided, however, that without the written consent of the Assignee the Assignor shall not collect any installment of rent in advance of the respective dates prescribed in the Assigned Leases for the payment thereof other than two (2) months' advance rental in the form of a security deposit or a payment for the last two (2) months of any lease term (hereinafter referred to as "Permitted Advance Rental Payments").

2. Assignee's Rights in Event of Default.

2.1 Immediately upon the occurrence of any Event of Default, the license mentioned in the foregoing Section 1 hereof shall cease and terminate, and in such event in addition to any other remedies of the Assignee, upon notice from Assignee to each lessee of an Assigned Lease, all rentals thereafter payable to Assignor shall be paid to Assignee.

2.2 The Assignor does hereby constitute and appoint the Assignee, irrevocably, with full power of substitution and revocation, its true and lawful attorney, for it and in its name, place and stead, to do and perform any or all of the actions that Assignor is entitled to perform in connection with the Assigned Leases, as fully, to all intents and purposes, as it could do if personally present, hereby ratifying and confirming all that its said attorney or its substitute shall lawfully do or cause to be done by virtue hereof. Any action, or failure or refusal to act, by the Assignee under this Section 2.2 shall be at its election and without any liability on its part.

2.3 The Assignee shall apply the net amount of rents, issues and profits received by it from the Mortgaged premises, in the following order of priority: (i) to payment of all proper costs and charges (including any liability, loss, expense or damage hereinafter referred to in Section 4.1 hereof), (ii) to the payment of all accrued but unpaid interest due under the Note, (iii) to the payment of principal under the Note to be applied to principal installments in the inverse order of maturity, (iv) to the payment of any other amounts owed to Assignee and secured by the Mortgage, and (v) to the Assignor or such persons legally entitled thereto.

2.4 The Assignee shall be accountable to the Assignor only for monies actually received by the Assignee and the acceptance of this assignment shall not constitute a satisfaction of any of the Obligations, except to the extent of amounts actually received and applied by the Assignee on account of the same.

2.5 The rights and powers of the Assignee hereunder shall continue and remain in full force and effect until all amounts secured hereby are paid in full.

3. Covenants of Assignor. The Assignor, for itself and for its successors and assigns, agrees and warrants as follows:

(a) that each of the Assigned leases now or hereafter in effect is and shall be a valid and subsisting lease and that there are no defaults on the part of any of the parties thereto;

(b) that the Assignor has not sold, assigned, transferred, mortgaged or pledged any of the rents, issues or profits from the Mortgaged Premises or any part thereof, whether now or hereafter to become due, to any person, firm or corporation other than the Assignee and \_\_\_\_\_;

(c) that no rents, issues or profits of the Mortgaged Premises, or any part thereof, becoming due subsequent to the date hereof have been collected (other than permitted Advance Rental Payments) nor has payment of any of the same been anticipated, waived, released, discounted or otherwise discharged or compromised;

(d) that it will not assign, pledge or otherwise encumber the Assigned Leases or any of the rents thereunder unless the prior written consent of the Assignee shall have been obtained thereto;

(e) that it will not, without in each case having obtained the prior written consent of the Assignee, amend or modify, directly or indirectly in any respect whatsoever, cancel, terminate, or accept any surrender of any Assigned Lease;

(f) that it will not waive or give any consent with respect to any default or variation in the performance of any material term, covenant or condition on the part of the lessee, sublessee, tenant or their occupant to be performed under the Assigned Leases, but will at all times take proper steps to enforce all of the provisions and conditions thereof;

(g) that it will perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions on its part to be performed and observed with respect to each of the Assigned Leases;

(h) that it will, upon written request by the Assignee, serve such written notices upon any lessee under any Assigned Lease or any other occupant of any portion of the Mortgaged Premises concerning this assignment, or include among the written provisions of any instrument hereafter creating any such lease, sublease, tenancy or right of occupancy specific reference to this assignment, and make, execute and deliver all such powers of attorney, instruments of pledge or assignment, and such other instruments or documents as the Assignee may reasonably request at any time for the purpose of securing its rights hereunder; and

(i) that it will furnish to the Assignee, on demand, true copies of all Assigned Leases hereafter executed and true copies of each document effecting the renewal, amendment or modification of any Assigned Lease;

(j) that it will not enter into any lease with respect to the Mortgaged Premises without first obtaining Assignee's written approval of the terms and conditions thereof and of the prospective lessee thereunder;

(k) that it will promptly notify Assignee of any extension or renewal of any Assigned Lease;

(l) that, upon Assignee's request, from time to time, it will provide Assignee with a rent roll, dated as of the end of such fiscal quarter and certified as correct by the chief financial officer of Assignor, stating with respect to each unit in the Mortgaged Premises the name of the tenant thereof, the rent paid by such tenant, the date to which such rent is paid, the date on which the tenant's leasehold interest terminates and the amount held by Assignor by way of security deposit from each such tenant;

(m) that it will not enter into any agreement with any management agent or firm with respect to the Mortgaged Premises unless such agent or firm first agrees with Assignee to recognize Assignee's rights under this Collateral Assignment of Leases and Rents and further agrees to transfer all rents received by such agent or firm directly to Assignee upon Assignee's demand therefor.

#### 4. Indemnification.

4.1 The Assignor hereby agrees to indemnify and hold the Assignee harmless against and from (a) 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 Assigned Leases, or by reason of any of the Obligations, or by reason of any action taken or expenses incurred or paid by the Assignee under this Collateral Assignment of Leases and Rents or under any of the Obligations (including without limitation any action which the Assignee in its discretion may take to protect its interest in the Mortgaged Premises), and (b) any and all claims and demands whatsoever which may be incurred by or asserted against the Assignor by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants and conditions contained in any of the Assigned Leases.

4.2 Should the Assignee incur any such liability as described in Section 4.1, the amount thereof, together with interest thereon at the rate as set forth in the Note shall be payable by the Assignor to the Assignee immediately upon demand, or at the option of the Assignee, the Assignee may reimburse itself therefor out of any rents, issues or profits of the Mortgaged Premises collected by the Assignee.

4.3 Nothing contained herein shall operate or be construed to obligate the Assignee to perform any of the terms covenants or conditions contained in any Assigned Lease, or to take any measures, legal or otherwise, to enforce collection of any of said rents or other payments, or otherwise to impose any obligation upon the Assignee with respect to any of said leases, including but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained, in the event that any lessee shall have been joined as a party defendant in any action to foreclose the Mortgage and the estate of such lessee shall have been thereby terminated.

4.4 Prior to actual entry into and taking possession of the Mortgaged Premises by the Assignee, this assignment shall not operate to place upon the Assignee any responsibility for the operation, control, care, management or repair of the Mortgaged Premises, and the execution of this assignment by the Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Premises is and shall be that of the Assignor prior to such actual entry and taking of possession.

5. Exercise of Remedies. Failure of the Assignee to avail itself of any of the terms, covenants and conditions of this assignment for any period of time, or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Assignee under this assignment are cumulative and are not in lieu of but are in addition to any other rights and remedies which the Assignee shall have under or by virtue of any other of the Obligations. The rights and remedies of the Assignee hereunder may be exercised from time to time and as often as such exercise is deemed expedient.

6. Termination of this Agreement. Upon payment in full of all the indebtedness secured by the Mortgage, as well as any sums which may be payable hereunder, as evidenced by a recorded satisfaction or release of the Mortgage, this assignment shall become and be void and of no effect without the recording of any further termination, discharge or reassignment of this Assignment.

7. Notice. 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 set forth above or at such other address as such party may hereafter designate by Notice given in like fashion. Notices shall be deemed given when mailed. Notwithstanding the foregoing, routine communications such as ordinary distribution checks, copies of documents, etc. may be sent by ordinary first class mail.

8. Miscellaneous Provisions.

8.1 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. References herein to the Note, the Loan Agreement, the Mortgage and the Security Instruments shall be construed to include such instruments as they may be amended from time to time.

8.2 This assignment shall be construed and enforced in accordance with and governed by the laws of the State of New Hampshire.

8.3 No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless the Assignee shall have consented thereto in writing.

8.4 If there is any conflict between the terms and provisions of the Mortgage and the terms and provisions of this assignment, the terms and provisions of this assignment shall prevail.

8.5 The terms, covenants, and conditions contained herein shall inure to the benefit of, and bind the Assignee and the Assignor and their respective successors and assigns.

8.6 The captions of this assignment are for convenience and reference only and neither in any way define, limit, or describe the scope or interest of this assignment nor in any way affect this assignment.

*(Signature page follows)*

IN WITNESS WHEREOF, the Assignor has caused these presents to be executed by its duly authorized officer on the day and year first above written.

**RAILROAD LAND DEVELOPMENT, LLC**

By: MONADNOCK ECONOMIC DEVELOPMENT  
CORPORATION, Its Sole member

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

Name: John G. Dugan

Title: President

STATE OF NEW HAMPSHIRE  
COUNTY OF CHESHIRE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by John G. Dugan, President of Monadnock Economic Development Corporation, a New Hampshire corporation and sole member of Railroad Land Development, LLC, a New Hampshire limited liability company, on behalf of such limited liability company.

\_\_\_\_\_  
Justice of the Peace/Notary Public

My Commission expires:



## GUARANTY

THIS GUARANTY is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by Cypress St. Development, LLC, a New Hampshire limited liability company with a principal place of business at 51 Railroad Street, Suite 101, Keene, New Hampshire 03431 ("Guarantor"), to and with the State of New Hampshire with an address of c/o the Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 ("State").

WHEREAS, contemporaneously herewith, pursuant to a Loan Agreement of near or even date between the State and Railroad Land Development, LLC ("Borrower"), subject to certain terms and conditions, State has agreed to loan to Borrower up to the principal sum of Four Hundred Eighty Thousand Dollars (\$480,000), which is to be repaid with interest in accordance with the terms of a certain promissory note of even date issued by Borrower to State (the "Note") in said principal amount;

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

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

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; (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, certain security instruments, if any, described in the Loan Agreement (the "Security Instruments") 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 and the Security Instruments (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 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.

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 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.

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 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.

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 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.

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. If requested by the State, Guarantor hereby covenants and agrees that Guarantor will, at Guarantor's expense, annually deliver to State on or before April 15<sup>th</sup> of each year financial statements in form and content satisfactory to State accurately reflecting all changes in net worth for the preceding year and, as soon as practicable after filing with the Internal Revenue Service, each year, Guarantor's complete federal income tax return with the schedules thereto.

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

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

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 Lender under this Guaranty.

17. All references herein to the Loan Agreement, the Note and the Security Instruments 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, 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.

*(Signature page follows)*

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

**CYPRESS ST. DEVELOPMENT, LLC**

By: MONADNOCK ECONOMIC DEVELOPMENT  
CORPORATION, Its Sole Member

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President



Return to:

## MORTGAGE DEED

Cypress St. Development, LLC, a New Hampshire limited liability company with a principal office at 51 Railroad Street, Suite 101, Keene, New Hampshire 03431 (the "Mortgagor"), for consideration paid, grants to 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 "Mortgagee"), with MORTGAGE COVENANTS, to secure the payment of Four Hundred Eighty Thousand Dollars (\$480,000) with interest, payable in accordance with Guaranty of even date of the Mortgagor guarantying obligations of Railroad Land Development, LLC (the "Borrower") to the Mortgagee pursuant to the Promissory Note of the Borrower of near or even date herewith (the "Note") and the performance of all agreements and conditions as provided in (a) this mortgage, (b) the Guaranty, (c) the Note, (d) a Loan Agreement of near or even date between the Mortgagor and the Mortgagee (the "Loan Agreement"), (e) certain Security Instruments, as defined in the Loan Agreement, (f) any subsequent advances under the Note, and (g) any and all renewals, extensions and amendments of the Note or other obligations of the Mortgagor to the Mortgagee, the premises described in Schedule A attached hereto and incorporated herein by reference (the "Premises").

The transfer of title to the Premises without the written consent of the Mortgagee shall, at the option of the Mortgagee make the entire balance of sums due to the Mortgagee secured hereby at once due and payable. It is understood that entering into a contract for a deed, a lease for a period in excess of three years, a lease with options to buy, or like instrument, shall be construed as a transfer of title to the Premises for the purposes of this paragraph.

This mortgage is upon the statutory conditions and the additional conditions that the Mortgagor shall keep the Premises, including all improvements now existing or hereafter erected thereon, insured against loss by fire, hazards included within the term "extended coverage" and such other hazards as the Mortgagee may require, in such amounts and with such companies, as the Mortgagee may require and that such insurance policies and renewals thereof shall include a standard mortgage clause in favor of the Mortgagee. The Mortgagor shall promptly furnish to the Mortgagee all renewal notices and all receipts of said premiums. In the event of loss, Mortgagor shall give prompt notice to the Mortgagee and the insurance carrier, and failing this the Mortgagee is authorized to file such proof of loss on behalf of the Mortgagee. The Mortgagor shall reimburse the Mortgagee for, and there shall be secured by this mortgage, all sums which the Mortgagee shall advance for insurance, taxes, liens, assessments, legal fees, or other expenses which the Mortgagee shall deem necessary for the protection or preservation of

the Premises and the Mortgagee's interest therein, together with interest on such sums at the same rate as provided in the Note.

Upon any breach of the foregoing conditions or upon default and expiration of any applicable grace periods under the terms of the Note, or upon breach of or default or event of default under any current or subsequent obligations of the Mortgagor to the Mortgagee, including without limitation, the Loan Agreement and the Security Instruments, or to any other approved mortgagee of record, if any, the Mortgagee is authorized, without waiving its other rights as Mortgagee, to take possession of and/or rent the Premises for the account of the Mortgagor, and the Mortgagee shall further have the statutory power of sale to sell the Premises at some place in the town in which any portion of the land is situated, in one or more lots, at one or several sales, and the Mortgagor hereby appoints any officer of the Mortgagee the Mortgagor's agent and attorney in fact to convey the Premises so sold to the purchaser by indefeasible title, discharged of all rights of redemption by the Mortgagor or any person claiming under it.

Notice of any foreclosure sale shall be published in a newspaper of general circulation as required by law. The proceeds of any such sale shall be charged with all expenses thereof, including attorney fees. If the Mortgagee acquires the Premises, all right, title and interest of the Mortgagor in and to any insurance policies and in and to the proceeds thereof, resulting from damage to the Premises prior to the foreclosure, shall pass to the Mortgagee, as the case may be, to the extent of sums secured by this Mortgage.

NOTICE IS HEREBY GIVEN that for purposes of RSA 479:3 this mortgage secures a maximum amount equal to the sums due under the Note, plus accrued interest thereon, plus advances, if any, to protect the security of this mortgage, plus foreclosure costs and expenses, including attorneys' fees, if any, plus any other costs and expenses authorized by this mortgage, or the Loan Agreement.

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.

The Premises are not homestead property.

Nothing herein contained or contained in the Loan Agreement, the Note, any guaranty guarantying the Note, any security instrument securing such guaranty or any other Security Instrument shall be deemed to constitute a waiver of the sovereign immunity of the Mortgagee, which immunity is hereby reserved to the Mortgagee.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**CYPRESS ST. DEVELOPMENT, LLC**

By: MONADNOCK ECONOMIC DEVELOPMENT  
CORPORATION, Its Sole Member

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President

STATE OF NEW HAMPSHIRE  
COUNTY OF CHESHIRE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by John G. Dugan, the President of Monadnock Economic Development Corporation, a New Hampshire corporation and sole member of Cypress St. Development, LLC, a New Hampshire limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My Commission expires: \_\_\_\_\_



Return to:

### **COLLATERAL ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Cypress St. Development, LLC, a New Hampshire limited liability company (the "Assignor"), having a place of business at 51 Railroad Street, Suite 101, Keene, New Hampshire, 03431, to the State of New Hampshire, with an address of 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (the "Assignee");

#### **RECITALS**

A. Concurrently herewith, the Assignor has executed and delivered to the Assignee a certain Guarantee (the "Guarantee") guarantying obligations of Railroad Land Development, LLC (the "Borrower") under a loan Agreement of near or even date between the Borrower and the Assignee (the "Loan Agreement") and a Promissory Note of the Borrower in the principal amount of \$480,000 (the "Note"). The Guarantee is secured by a Mortgage Deed of the Assignor to the Assignee (the "Mortgage") with respect to the real property and improvements of the Assignor located in Keene, Cheshire County, New Hampshire, more particularly described in Schedule A annexed hereto (the "Mortgaged Premises").

B. As additional security for the Note and the obligations of the Assignor thereunder and related documents, the Assignor has executed and delivered to the Assignee this Collateral Assignment of Leases and Rents.

NOW, THEREFORE, in consideration of Assignee making the loan evidenced by the Note, the Assignor, does hereby transfer, assign, deliver and grant a security interest to the Assignee in all of the right, title and interest of the Assignor in and to (1) all leases, subleases, tenancies and any other agreements, whether written or oral, now or hereafter existing with respect to any portion or portions of the Mortgaged Premises, (2) all rents and other payments of every kind due or payable and to become due or payable to the Assignor by virtue of the Assigned Leases, or otherwise due or payable and to become due or payable to the Assignor as the result of any use, possession or occupancy of any portion or portions of the Mortgaged Premises, and (3) all rights, title and interest of the Assignor in and to any and all guaranties of the Assigned Leases.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, for the purpose of securing (1) payment of the Guaranty and the Note together with the interest thereon; (2) payment of all other sums, with interest thereon, to become due and payable to the Assignee hereunder, under the Mortgage or under any other instrument securing the Note; (3) performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein, or in the Note, the Loan Agreement, the Mortgage or any other Security Instrument (as defined in the Loan Agreement); and (4) payment of any other obligation of the Assignor to the Assignee now or hereafter existing, (said obligations are hereinafter collectively referred to as the "Obligations").

This instrument of assignment is delivered and accepted upon the following terms and conditions:

1. Assignor's License to Operate if no Default. So long as no Event of Default (as defined under the Obligations) or other default in the performance of the Obligations shall exist (hereinafter referred to as an "Event of Default"), the Assignor shall have a license to manage and operate the Mortgaged Premises and to collect, receive and apply for its own account all rents, issues and profits accruing by virtue of the Assigned Leases, and to execute and deliver proper receipts and acquittances therefor, provided, however, that without the written consent of the Assignee the Assignor shall not collect any installment of rent in advance of the respective dates prescribed in the Assigned Leases for the payment thereof other than two (2) months' advance rental in the form of a security deposit or a payment for the last two (2) months of any lease term (hereinafter referred to as "Permitted Advance Rental Payments").

2. Assignee's Rights in Event of Default.

2.1 Immediately upon the occurrence of any Event of Default, the license mentioned in the foregoing Section 1 hereof shall cease and terminate, and in such event in addition to any other remedies of the Assignee, upon notice from Assignee to each lessee of an Assigned Lease, all rentals thereafter payable to Assignor shall be paid to Assignee.

2.2 The Assignor does hereby constitute and appoint the Assignee, irrevocably, with full power of substitution and revocation, its true and lawful attorney, for it and in its name, place and stead, to do and perform any or all of the actions that Assignor is entitled to perform in connection with the Assigned Leases, as fully, to all intents and purposes, as it could do if personally present, hereby ratifying and confirming all that its said attorney or its substitute shall lawfully do or cause to be done by virtue hereof. Any action, or failure or refusal to act, by the Assignee under this Section 2.2 shall be at its election and without any liability on its part.

2.3 The Assignee shall apply the net amount of rents, issues and profits received by it from the Mortgaged premises, in the following order of priority: (i) to payment of all proper costs and charges (including any liability, loss, expense or damage hereinafter referred to in Section 4.1 hereof), (ii) to the payment of all accrued but unpaid interest due under the Note, (iii) to the payment of principal under the Note to be applied to principal installments in the inverse

order of maturity, (iv) to the payment of any other amounts owed to Assignee and secured by the Mortgage, and (v) to the Assignor or such persons legally entitled thereto.

2.4 The Assignee shall be accountable to the Assignor only for monies actually received by the Assignee and the acceptance of this assignment shall not constitute a satisfaction of any of the Obligations, except to the extent of amounts actually received and applied by the Assignee on account of the same.

2.5 The rights and powers of the Assignee hereunder shall continue and remain in full force and effect until all amounts secured hereby are paid in full.

3. Covenants of Assignor. The Assignor, for itself and for its successors and assigns, agrees and warrants as follows:

(a) that each of the Assigned leases now or hereafter in effect is and shall be a valid and subsisting lease and that there are no defaults on the part of any of the parties thereto;

(b) that the Assignor has not sold, assigned, transferred, mortgaged or pledged any of the rents, issues or profits from the Mortgaged Premises or any part thereof, whether now or hereafter to become due, to any person, firm or corporation other than the Assignee and \_\_\_\_\_;

(c) that no rents, issues or profits of the Mortgaged Premises, or any part thereof, becoming due subsequent to the date hereof have been collected (other than permitted Advance Rental Payments) nor has payment of any of the same been anticipated, waived, released, discounted or otherwise discharged or compromised;

(d) that it will not assign, pledge or otherwise encumber the Assigned Leases or any of the rents thereunder unless the prior written consent of the Assignee shall have been obtained thereto;

(e) that it will not, without in each case having obtained the prior written consent of the Assignee, amend or modify, directly or indirectly in any respect whatsoever, cancel, terminate, or accept any surrender of any Assigned Lease;

(f) that it will not waive or give any consent with respect to any default or variation in the performance of any material term, covenant or condition on the part of the lessee, sublessee, tenant or their occupant to be performed under the Assigned Leases, but will at all times take proper steps to enforce all of the provisions and conditions thereof;

(g) that it will perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions on its part to be performed and observed with respect to each of the Assigned Leases;

(h) that it will, upon written request by the Assignee, serve such written notices upon any lessee under any Assigned Lease or any other occupant of any portion of the Mortgaged Premises concerning this assignment, or include among the written provisions of any instrument hereafter creating any such lease, sublease, tenancy or right of occupancy specific reference to this assignment, and make, execute and deliver all such powers of attorney, instruments of pledge or assignment, and such other instruments or documents as the Assignee may reasonably request at any time for the purpose of securing its rights hereunder; and

(i) that it will furnish to the Assignee, on demand, true copies of all Assigned Leases hereafter executed and true copies of each document effecting the renewal, amendment or modification of any Assigned Lease;

(j) that it will not enter into any lease with respect to the Mortgaged Premises without first obtaining Assignee's written approval of the terms and conditions thereof and of the prospective lessee thereunder;

(k) that it will promptly notify Assignee of any extension or renewal of any Assigned Lease;

(l) that, upon Assignee's request, from time to time, it will provide Assignee with a rent roll, dated as of the end of such fiscal quarter and certified as correct by the chief financial officer of Assignor, stating with respect to each unit in the Mortgaged Premises the name of the tenant thereof, the rent paid by such tenant, the date to which such rent is paid, the date on which the tenant's leasehold interest terminates and the amount held by Assignor by way of security deposit from each such tenant;

(m) that it will not enter into any agreement with any management agent or firm with respect to the Mortgaged Premises unless such agent or firm first agrees with Assignee to recognize Assignee's rights under this Collateral Assignment of Leases and Rents and further agrees to transfer all rents received by such agent or firm directly to Assignee upon Assignee's demand therefor.

#### 4. Indemnification.

4.1 The Assignor hereby agrees to indemnify and hold the Assignee harmless against and from (a) 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 Assigned Leases, or by reason of any of the Obligations, or by reason of any action taken or expenses incurred or paid by the Assignee under this Collateral Assignment of Leases and Rents or under any of the Obligations (including without limitation any action which the Assignee in its discretion may take to protect its interest in the Mortgaged Premises), and (b) any and all claims and demands whatsoever which may be incurred by or asserted against the Assignor by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants and conditions contained in any of the Assigned Leases.

4.2 Should the Assignee incur any such liability as described in Section 4.1, the amount thereof, together with interest thereon at the rate as set forth in the Note shall be payable by the Assignor to the Assignee immediately upon demand, or at the option of the Assignee, the Assignee may reimburse itself therefor out of any rents, issues or profits of the Mortgaged Premises collected by the Assignee.

4.3 Nothing contained herein shall operate or be construed to obligate the Assignee to perform any of the terms covenants or conditions contained in any Assigned Lease, or to take any measures, legal or otherwise, to enforce collection of any of said rents or other payments, or otherwise to impose any obligation upon the Assignee with respect to any of said leases, including but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained, in the event that any lessee shall have been joined as a party defendant in any action to foreclose the Mortgage and the estate of such lessee shall have been thereby terminated.

4.4 Prior to actual entry into and taking possession of the Mortgaged Premises by the Assignee, this assignment shall not operate to place upon the Assignee any responsibility for the operation, control, care, management or repair of the Mortgaged Premises, and the execution of this assignment by the Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Premises is and shall be that of the Assignor prior to such actual entry and taking of possession.

5. Exercise of Remedies. Failure of the Assignee to avail itself of any of the terms, covenants and conditions of this assignment for any period of time, or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Assignee under this assignment are cumulative and are not in lieu of but are in addition to any other rights and remedies which the Assignee shall have under or by virtue of any other of the Obligations. The rights and remedies of the Assignee hereunder may be exercised from time to time and as often as such exercise is deemed expedient.

6. Termination of this Agreement. Upon payment in full of all the indebtedness secured by the Mortgage, as well as any sums which may be payable hereunder, as evidenced by a recorded satisfaction or release of the Mortgage, this assignment shall become and be void and of no effect without the recording of any further termination, discharge or reassignment of this Assignment.

7. Notice. 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 set forth above or at such other address as such party may hereafter designate by Notice given in like fashion. Notices shall be deemed given when mailed. Notwithstanding the foregoing, routine communications such as ordinary distribution checks, copies of documents, etc. may be sent by ordinary first class mail.

8. Miscellaneous Provisions.

8.1 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. References herein to the Note, the Loan Agreement, the Mortgage and the Security Instruments shall be construed to include such instruments as they may be amended from time to time.

8.2 This assignment shall be construed and enforced in accordance with and governed by the laws of the State of New Hampshire.

8.3 No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless the Assignee shall have consented thereto in writing.

8.4 If there is any conflict between the terms and provisions of the Mortgage and the terms and provisions of this assignment, the terms and provisions of this assignment shall prevail.

8.5 The terms, covenants, and conditions contained herein shall inure to the benefit of, and bind the Assignee and the Assignor and their respective successors and assigns.

8.6 The captions of this assignment are for convenience and reference only and neither in any way define, limit, or describe the scope or interest of this assignment nor in any way affect this assignment.

8.7 Nothing contained in this assignment, the Loan Agreement, the Note any guaranty guarantying the Note, an instrument securing such guaranty 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, the Assignor has caused these presents to be executed by its duly authorized officer on the day and year first above written.

**CYPRESS ST. DEVELOPMENT, LLC**

By: MONADNOCK ECONOMIC DEVELOPMENT  
CORPORATION, Its Sole Member

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President

STATE OF NEW HAMPSHIRE  
COUNTY OF CHESHIRE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by John G. Dugan, the President of Monadnock Economic Development Corporation, a New Hampshire corporation and the sole member of Cypress St. Development, LLC, a New Hampshire limited liability company, on behalf of such company.

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My Commission expires:



## GUARANTY

THIS GUARANTY is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by Monadnock Economic Development Corporation, a New Hampshire corporation with a principal place of business at 51 Railroad Street, Suite 101, Keene, New Hampshire 03431 ("Guarantor"), to and with the State of New Hampshire with an address of c/o the Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 ("State").

WHEREAS, contemporaneously herewith, pursuant to a Loan Agreement of near or even date between the State and Railroad Land Development, LLC ("Borrower"), subject to certain terms and conditions, State has agreed to loan to Borrower up to the principal sum of Four Hundred Eighty Thousand Dollars (\$480,000), which is to be repaid with interest in accordance with the terms of a certain promissory note of even date issued by Borrower to State (the "Note") in said principal amount;

WHEREAS, Guarantor is the sole member of Borrower;

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

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

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; (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, certain security instruments, if any, described in the Loan Agreement (the "Security Instruments") 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 and the Security Instruments (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 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.

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 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.

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 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.

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 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.

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. If requested by the State, Guarantor hereby covenants and agrees that Guarantor will, at Guarantor's expense, annually deliver to State on or before April 15<sup>th</sup> of each year financial statements in form and content satisfactory to State accurately reflecting all changes in net worth for the preceding year and, as soon as practicable after filing with the Internal Revenue Service, each year, Guarantor's complete federal income tax return with the schedules thereto.

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

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

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 Lender under this Guaranty.

17. All references herein to the Loan Agreement, the Note and the Security Instruments 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, 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.

**MONADNOCK ECONOMIC  
DEVELOPMENT CORPORATION**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President



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## **MORTGAGE DEED**

Monadnock Economic Development Corporation, a New Hampshire corporation with a principal office at 51 Railroad Street, Suite 101, Keene, New Hampshire 03431 (the "Mortgagor"), for consideration paid, grants to 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 "Mortgagee"), with MORTGAGE COVENANTS, to secure the payment of Four Hundred Eighty Thousand Dollars (\$480,000) with interest, payable in accordance with Guaranty of even date of the Mortgagor guarantying obligations of Railroad Land Development, LLC (the "Borrower") to the Mortgagee pursuant to the Promissory Note of the Borrower of near or even date herewith (the "Note") and the performance of all agreements and conditions as provided in (a) this mortgage, (b) the Guaranty, (c) the Note, (d) a Loan Agreement of near or even date between the Mortgagor and the Mortgagee (the "Loan Agreement"), (e) certain Security Instruments, as defined in the Loan Agreement, (f) any subsequent advances under the Note, and (g) any and all renewals, extensions and amendments of the Note or other obligations of the Mortgagor to the Mortgagee, the premises described in Schedule A attached hereto and incorporated herein by reference (the "Premises").

The transfer of title to the Premises without the written consent of the Mortgagee shall, at the option of the Mortgagee make the entire balance of sums due to the Mortgagee secured hereby at once due and payable. It is understood that entering into a contract for a deed, a lease for a period in excess of three years, a lease with options to buy, or like instrument, shall be construed as a transfer of title to the Premises for the purposes of this paragraph.

This mortgage is upon the statutory conditions and the additional conditions that the Mortgagor shall keep the Premises, including all improvements now existing or hereafter erected thereon, insured against loss by fire, hazards included within the term "extended coverage" and such other hazards as the Mortgagee may require, in such amounts and with such companies, as the Mortgagee may require and that such insurance policies and renewals thereof shall include a standard mortgage clause in favor of the Mortgagee. The Mortgagor shall promptly furnish to the Mortgagee all renewal notices and all receipts of said premiums. In the event of loss, Mortgagor shall give prompt notice to the Mortgagee and the insurance carrier, and failing this the Mortgagee is authorized to file such proof of loss on behalf of the Mortgagee. The Mortgagor shall reimburse the Mortgagee for, and there shall be secured by this mortgage, all sums which the Mortgagee shall advance for insurance, taxes, liens, assessments, legal fees, or other expenses which the Mortgagee shall deem necessary for the protection or preservation of

the Premises and the Mortgagee's interest therein, together with interest on such sums at the same rate as provided in the Note.

Upon any breach of the foregoing conditions or upon default and expiration of any applicable grace periods under the terms of the Note, or upon breach of or default or event of default under any current or subsequent obligations of the Mortgagor to the Mortgagee, including without limitation, the Loan Agreement and the Security Instruments, or to any other approved mortgagee of record, if any, the Mortgagee is authorized, without waiving its other rights as Mortgagee, to take possession of and/or rent the Premises for the account of the Mortgagor, and the Mortgagee shall further have the statutory power of sale to sell the Premises at some place in the town in which any portion of the land is situated, in one or more lots, at one or several sales, and the Mortgagor hereby appoints any officer of the Mortgagee the Mortgagor's agent and attorney in fact to convey the Premises so sold to the purchaser by indefeasible title, discharged of all rights of redemption by the Mortgagor or any person claiming under it.

Notice of any foreclosure sale shall be published in a newspaper of general circulation as required by law. The proceeds of any such sale shall be charged with all expenses thereof, including attorney fees. If the Mortgagee acquires the Premises, all right, title and interest of the Mortgagor in and to any insurance policies and in and to the proceeds thereof, resulting from damage to the Premises prior to the foreclosure, shall pass to the Mortgagee, as the case may be, to the extent of sums secured by this Mortgage.

NOTICE IS HEREBY GIVEN that for purposes of RSA 479:3 this mortgage secures a maximum amount equal to the sums due under the Note, plus accrued interest thereon, plus advances, if any, to protect the security of this mortgage, plus foreclosure costs and expenses, including attorneys' fees, if any, plus any other costs and expenses authorized by this mortgage, or the Loan Agreement.

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.

The Premises are not homestead property.

Nothing herein contained or contained in the Loan Agreement, the Note, any guaranty guarantying the Note, any security instrument securing such guaranty or any other Security Instrument shall be deemed to constitute a waiver of the sovereign immunity of the Mortgagee, which immunity is hereby reserved to the Mortgagee.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**MONADNOCK ECONOMIC  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President

STATE OF NEW HAMPSHIRE  
COUNTY OF CHESHIRE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by John G. Dugan, the President of Monadnock Economic Development Corporation, a New Hampshire corporation, on behalf of the corporation.

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My Commission expires: \_\_\_\_\_



Return to:

### **COLLATERAL ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Monadnock Economic Development Corporation, a New Hampshire corporation (the "Assignor"), having a place of business at 51 Railroad Street, Suite 101, Keene, New Hampshire, 03431, to the State of New Hampshire, with an address of 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095 (the "Assignee");

#### **RECITALS**

A. Concurrently herewith, the Assignor has executed and delivered to the Assignee a certain Guarantee (the "Guarantee") guarantying obligations of Railroad Land Development, LLC (the "Borrower") under a loan Agreement of near or even date between the Borrower and the Assignee (the "Loan Agreement") and a Promissory Note of the Borrower in the principal amount of \$480,000 (the "Note"). The Guarantee is secured by a Mortgage Deed of the Assignor to the Assignee (the "Mortgage") with respect to the real property and improvements of the Assignor located in Keene, Cheshire County, New Hampshire, more particularly described in Schedule A annexed hereto (the "Mortgaged Premises").

B. As additional security for the Guarantee and the obligations of the Assignor thereunder and related documents, the Assignor has executed and delivered to the Assignee this Collateral Assignment of Leases and Rents.

NOW, THEREFORE, in consideration of Assignee making the loan evidenced by the Note, the Assignor, does hereby transfer, assign, deliver and grant a security interest to the Assignee in all of the right, title and interest of the Assignor in and to (1) all leases, subleases, tenancies and any other agreements, whether written or oral, now or hereafter existing with respect to any portion or portions of the Mortgaged Premises, (2) all rents and other payments of every kind due or payable and to become due or payable to the Assignor by virtue of the Assigned Leases, or otherwise due or payable and to become due or payable to the Assignor as the result of any use, possession or occupancy of any portion or portions of the Mortgaged Premises, and (3) all rights, title and interest of the Assignor in and to any and all guaranties of the Assigned Leases.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, for the purpose of securing (1) payment of the Guarantee and the Note together with the interest thereon; (2) payment of all other sums, with interest thereon, to become due and payable to the Assignee hereunder, under the Mortgage or under any other instrument securing the Note; (3) performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein, or in the Note, the Loan Agreement, the Mortgage or any other Security Instrument (as defined in the Loan Agreement); and (4) payment of any other obligation of the Assignor to the Assignee now or hereafter existing, (said obligations are hereinafter collectively referred to as the "Obligations").

This instrument of assignment is delivered and accepted upon the following terms and conditions:

1. Assignor's License to Operate if no Default. So long as no Event of Default (as defined under the Obligations) or other default in the performance of the Obligations shall exist (hereinafter referred to as an "Event of Default"), the Assignor shall have a license to manage and operate the Mortgaged Premises and to collect, receive and apply for its own account all rents, issues and profits accruing by virtue of the Assigned Leases, and to execute and deliver proper receipts and acquittances therefor, provided, however, that without the written consent of the Assignee the Assignor shall not collect any installment of rent in advance of the respective dates prescribed in the Assigned Leases for the payment thereof other than two (2) months' advance rental in the form of a security deposit or a payment for the last two (2) months of any lease term (hereinafter referred to as "Permitted Advance Rental Payments").

2. Assignee's Rights in Event of Default.

2.1 Immediately upon the occurrence of any Event of Default, the license mentioned in the foregoing Section 1 hereof shall cease and terminate, and in such event in addition to any other remedies of the Assignee, upon notice from Assignee to each lessee of an Assigned Lease, all rentals thereafter payable to Assignor shall be paid to Assignee.

2.2 The Assignor does hereby constitute and appoint the Assignee, irrevocably, with full power of substitution and revocation, its true and lawful attorney, for it and in its name, place and stead, to do and perform any or all of the actions that Assignor is entitled to perform in connection with the Assigned Leases, as fully, to all intents and purposes, as it could do if personally present, hereby ratifying and confirming all that its said attorney or its substitute shall lawfully do or cause to be done by virtue hereof. Any action, or failure or refusal to act, by the Assignee under this Section 2.2 shall be at its election and without any liability on its part.

2.3 The Assignee shall apply the net amount of rents, issues and profits received by it from the Mortgaged premises, in the following order of priority: (i) to payment of all proper costs and charges (including any liability, loss, expense or damage hereinafter referred to in Section 4.1 hereof), (ii) to the payment of all accrued but unpaid interest due under the Note, (iii) to the payment of principal under the Note to be applied to principal installments in the inverse

order of maturity, (iv) to the payment of any other amounts owed to Assignee and secured by the Mortgage, and (v) to the Assignor or such persons legally entitled thereto.

2.4 The Assignee shall be accountable to the Assignor only for monies actually received by the Assignee and the acceptance of this assignment shall not constitute a satisfaction of any of the Obligations, except to the extent of amounts actually received and applied by the Assignee on account of the same.

2.5 The rights and powers of the Assignee hereunder shall continue and remain in full force and effect until all amounts secured hereby are paid in full.

3. Covenants of Assignor. The Assignor, for itself and for its successors and assigns, agrees and warrants as follows:

(a) that each of the Assigned leases now or hereafter in effect is and shall be a valid and subsisting lease and that there are no defaults on the part of any of the parties thereto;

(b) that the Assignor has not sold, assigned, transferred, mortgaged or pledged any of the rents, issues or profits from the Mortgaged Premises or any part thereof, whether now or hereafter to become due, to any person, firm or corporation other than the Assignee and \_\_\_\_\_;

(c) that no rents, issues or profits of the Mortgaged Premises, or any part thereof, becoming due subsequent to the date hereof have been collected (other than permitted Advance Rental Payments) nor has payment of any of the same been anticipated, waived, released, discounted or otherwise discharged or compromised;

(d) that it will not assign, pledge or otherwise encumber the Assigned Leases or any of the rents thereunder unless the prior written consent of the Assignee shall have been obtained thereto;

(e) that it will not, without in each case having obtained the prior written consent of the Assignee, amend or modify, directly or indirectly in any respect whatsoever, cancel, terminate, or accept any surrender of any Assigned Lease;

(f) that it will not waive or give any consent with respect to any default or variation in the performance of any material term, covenant or condition on the part of the lessee, sublessee, tenant or their occupant to be performed under the Assigned Leases, but will at all times take proper steps to enforce all of the provisions and conditions thereof;

(g) that it will perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions on its part to be performed and observed with respect to each of the Assigned Leases;

(h) that it will, upon written request by the Assignee, serve such written notices upon any lessee under any Assigned Lease or any other occupant of any portion of the Mortgaged Premises concerning this assignment, or include among the written provisions of any instrument hereafter creating any such lease, sublease, tenancy or right of occupancy specific reference to this assignment, and make, execute and deliver all such powers of attorney, instruments of pledge or assignment, and such other instruments or documents as the Assignee may reasonably request at any time for the purpose of securing its rights hereunder; and

(i) that it will furnish to the Assignee, on demand, true copies of all Assigned Leases hereafter executed and true copies of each document effecting the renewal, amendment or modification of any Assigned Lease;

(j) that it will not enter into any lease with respect to the Mortgaged Premises without first obtaining Assignee's written approval of the terms and conditions thereof and of the prospective lessee thereunder;

(k) that it will promptly notify Assignee of any extension or renewal of any Assigned Lease;

(l) that, upon Assignee's request, from time to time, it will provide Assignee with a rent roll, dated as of the end of such fiscal quarter and certified as correct by the chief financial officer of Assignor, stating with respect to each unit in the Mortgaged Premises the name of the tenant thereof, the rent paid by such tenant, the date to which such rent is paid, the date on which the tenant's leasehold interest terminates and the amount held by Assignor by way of security deposit from each such tenant;

(m) that it will not enter into any agreement with any management agent or firm with respect to the Mortgaged Premises unless such agent or firm first agrees with Assignee to recognize Assignee's rights under this Collateral Assignment of Leases and Rents and further agrees to transfer all rents received by such agent or firm directly to Assignee upon Assignee's demand therefor.

#### 4. Indemnification.

4.1 The Assignor hereby agrees to indemnify and hold the Assignee harmless against and from (a) 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 Assigned Leases, or by reason of any of the Obligations, or by reason of any action taken or expenses incurred or paid by the Assignee under this Collateral Assignment of Leases and Rents or under any of the Obligations (including without limitation any action which the Assignee in its discretion may take to protect its interest in the Mortgaged Premises), and (b) any and all claims and demands whatsoever which may be incurred by or asserted against the Assignor by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants and conditions contained in any of the Assigned Leases.

4.2 Should the Assignee incur any such liability as described in Section 4.1, the amount thereof, together with interest thereon at the rate as set forth in the Note shall be payable by the Assignor to the Assignee immediately upon demand, or at the option of the Assignee, the Assignee may reimburse itself therefor out of any rents, issues or profits of the Mortgaged Premises collected by the Assignee.

4.3 Nothing contained herein shall operate or be construed to obligate the Assignee to perform any of the terms covenants or conditions contained in any Assigned Lease, or to take any measures, legal or otherwise, to enforce collection of any of said rents or other payments, or otherwise to impose any obligation upon the Assignee with respect to any of said leases, including but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained, in the event that any lessee shall have been joined as a party defendant in any action to foreclose the Mortgage and the estate of such lessee shall have been thereby terminated.

4.4 Prior to actual entry into and taking possession of the Mortgaged Premises by the Assignee, this assignment shall not operate to place upon the Assignee any responsibility for the operation, control, care, management or repair of the Mortgaged Premises, and the execution of this assignment by the Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Premises is and shall be that of the Assignor prior to such actual entry and taking of possession.

5. Exercise of Remedies. Failure of the Assignee to avail itself of any of the terms, covenants and conditions of this assignment for any period of time, or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Assignee under this assignment are cumulative and are not in lieu of but are in addition to any other rights and remedies which the Assignee shall have under or by virtue of any other of the Obligations. The rights and remedies of the Assignee hereunder may be exercised from time to time and as often as such exercise is deemed expedient.

6. Termination of this Agreement. Upon payment in full of all the indebtedness secured by the Mortgage, as well as any sums which may be payable hereunder, as evidenced by a recorded satisfaction or release of the Mortgage, this assignment shall become and be void and of no effect without the recording of any further termination, discharge or reassignment of this Assignment.

7. Notice. 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 set forth above or at such other address as such party may hereafter designate by Notice given in like fashion. Notices shall be deemed given when mailed. Notwithstanding the foregoing, routine communications such as ordinary distribution checks, copies of documents, etc. may be sent by ordinary first class mail.

8. Miscellaneous Provisions.

8.1 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. References herein to the Note, the Loan Agreement, the Mortgage and the Security Instruments shall be construed to include such instruments as they may be amended from time to time.

8.2 This assignment shall be construed and enforced in accordance with and governed by the laws of the State of New Hampshire.

8.3 No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless the Assignee shall have consented thereto in writing.

8.4 If there is any conflict between the terms and provisions of the Mortgage and the terms and provisions of this assignment, the terms and provisions of this assignment shall prevail.

8.5 The terms, covenants, and conditions contained herein shall inure to the benefit of, and bind the Assignee and the Assignor and their respective successors and assigns.

8.6 The captions of this assignment are for convenience and reference only and neither in any way define, limit, or describe the scope or interest of this assignment nor in any way affect this assignment.

8.7 Nothing contained in this assignment, the Loan Agreement, the Note any guaranty guarantying the Note, an instrument securing such guaranty 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, the Assignor has caused these presents to be executed by its duly authorized officer on the day and year first above written.

**MONADNOCK ECONOMIC  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: John G. Dugan  
Title: President

STATE OF NEW HAMPSHIRE  
COUNTY OF CHESHIRE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by John G. Dugan, President of Monadnock Economic Development Corporation, a New Hampshire corporation, on behalf of such corporation.

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My Commission expires:

