



New Hampshire Business Finance Authority

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June 24, 2020

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

Business Finance Authority Loan to Rochester Economic Development Commission Pursuant to RSA 162-A:7

Dear Governor and Council:

REQUESTED ACTION

Holding of a public hearing and passage of a resolution entitled: A RESOLUTION UNDER RSA 162-A:18 AWARDED AND APPROVING A LOAN UNDER RSA 162-A:7 TO ROCHESTER ECONOMIC DEVELOPMENT COMMISSION. (For the text of the requested Resolution see Exhibit Two attached to this letter of transmittal.)

The Business Finance Authority of the State of New Hampshire (the "Authority") respectfully requests that you hold a public hearing and make the statutory findings under RSA 162-A:18, with respect to the proposed loan by the Authority to Rochester Economic Development Commission (the "Borrower"), a local development organization, in the form of a term loan in the principal amount of up to Three Million Dollars (\$3,000,000). The Authority recommends your favorable action and submits in support thereof, the following materials as designated:

1. a summary of the transaction
2. a proposed resolution for adoption by the Governor and Council
3. a copy of RSA 162-A:7
4. a letter from the undersigned explaining the transaction
5. a commitment letter extended by the Authority to the Borrower
6. draft loan documents, which when executed and delivered, will evidence and govern the loan to be made by the Authority to the Borrower
7. an agreement between the Authority and the Rochester Economic Development Commission, which when executed will evidence the local development organization's recommendation of the proposed loan transaction
8. a resolution adopted by the Authority on September 16, 2019, which recommends that Governor and Council approve the proposed loan
9. a summary of required statutory findings of the Governor and Council with reference materials to support each finding.

Financing for New Hampshire's Future

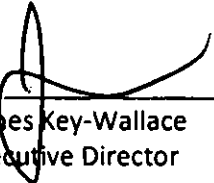
2 Pillsbury Street, Suite 201, Concord, NH 03301
Tel: (603) 415-0190 Fax: (603) 415-0194 www.nhbfa.com



The Authority would be pleased to furnish any additional documentation and information which you may request.

Respectfully Submitted,

**BUSINESS FINANCE AUTHORITY
OF THE STATE OF NEW HAMPSHIRE**

By: 
James Key-Wallace
Executive Director

Loan Summary

Borrower: Rochester Economic Development Commission

Location: 31 Wakefield Street
Rochester, New Hampshire 03867

Type of Business: Economic Development

Lender: Business Finance Authority of New Hampshire
2 Pillsbury Street, Suite 201
Concord, New Hampshire 03301

Amount of Loan: \$3,000,000

Type of Loan: Term Loan

Purpose: The purpose of this loan is to provide Rochester Economic Development Commission with the capital needed to make a loan to LDI Solutions, LLC to construct a new manufacturing/main office. The new facility will be +/-25,000 square feet of both manufacturing and office space. The location of the build is 145 Airport Drive in Rochester, NH 03867.

Collateral: Note to be secured by first lien on all assets of the borrower. Evidence of adequate collateral as verified by an appraisal, indicating a loan-to-value no worse than 85%, guarantors assets to be included in LTV calculation.

A RESOLUTION UNDER RSA 162-A:18 AWARDED A LOAN UNDER RSA 162-A:7 FROM THE BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE TO ROCHESTER ECONOMIC DEVELOPMENT COMMISSION

WHEREAS, the Governor and Council (the "Governor and Council") of the State of New Hampshire (the "State") have received from the Business Finance Authority of the State of New Hampshire (the "Authority") its written recommendation that the Governor and Council make certain findings and determinations pursuant to RSA 162-A:18 with respect to a loan by the Authority to Rochester Economic Development Commission (the "Borrower") in the original principal amount of up to \$3,000,000 to be used to provide Rochester Economic Development Commission with the capital needed to make a loan to LDI Solutions, LLC to construct a new manufacturing/main office. (the "Loan");

WHEREAS, pursuant to the provisions of RSA Chapter 162-A, the Governor and Council is authorized to approve the recommendation of the Authority and to authorize and approve the Loan by the Authority upon the making of specific findings after public hearing;

WHEREAS, the Governor and Council will receive all the documentation and information with respect to the proposed Loan by the Authority; and

WHEREAS, further action by the Authority with respect to the proposed transaction is subject to the passage of this Resolution and cannot be taken until after its passage.

NOW, THEREFORE, it is hereby resolved that:

1. Findings and Determination: On the basis of the documentation and information received by the Governor and Council, after a public hearing, the Governor and Council find:
 - a. Special Findings:
 - I. The Loan is consistent with local or regional development plans or policies
 - b. General Findings:
 - I. The Loan that the Authority has proposed will serve a public use and provide a public benefit
 - II. The Loan that the Authority has proposed is within the policy of, and the authority conferred, by RSA Chapter 162-A
 - III. The Loan that the Authority has proposed will preserve or increase the social welfare or economic prosperity of the State and one or more of its political subdivisions, and will promote the general welfare of the State's citizens
 - IV. The Loan that the Authority has proposed will promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment

2. Approval: Governor and Council approve the Loan by the Authority as recommended by the Authority and authorize the Authority to cause the execution and delivery of the loan documents substantially in the form submitted to Governor and Council and to take such further action as the act with respect to the transaction as may be required

3. Effective Date: This Resolution shall take effect upon its passage

Passed and agreed to June 24, 2020.

Governor Christopher T. Sununu

Councilor Michael J. Cryans

Councilor Andru Volinsky

Councilor Russell E. Prescott

Councilor Theodore L. Gatsas

Councilor Debora B. Pignatelli

Section 162-A:7

162-A:7 Aid to Local or Regional Development Organizations.

I. The authority may expend or loan money upon such terms and conditions as prescribed by the authority to acquire, develop, redevelop, construct, renovate, or expand real or personal property for business use. No expenditure or loan shall be made by the authority under this section unless it is with the approval of, or in cooperation with, a local development organization.

II. Prior to the expenditure or loan of any money under this section, the authority shall enter into one or more agreements with such organization to provide for the conditions on which the expenditures or loans will be made, the terms of repayment of such expenditure or loan, the time and manner of such repayment, conditions under which the property is to be used by or leased to one or more businesses, the form and amount of security if any, to be pledged to the authority for such repayment, and such other provisions as the authority may determine are necessary or desirable. Repayment of any expenditure or loan made by the authority may be with or without interest and may take the form of cash, real or personal property, or services.

III. Any property acquired, developed, redeveloped, constructed, renovated, or expanded under this section may be leased by the authority or the local development organization, as appropriate, for business use, and under such terms and conditions as they shall deem appropriate. Any such lease may include options of the lessee to purchase the property, provided that the purchase price upon the exercise of any such option shall not be less than the amount necessary to reimburse the authority, with interest if applicable, for any unpaid balance of expenditures made by the authority for such property. Any lease shall obligate the lessee to pay all costs and expenses of upkeep, maintenance and operation of the property during the lease term.

IV. The authority shall not expend or loan any money or make a binding commitment to spend any money for a particular project under this section unless after a hearing the governor and council have made the findings specified in RSA 162-A:18.

Source. 1992, 262:3. 1993, 335:5, eff. June 29, 1993.

June 24, 2020

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

Loan from the Business Finance Authority to Rochester Economic Development Commission pursuant to RSA 162A:7

Dear Governor and Council:

The purpose of this letter is to describe and explain the proposed loan from the Business Finance Authority of the State of New Hampshire (the "Authority") to Rochester Economic Development Commission (the "Borrower") as recommended by the Authority, based upon information supplied by the Authority and the Borrower.

1. **Statutory Authority:** RSA 162-A:7 authorizes the Authority to expend or loan money to acquire, develop, redevelop, construct, renovate or expand real or personal property for business use with the approval of or in cooperation with a local development organization. The statute also provides that upon the Authority's recommendation, the Governor and Council may, after holding a public hearing and making certain findings, approve and authorize such a loan or expenditure of money by the Authority.
2. **Concept of the Aid to Local Development Organization Program:** The Authority has developed the Aid to Local Development Organization Program as a significant part of its programs intended to facilitate the growth and development of businesses within the state. In general, the program focuses on expending funds or making loans for projects identified by local development organizations as providing important opportunities for economic development within particular regions or communities of the State.
3. **Agreement with Local Development Organization:** RSA 162-A:7, II requires the Authority to enter into an agreement with a local development organization providing for the conditions upon which the expenditure or loan will be made.
4. **Description of the Transaction:** The Borrower is the Rochester Economic Development Commission. The Authority recommends that it make a loan to the borrower in the total principal amount of up to Three Million Dollars (\$3,000,000) (the "Loan") to provide the capital needed to make a loan to LDI Solutions, LLC to construct a new manufacturing/main office. The new facility will be +/-25,000 square feet of both manufacturing and office space. The location of the build is 145 Airport Drive in Rochester, NH 03867.
5. **Terms of the Loan Documents:** The terms and conditions of the Loan are to be expressed in a loan agreement between the Authority and the Borrower and certain other loan documents.

The loan documents, which will be in substantially the form submitted to Governor and Council with this letter, will include the following terms and conditions:

- a. Promissory Note: The Loan will be evidenced by a Promissory Note of the Borrower in the original principal amount of up to Three Million Dollars (\$3,000,000). The Loan will bear a fixed interest at 4.75%.
 - b. Representations and Covenants of the Borrower: The loan agreement contains such provisions as the Authority has determined necessary and desirable in order to administer the loan, including without limitation, representations and warranties and covenants of the Borrower, indemnification of the Authority for the risks concerning any potential hazardous waste, the provision of payment of the Authority's costs and expenses, and the Authority's remedies upon default of the Borrower.
 - c. Security: Note to be secured by a guarantee from the city of Rochester.
 - d. Use of Proceeds: Proceeds of the Loan will be used only to finance the expansion and retention of businesses.
6. In Summary: Based upon the foregoing, all statutory requirements are embodied and implemented in the proposed transaction and loan documents.

Very truly yours,

BUSINESS FINANCE AUTHORITY

By: 

James Key-Wallace
Executive Director

nhBFA

New Hampshire Business Finance Authority

May 18, 2020

Mr. Michael Scala
Rochester Economic Development Commission
33 Wakefield Street
Rochester, NH 03867

RE: Loan to Rochester Economic Development Commission for the benefit of LDI Corporation

Dear Mr. Scala,

The Business Finance Authority of the State of New Hampshire ("the Authority") has approved in principle the application submitted by the Rochester Economic Development Commission (the "Rochester EDC"), a local development organization (the "LDO"). Accordingly, the Authority is prepared to proceed with the discussions to make the loan described below (the "Loan") to the Rochester EDC under the Authority's Local Development Organization loan program, subject to the general terms and conditions set forth in this letter. This letter is an expression of the Authority's intent to recommend that the Governor and Council approve the Loan as described in this letter and upon such approval to make the Loan based only upon the information that the LDO has submitted. Any obligation to recommend Governor and Council's approval of the Loan, or to consummate the Loan, will arise only upon the satisfactory preparation, execution and delivery of documentation in form and substance satisfactory to the Authority.

In reaching its decision, the Authority has reviewed all information submitted in the application. We have acquired an understanding of the Rochester EDC's financial situation. Of course, as we proceed, we will require further information.

Policy Background:

The Authority has determined that the proposed transaction will serve to promote business development within the State by expanding the availability of credit within the city of Rochester. The Authority's commitment concerning the Loan reflects this fundamental determination that the proposed transaction will serve a public use and provide a public benefit. The Authority was created to offer credit enhancements to New Hampshire businesses. The LDO loan program established under RSA Chapter 162-A:7 is intended to do so indirectly by assisting local development organizations in promoting and developing business within the State. The statute provides that the Authority may make a loan only if the local development organization agrees to the use of the proceeds of the loan for the promotion, encouragement or development of business within the State, or a region or community of the State and in compliance with the terms and conditions upon which the Authority will make the loan. This letter is intended to outline the ways in which the Authority intends to meet these requirements.

Financing for New Hampshire's Future

2 Pillsbury Street, Suite 201, Concord, NH 03301
Tel: (603) 415-0190 Fax: (603) 415-0194 www.nhbfa.com

Terms of Loan Proposal:

I am authorized to report to you that the Authority has approved in principal the Rochester EDC's request, subject to and limited by the following terms and conditions:

Identification of Loan:

The Loan in the amount up to \$3,000,000 will provide Rochester Economic Development Commission with the capital needed to make a loan to LDI Corporation to construct a new manufacturing/main office. The new facility will be +/-25,000 square feet of both manufacturing and office space. The location of the build is 145 Airport Drive in Rochester, NH 03867.

Terms of Repayment:

The loan will have a five (5) year term priced at 4.75% fixed, twenty (20) year amortization, monthly payments of principal and interest.

Security:

Note to be secured by a guarantee from the city of Rochester.

Disbursement:

Disbursement of Loan proceeds shall be subject to customary conditions, including without limitation:

- If Rochester chooses to use the loan for the construction period, the structure will be interest-only, monthly payments based on 20 year amortization schedule thereafter.
- Note to be secured by first lien on all assets of the borrower.
- Guarantee from the City of Rochester.
- Subject to all required construction loan advance processes typical for financing of this nature. Including but not limited to site inspections, mechanics lien waivers, certified opinions that project funds remain adequate to finish construction, etc. The oversight of the construction is to be completed by Rochester Economic Development Commission.
- All other funding required for project committed and funded.
- Evidence of adequate collateral as evidenced by an appraisal, indicating a Loan-to-Value no worse than 85%,

guarantors assets to be included in LTV calculation.

- Copy of the closing documents with LDI, city approval, all permits, final construction documents/plans and all other relevant documentation in connection to the 145 Airport Road purchase and build.
- Customary insurance for a project and financing of this nature.
- All expenses incurred by the BFA in connection to preparing the closing of the loan to be paid by the Rochester Economic Development Commission, whether or not the loan closes.

Documents:

The Loan Agreement, Promissory Note, and Security Instruments to be drafted by counsel to the Authority shall contain such representations, warranties and covenants as are acceptable to the Authority. Rochester EDC shall provide the Authority with such other documents, agreements, reports and certificates the Authority may reasonably require, including, without limitation, title insurance and survey in form and substance satisfactory to the Authority.

LDO Agreement:

At or before the closing, the Rochester EDC shall execute an agreement evidencing its approval of the Loan in accordance with RSA 162-A:7 II.

Further Investigations and Modification of Documents:

The Authority's obligation to make the Loan shall be subject to the Authority's review and approval to its satisfaction of all loan documents relating to the Loan and the proposed Loan collateral, evidenced by the Loan and all other loan documentation, including, without limitation, UCC search information, collateral value analysis, appraisals, environmental reports, governmental approvals, construction contracts, and financial statements of Rochester EDC and also subject to the truth and accuracy of Rochester EDC's representations in its loan application.

Authority Legal Expenses:

As a condition to proceeding, Rochester EDC shall pay all reasonable legal counsel fees and expenses incurred in the evaluation, preparation and provision for the Authority's Loan, even if the

transaction is not consummated.

Legal Opinion:

Counsel to the LDO shall provide opinions as to the due organization of the LDO and the power and due authority of the LDO to enter into the loan documents, the enforceability of the Loan documents and such other matters as the Authority may reasonably request, including compliance with applicable laws.

Approval:

As required by RSA 162-A:7, the Loan transaction may become effective only upon approval of the Governor and Council.

If Rochester EDC wishes to proceed further to finalize the terms of this proposal, please sign and return this letter to us on or before 2:00 p.m. on June 1, 2020. As noted, any obligation to take action by the Authority will arise only upon satisfactory preparation, execution and delivery of documentation. On behalf of the Authority, I look forward to working with the Rochester EDC toward a successful financing transaction.

Sincerely,

Jeremy Stanizzi
Senior Credit Officer


Agreed and Accepted

ROCHESTER ECONOMIC DEVELOPMENT COMMISSION

By: Blaine Cox

Date: 5-26-2020

Name: Blaine M. Cox
Title: City Manager

PROMISSORY NOTE

\$3,000,000.00
Sixty (60) Months

_____, 2020
Concord, New Hampshire

FOR VALUE RECEIVED, the undersigned, **ROCHESTER ECONOMIC DEVELOPMENT COMMISSION**, an instrumentality of the City of Rochester, New Hampshire with a business address of 31 Wakefield Street, Rochester, New Hampshire 03867 (the "Borrower"), promises to pay to **BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE**, a public body corporate and agency of the State of New Hampshire with a principal place of business at 2 Pillsbury Street, Suite 201, Concord, New Hampshire 03301 (hereinafter the "Lender" and any subsequent transferee of this Note, whether taking by negotiation or otherwise, are sometimes referred to herein as the "Holder"), or to its order, at the Lender's principal office or at such other place as the Lender or any subsequent Holder may designate in writing, in lawful money of the United States of America and in immediately available funds, the principal sum of **Three Million and No/100ths Dollars (\$3,000,000.00)**, not later than sixty (60) months from the date hereof (the "Maturity Date"), together with interest in arrears on the unpaid principal balance from time to time outstanding, from the date hereof until the entire principal amount due hereunder is paid in full at the interest rate and in the manner set forth below. Interest shall be calculated on the basis of the actual number of days elapsed over a year of 360 days. Principal and interest shall be payable monthly on the same day of each month, or the next business day thereafter if such day is not a business day, commencing one (1) month from the date hereof, and continuing month to month thereafter until this Note is paid in full. [All payments shall be made to Lender through a direct debit (ACH) from Borrower's bank account.] This Note is being issued pursuant to RSA 162-G and a vote of the Borrower passed _____, 2020.

This Note is being executed and delivered in accordance with the terms of a certain Commercial Loan Agreement of even date herewith (the "Loan Agreement") between, among others, the Borrower, the City of Rochester, New Hampshire (the "Guarantor") and the Lender, as acknowledged by LDI SOLUTIONS, LLC and the documents defined therein as the "Loan Documents". The payment and performance of the obligations contained in this Note, and the Loan Documents are secured by a Guaranty by the City and the other Security Documents as defined in the Loan Agreement. The Mortgage, the Mortgage Assignment and Assignment, the Security Agreement and the Guaranty (each as defined in the Loan Agreement), together with any other instruments securing this Note, shall hereinafter be collectively referred to as the "Security Instruments". The collateral granted to the Lender in the Security Instruments shall hereinafter be collectively referred to as the "Collateral".

As used herein, the following terms shall have the meanings set forth below. Capitalized terms used herein which are not otherwise defined shall have the meanings given to such term in the Loan Agreement.

"Fixed Rate" shall mean a rate of interest equal to four and seventy-five hundredths percent (4.75%) per annum.

So long as no Event of Default (as hereinafter defined) shall occur, in which event the Lender may elect to accelerate the maturity date hereof, the principal balance of this Note together with any unpaid interest thereon shall be due and payable as follows:

- a. Principal and Interest Payments. Commencing one (1) month from the date hereof, the Borrower shall make fifty-nine (59) consecutive combined monthly installments of principal and interest in an amount which would amortize the principal balance thereof over an amortization period beginning on the date one (1) month from the date hereof and ending two hundred forty (240) months from said date (the "Amortization Period") with interest at the Fixed Rate. Monthly payments shall be Nineteen Thousand Three Hundred Eighty-six and 71/100 Dollars (\$19,386.71).
- b. On the Maturity Date, the Borrower shall pay to the Holder the entire principal balance then outstanding, together with accrued and unpaid interest thereon and any other charges due hereunder or under any other document evidencing, securing, guaranteeing, or otherwise executed in connection with the loan evidenced hereby.

[This Note may be prepaid in whole or in part at any time without premium or penalty. In the event that any partial prepayment made by the Borrower, the amount of such prepayment shall be applied first to accrued interest and delinquency charges and attorneys' fees and thereafter to principal in the inverse order of maturity.]

If the Holder shall advance any payment of any charge affecting the Collateral securing this Note, the amount so advanced shall, at the Holder's option, be added to the principal of this Note, and shall thereafter bear interest at the Default Rate set forth in the Loan Agreement, or may be payable to the Holder upon demand, as the Holder may elect. Such sums shall be secured by the Security Instruments equally with the principal and interest hereof.

Upon the occurrence of any one of the following events (each of which events shall be an "Event of Default" hereunder):

- a. the failure of the Borrower to make any payment of principal or interest hereunder in excess of five (5) days after the receipt of written notice from Lender of such overdue payment, or
- b. the failure by the Borrower to perform or observe any of the provisions, terms, conditions, warranties or covenants of this Note, and such default shall have remained unremedied for a period of thirty (30) calendar days after the Holder shall have given the Borrower written notice specifying such default and demanding the same be remedied, or
- c. an Event of Default as described and defined in the Loan Agreement, any of the other Loan Documents, including without limitation any of the Security Instruments, and the expiration of any period provided in such instrument to cure such default,

then the Holder hereof may declare the entire unpaid principal balance and accrued interest thereon immediately due and payable without notice, demand or presentment and may exercise any of its rights and remedies, including those set forth in the Security Instruments. In the event that the Lender or any subsequent Holder of this Note shall exercise or endeavor to exercise any of its rights and remedies hereunder, under the Security Instruments, or otherwise, the Borrower shall pay on demand all reasonable costs and expenses incurred in connection therewith, including, without limitation, reasonable accountants' and attorneys' fees and foreclosure costs and the Lender may take judgment for all such amounts in addition to all other sums due hereunder. The Borrower agrees to pay, and the Holder shall be entitled to collect, interest at the Default Rate set forth in the Loan Agreement from and after maturity or Event of Default, irrespective of the commencement of foreclosure or suit or the taking of judgment.

Further, if any monthly installment of principal and/or interest due hereunder is not received by the Holder within ten (10) calendar days after its due date, the Borrower shall pay to the Holder a late payment charge for the calendar month during which such default shall occur equal to five percent (5.0%) of such installment, or five dollars (\$5.00), whichever is greater, for the purpose of defraying the expense incurred by the Holder in handling and processing such delinquent payment.

Every maker, endorser, surety, guarantor or accommodation party hereof waives all exemption rights, valuation and appraisal, presentment, protest and demand, demand for payments, notices of dishonor and protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement hereof, and also waives all defenses based on suretyship or impairment of collateral.

Every maker, endorser, surety, guarantor, or accommodation party hereof assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of any collateral, and/or to the addition or release of any other party or person primarily or secondarily liable with respect to the indebtedness evidenced by this Note.

In the event any payment of principal or interest or other amount received upon this obligation and paid by the Borrower shall be deemed by final order of a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under the Bankruptcy Code or insolvency laws of any state or other jurisdiction; then, in such event to the extent thereof, the obligation of the Borrower shall, jointly and severally, survive as an obligation due hereunder and shall not be discharged, or satisfied by said payment or payments, notwithstanding the return of this Note to the Borrower by the Holder hereof or any Security Instrument or other guaranty, endorsement or the like.

Should this Note be signed by more than one Borrower, the singular shall include the plural and all obligations shall be the joint and several obligation of each signer hereof. Each Borrower shall remain primarily liable on this Note and the Security Instruments until full payment, unaffected by the alienation of any Collateral securing this Note, by any agreement or transaction between the Holder and any subsequent owner or alienee of any Collateral securing this Note as to payment of principal, interest or other moneys, by any forbearance or extension of time, guaranty or assumption by others, or by any other matter, as to all of which notice is hereby waived by the Borrower.

This Note and the provisions hereof shall be binding upon the Borrower and the Borrower's heirs, administrators, executors, successors, legal representatives and assigns and shall inure to the benefit of the Holder and the Holder's heirs, administrators, executors, successors, legal representatives and assigns.

Failure of the Holder to exercise any right herein contained shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

The laws of the State of New Hampshire shall apply to this Note.

IN WITNESS WHEREOF, the Borrower has executed this Promissory Note as a sealed instrument as of the date first above written.

BORROWER:
ROCHESTER ECONOMIC
DEVELOPMENT COMISSION

Witness

By: _____
Name: _____
Its: _____
Hereunto Duly Authorized

COMMERCIAL LOAN AGREEMENT

This COMMERCIAL LOAN AGREEMENT (this "Agreement") is made as of this ____ day of _____, 2020, by and among **BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE**, a public body corporate and agency of the State of New Hampshire with a principal place of business at 2 Pillsbury Street, Suite 201, Concord, New Hampshire 03301 (together with its successors and assigns the "Lender"), **ROCHESTER ECONOMIC DEVELOPMENT COMMISSION**, a New Hampshire local development organization and an instrumentality of the City of Rochester, New Hampshire (the "City") established as the City's Business Industrial Authority under RSA 162-G (the "Act"), with a business address of 33 Wakefield Street, Rochester, New Hampshire 03867 (the "Borrower"), [and **CITY OF ROCHESTER, NEW HAMPSHIRE**, a municipality within the State of New Hampshire (the "Guarantor")].

FACTUAL BACKGROUND:

This Agreement is premised on the following understandings of the parties:

A. LDI SOLUTIONS, LLC ("LDI") of 3560 Lafayette Road, Building 2, Suite C, Portsmouth, NH 03801, is seeking to move its business to the City.

B. The Borrower assists persons interested in making the City their business location, undertakes acts to encourage the availability of industrial sites within the City, and acts as the official agent of the City in matters pertaining to economic development.

C. LDI intends to purchase the property located at 145 Airport Drive, Rochester, NH, all as more particularly described in Exhibit A attached hereto (the "Premises"), to construct an approximately 25,000 sq. ft. building on the Premises (the "Construction"), and to grant a mortgage on the Premises (the "Mortgage") in favor of the [City and the] Borrower.

D. The Borrower is entering into this Agreement for the purpose of borrowing \$3,000,000 from the Lender (the "Loan"), for the purpose of re-lending such amount to LDI to finance the Construction.

E. The City will Guaranty (the "Guaranty") the Loan.

F. In accordance with that certain Commitment Letter dated May 18, 2020 (the "Commitment"), the Lender has expressed its intention to make to the Borrower the Loan the original principal amount of **Three Million and No/100ths Dollars (\$3,000,000.00)**.

G. The Borrower has expressed its intention to borrow such money from the Lender by executing the Commitment. As a material inducement to the Lender to make the Loan, the Guarantor has agreed to unconditionally Guaranty the Loan.

H. In reliance on the representations of the Borrower and the Guarantor, the Lender is willing to make the Loan only upon compliance by the Borrower and the Guarantor with the terms,

conditions and obligations set forth below.

TERMS OF AGREEMENT:

In consideration of the mutual promises and obligations of the parties set forth below, the Lender, the Borrower and the Guarantor hereby covenant and agree as follows:

1. Agreement to Loan

1.1. Loan by Lender. The Lender agrees to lend to the Borrower, and the Borrower desires to borrow for the purposes set forth in Paragraph 1.3, below, the principal amount of **Three Million and No/100ths Dollars (\$3,000,000.00)** in accordance with and subject to the terms and conditions of this Agreement. For purposes of this Agreement, any sums advanced by the Lender under the Loan shall be referred to as the "Loan Proceeds."

1.2. Execution and Delivery of Note and Loan Documents. In consideration of the Lender's agreement to make the Loan, the Borrower, and the Guarantor, as applicable, agree to fulfill all of its obligations and conditions under this Agreement and any other documents related thereto (collectively, the "Obligations"), and to execute and deliver to the Lender the following:

a. Note. A promissory note in the principal amount of **Three Million and No/100ths Dollars (\$3,000,000.00)** evidencing the Loan, payable to the order of the Lender and in form and substance acceptable to the Lender in its sole discretion (the "Note").

b. Security Documents. The security documents described in Paragraph 2.1, below or otherwise required in connection with the Loan (the "Security Documents").

c. Guaranty Documents. The Guaranty documents described in Paragraph 2.2, below or otherwise required in connection with the Loan (the "Guaranty Documents").

This Agreement, the Note, all Security Documents, and all Guaranty Documents delivered in connection with this Agreement and/or the Obligations, together with such other documents, agreements, and other instruments executed and delivered to the Lender in accordance with or ancillary to the foregoing shall be collectively referred to herein as the "Loan Documents."

1.3. Use of Loan Proceeds. The Loan Proceeds from the Loan will be used solely for the financing of the Construction as specified in the Commitment. The Loan Proceeds will be used solely for business purposes and not for personal, family or household purposes.

2. Security for Loan. The Borrower agrees to provide, or cause to be provided to the Lender as security for the repayment of the Loan and the fulfillment of all of the Borrower's obligations under this Agreement and any documents related hereto, the following:

2.1. Security Documents.

a. [Assignment of Mortgage, Security Agreement and Fixture Filing]. An assignment of the Mortgage in form and substance acceptable to Lender in its sole discretion, which grants to the [Borrower] a [first] priority mortgage and security interest in the Premises, together with all replacements thereof, substitutions thereto and proceeds therefrom (the "Assignment of Mortgage").

b. Assignment of Rents and Leases. An assignment or assignments of rents and leases between the Borrower and the Lender in form and substance acceptable to Lender in its sole discretion, granting to the Lender a [first] priority assignment of leases and rents in the Premises and proceeds therefrom (the "Assignment").

2.2. Guaranty Documents.

a. Unconditional Guaranty. All of the obligations of the Borrower under this Agreement, the Note and all related documents shall be unconditionally guaranteed by the Guarantor.

b. General Obligation. The Guarantor shall deliver to the Lender a guaranty agreement in form and substance acceptable to the Lender in its sole discretion. The Guarantor's Guaranty shall be a general obligation of the City.

2.3. Purposes. Under this Agreement, the Lender shall be a secured party under New Hampshire RSA 479 and RSA 382-A respectively in the real and personal property of the Borrower as more particularly described above, and subject to the terms and conditions herein set forth. The Borrower[, LDI] and Guarantor agree to sign and deliver to the Lender such documents and agreements and to pay such filing fees as are required to make effective such security interests. All Security Documents given to the Lender to secure the obligations under this Agreement and all documents related thereto also shall secure any extensions, modifications or renewals for the Loan and any other obligations or liabilities of the Borrower and the Guarantor to the Lender whether arising prior or subsequent to the Closing of the Loan.

3. **Conditions Precedent**. The obligation of the Lender to make the Loan pursuant to this Agreement is expressly conditioned upon the prior satisfaction of the following conditions:

3.1. Delivery of Instruments and Documentation. Prior to the distribution of any of the Loan Proceeds, the Borrower shall have delivered or caused to be delivered to the Lender or its counsel, in form and substance acceptable to the Lender in its sole discretion and judgment, the following:

- a. the Note;
- b. the Mortgage;
- c. the Assignment of Mortgage;
- d. the Assignment;

- e. the Guaranty;
 - f. [the Security Agreement];
 - g. [the UCC-1];
 - h. [an indemnification with respect to environmental matters in form and substance satisfactory to Lender (the "Environmental Indemnification")];
 - i. prior to the Closing, certified copies of all proceedings taken by the Borrower and the Guarantor shall have been taken;
 - j. an opinion of bond counsel to the Borrower in form and substance satisfactory to the Lender;
 - k. an opinion of bond counsel to the Guarantor in form and substance satisfactory to the Lender
 - l. prior to the Closing, evidence of all other funding required for completion of the Construction;
 - m. prior to the Closing, evidence of adequate collateral, as evidenced by [TBD];
 - n. prior to the Closing, a copy of an MAI appraisal pertaining to the Premises [include as-built?];
 - o. copies of closing documents between Borrower and LDI, including final construction documents and plans and specifications;
 - p. evidence of insurance acceptable to Lender;
 - q. Payment of the related expenses and fees of the Lender and its counsel;
- and
- r. Such other documents, instruments, approvals, opinions or assurances as the Lender and/or its counsel may request prior to or at the Closing, or during the term of the Loan, and which the Lender and/or its counsel deem necessary, in their sole discretion, to protect the interests of the Lender relative to the Loan.

3.2. Approval of Lender Counsel. All legal matters incidental to this Agreement and the transactions contemplated hereby, including without limitation the priority of the lien of the security interests under the Security Documents, and the form and substance of each instrument or document required to be furnished by the Borrower or the Guarantor shall be satisfactory to counsel for the Lender in their sole discretion or judgment.

3.3. Compliance. At the time of any borrowing under this Agreement:

a. Compliance with Commitment. The Borrower shall have complied, and shall then be in compliance, with all the terms, covenants and conditions of this Agreement and the Commitment;

b. No Defaults. No event of default as defined in this Agreement or any related documents and no other occurrence which, but for the passage of time or the giving of notice or both, would constitute an event of default, shall exist; and

c. No Material Adverse Change. There shall be no material adverse change (as determined by the Lender in its sole discretion) in the business or financial condition of the Borrower, Guarantor or LDI.

4. Representations and Warranties. In order to induce the Lender to make the Loan, the Borrower and the Guarantor (to the extent noted below) hereby represent and warrant to the Lender, which representations and warranties shall be deemed reaffirmed as of, and shall survive, the Closing of the Loan, as follows:

4.1. Due Organization and Existence.

a. The Borrower is a New Hampshire local development organization and an instrumentality of the City established as the City's Business Industrial Authority under the Act; has full power, authority and legal right to own its properties and assets and to conduct all business in which it engage or propose to engage; and has full power and authority to execute and deliver to the Lender all Loan Documents with respect to the Loan.

b. The Guarantor is a municipality of the State of New Hampshire and has full power and authority to execute and deliver to the Lender all Loan Documents with respect to the Loan.

4.2. Governing Documents. All articles of agreement, formation, bylaws and other writings of agreement among trustees or certificates of incorporation, bylaws, and enabling legislation under which the Borrower or Guarantor has been formed or existing and all amendments thereto, as applicable (collectively the "Governing Documents"), of Borrower and Guarantor have been duly filed and are in proper order.

4.3. Power and Authority. The execution, delivery, and performance by the Borrower and the Guarantor of the Loan Documents executed and delivered by the Borrower and Guarantor have been duly authorized by all necessary actions required under the terms and provisions of their Governing Documents, the laws of the State of New Hampshire, and any political subdivision thereof, agency, department, commission, board, bureau or instrumentality thereof (collectively a "Governmental Authority"), as applicable, and do not and will not:

a. require any additional consent or approval of the Borrower or Guarantor, or any other person holding a legal or beneficial interest in the Borrower or Guarantor;

- b. require the approval or consent of any Governmental Authority having jurisdiction over the Borrower or Guarantor or the property of either;
- c. contravene the Governing Documents of the Borrower or Guarantor;
- d. cause the Borrower or Guarantor to be in default under any law, rule, regulation, order, writ, judgment, administrative decision, injunction, decree, determination, or award to which the Borrower or the Guarantor is a party or by which it or its properties may be bound or affected; or
- e. result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, contract, lease, or instrument to which the Borrower or Guarantor is a party or by which it or its properties may be bound or affected.

4.4. Binding Agreement. The Loan Documents executed and delivered by the Borrower and Guarantor constitute the valid and legally binding obligations of the Borrower and Guarantor, respectively, and will be enforceable in accordance with their respective terms.

4.5. Litigation. There are no suits or proceedings pending or, to the knowledge of the Borrower or the Guarantor, threatened against or affecting the Borrower, the Guarantor or the Collateral, which, if adversely determined, would have a material adverse effect on the financial condition or business of the Borrower or the Guarantor or which pertain to the Collateral. There are no proceedings by or before any governmental commission, board, bureau or other administrative agency pending or, to the knowledge of the Borrower or the Guarantor, threatened against the Borrower, the Guarantor or the Collateral which, if adversely determined, would have a material adverse effect on the financial condition or business of the Borrower or the Guarantor, or the use by the Borrower and the Guarantor of the Collateral.

4.6. Title to the Collateral. The Borrower has, or will have on the Closing Date, full and indefeasible title to all Collateral pledged to the Lender and secured by the Security Documents, free and clear of any liens, attachments, assignments, rights or other claims except those previously existing of which the Borrower already has informed the Lender in writing, if any, and which the Lender has accepted in its sole discretion as set forth on the attached Schedule 4.6 (the "Permitted Encumbrances"), and the Borrower [and the Guarantor] hereby warrants and agrees to defend title to the Collateral against the claims and demands of all persons.

4.7. Solvency. [The present fair saleable value of the assets of the Borrower is greater than the amount required to pay its total liabilities; the amount of the capital of the Borrower is adequate in view of the type of business in which it is engaged; and the Borrower is able to pay its debts as they mature. Any borrowings made by the Borrower under this Agreement do not and will not render the Borrower insolvent; neither the Borrower nor the Guarantor is contemplating filing a petition under any state or federal bankruptcy or insolvency laws or liquidating all or a major portion of their respective properties; neither the Borrower nor the Guarantor has any knowledge of any person or entity contemplating filing any such petition against the Borrower or the Guarantor, including the properties and assets reflected in their financial

statements referred to herein.] [The Borrower is solvent.]

4.8. No False Statements. No statement of fact made by or on behalf of the Borrower or the Guarantor in this Agreement, or in any certificate or schedule furnished to the Lender 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 or the Guarantor that has not been disclosed to the Lender that materially affects adversely, nor as far as the Borrower or any such Guarantor can foresee, will materially affect adversely the property, business, operations or condition (financial or otherwise) of the Borrower, the Guarantor and/or the Collateral.

4.9. Taxes. To the extent applicable, the Borrower, LDI, and the Guarantor (i) has filed or caused to be filed all tax returns, reports and declarations required to be filed by any jurisdiction (federal, state and local) to which it is subject; (ii) has paid or has made provision for the payment of all income, business profit, business enterprise, payroll, property and any other taxes, assessments or governmental charges and levies, which have or may have become due pursuant to said returns, including interest and penalties, except such taxes, if any, as are being contested in good faith; and (iii) has set up adequate reserves for the payment of any tax which is being contested, so that no lien will encumber any Collateral in subsequent periods. The charges, accruals, and reserves in respect of income taxes on the books of the Borrower and the Guarantor are adequate. None of the Borrower, LDI or the Guarantor knows of any proposed material tax assessment against it or of any extension of time for the assessment of federal, state, or local taxes of the Borrower, LDI or the Guarantor that is in effect or has been requested, except as disclosed in the financial statements furnished to the Lender. Further, the Borrower has paid or has caused LDI to have paid all real estate taxes, assessments, governmental charges, liens, or claims for labor, supplies, and other obligations due with respect to the Premises which if unpaid, might become a lien against the Borrower, LDI or the Premises.

4.10. Regulatory and Environmental Compliance. All necessary easements or rights of access for people, vehicles and utilities to the Premises have been obtained; the Borrower, LDI and the Guarantor has duly complied with, and each has obtained, all necessary permits and approvals under (and the business, operations, assets, equipment, and property located on or used in connection with the present and any proposed use of the Premises are in compliance with) the provisions of all federal, state, and local zoning, land use, building, environmental, health, and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder, including without limitation the Americans With Disabilities Act and other federal, state and local environmental rules and regulations; and in general, there are no federal, state or local laws, or any covenants, conditions, restrictions, or reservations, controlling land uses or the conduct of activities thereon which would prevent or impede the contemplated use of the Premises by Borrower or LDI.

LDI and to the extent applicable, the Borrower have been issued and will maintain all required federal, state and local permits, licenses, certificates, and approvals relating to (1) air emissions; (2) discharges to surface water or groundwater; (3) noise emissions; (4) solid or liquid waste disposal; (5) the use, generation, storage, transportation, or disposal of toxic or hazardous substances or wastes (intended hereby and hereafter to include any and all such materials listed in

any federal, state, or local law, code or ordinance and all rules and regulations promulgated thereunder as hazardous or potentially hazardous); and (6) other environmental, health or safety matters. None of the Borrower, LDI or the Guarantor has received notice of, nor knows of or suspects facts which might constitute any violations of any federal, state, or local environmental, health, or safety laws, codes or ordinances, and any rules or regulations promulgated thereunder with respect to the Premises. To the best knowledge of the Borrower, LDI and the Guarantor there has been no emission, spill, release, or discharge into or upon (1) the air; (2) the soils; or any improvements located thereon; (3) the surface water or groundwater; or (4) the sewer, septic system or waste treatment, storage or disposal system servicing the premises of any toxic or hazardous substances or wastes at or from the Premises; and accordingly the Premises is free of all toxic or hazardous substances or wastes.

4.11. No Event of Default. Neither the Borrower nor the Guarantor knows of any Event of Default (as defined herein), or of any event, which, with the giving of notice or the passage of time, or both, would constitute such an Event of Default.

5. Affirmative Covenants. Until payment in full of the indebtedness now existing or hereafter incurred under this Agreement and the performance of all of Obligations, the Borrower and the Guarantor (to the extent noted below) agrees that, unless the Lender shall otherwise consent in writing in its sole discretion, it will:

5.1. Prompt Payment. Pay promptly when due all amounts due and owing to the Lender under the Loan Documents.

5.2. Taxes. To the extent applicable, pay when due all income, business profit, business enterprise, payroll, property and any other taxes or governmental charges assessed against the Borrower, the Guarantor or the Collateral.

5.3. Financial Statements; Reports. Furnish to the Lender:

a. Within one hundred twenty (120) days after the end of each fiscal year financial statements, as of the close of such year; the Borrower's and Guarantor's annual financial statements to be prepared by a certified public accountant acceptable to the Lender, which are complete and correct and fairly present the financial condition of the Borrower and the Guarantor and the results of its operations as of the date and for the period covered by such statements, all prepared in accordance with generally accepted accounting principles applied on a consistent basis; interim management statements (P&S) and proformas, as requested by Lender from the Borrower or from the Guarantor.

b. Upon request by Lender, within one hundred twenty (120) days after the close of each fiscal year of the Borrower, a certificate indicating no knowledge of any default as defined in this Agreement or if such default exists, specifying the nature thereof.

5.4. Maintenance of Insurance. Have and maintain or cause to be maintained such policies of hazard and liability insurance, containing such terms in such form, for such periods and written by such companies as set forth in the Mortgage pertaining to the Premises.

[All insurance policies described above shall contain such terms, be in such form and for such periods, and be written by such companies as are satisfactory to the Lender in its sole discretion. The Lender shall have the right to apply any and all insurance proceeds toward the reduction of outstanding principal on the Loan, in its sole option. In the event of failure to provide insurance as herein provided, the Lender may, at its option, provide such insurance and charge the amount thereof to the Borrower's loan account, and such action by the Lender shall not constitute a waiver of the Lender's right to claim a default for failure to provide said insurance or otherwise claim a default under the provisions of this Agreement, the Notes, the Security Documents or any other related loan documentation. The Borrower shall deliver such evidence of insurance to the Lender as the Lender may require.]

5.5. Compliance with Laws and Maintenance of Collateral. Maintain the Collateral in good order and repair, ordinary wear and tear accepted, and comply in all respects with all federal, state and local laws, ordinances, rules and regulations pertaining to the ownership and operation of the business of the Borrower, or any of the Collateral, as such laws, ordinances, rules and regulations may be amended from time to time.

5.6. Inspection by Lender. Permit any person designated by the Lender to inspect at a reasonable time the Collateral, and any of the other properties of the Borrower offered as security for the Loan under this Agreement, including without limitation, its books, records, inventory and accounts (and including the making of copies thereof and extracts therefrom).

5.7. Notification of Default Under This and Other Loan or Financing Arrangements. Promptly notify the Lender in writing of the occurrence of any event of default under this Agreement or any other loan or financing arrangement to which the Borrower or the Guarantor is a party.

5.8. Notification of Litigation. Promptly notify the Lender in writing of any governmental investigation or proceeding or of any litigation that has been instituted or is pending or threatened involving the Collateral or aggregate amounts or claims of [Ten Thousand and No/100ths Dollars (\$10,000.00)] or more, the outcome of which might have a material adverse effect on the continued operations or financial condition of the Borrower, [the Guarantor] or the use and enjoyment of the Collateral.

5.9. Payment of Expenses. Pay the Lender, whether or not the Closing shall occur, all of its expenses in connection with the making of this Agreement and the effectuation of its terms, including without limitation reasonable appraisal fees, legal fees and expenses, recording costs, and any and all other customary and reasonable expenses which are incurred in connection with the Loan. Except as may be permitted under the Commitment, the payment of such expenses shall not be made from the Loan Proceeds or the commitment or origination fees relative to the Loan, but shall be in addition thereto. In addition, the Borrower shall pay all costs of collection, including reasonable attorneys', accountants' and appraisal fees, that may be incurred by the Lender subsequent to the Closing resulting from a default under, or enforcement of the terms of, this Agreement or any documents related hereto, whether or not suit is brought or prosecuted to completion together with interest thereon at the rate applicable hereunder to amounts past due.

5.10. Environmental Matters. Be and remain in compliance with the provisions of all federal, state, and local environmental, health and safety laws, codes and ordinances, and all rules and regulations issued thereunder, and abide by any remediation provisions imposed by the State of New Hampshire; notify the Lender immediately of any notice of a hazardous discharge or environmental complaint received from any governmental agency or any other party; notify the Lender immediately of any hazardous discharge from or affecting the Premises; immediately contain and remove the same, in compliance with all applicable laws; promptly pay any fine or penalty assessed in connection therewith; permit the Lender to inspect the Premises, to conduct tests thereon, and to inspect all books, correspondence, and records pertaining thereto; and at the Lender's request, and at the Borrower's expense, provide a report of a qualified environmental engineer, satisfactory in scope, form, and content to the Lender, and such other and further assurances reasonably satisfactory to the Lender that the condition has been corrected.

6. Negative Covenants. Until payment in full of the indebtedness now existing or hereafter incurred under this Agreement and the performance of all obligations hereunder and under the Notes and the Security Documents, the Borrower [and the Guarantor] will not, without the express prior written consent of the Lender:

6.1. Further Encumbrances or Liens. Incur, create, assume or suffer to exist any mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on the Collateral or any of its other assets offered as security under the Loan Documents other than (i) interests granted to the Lender; or (ii) the Permitted Encumbrances.

6.2. Assignments. In acknowledgment that their identity is of material importance to the Lender, sell, lease, assign or transfer (including without limitation by merger or consolidation) any or all of its interests hereunder or under any documentation related hereto, or a majority of the ownership interests in the Borrower, and its assets, including without limitation the Collateral (whether in a single transaction or a series of transactions during any consecutive 12-month period).

7. Events of Default; Acceleration. The occurrence of any one or more of the following events shall constitute a default under this Agreement:

7.1. False Statements. If any statement, representation or warranty made by the Borrower [or the Guarantor] in this Agreement or in connection herewith or in any financial statement, report, schedule, or certificate furnished by it or any of its officers or accountants to the Lender during the term of this Agreement, whether made prior or subsequent to the Closing, shall prove to have been materially incorrect as of the date thereof.

7.2. Payment Default. Default by the Borrower or Guarantor in payment on the due date of any principal or interest called for under the Note.

7.3. Failure to Perform Other Loan Obligations. Default by the Borrower or Guarantor in the performance or observance of any of the other provisions, terms, conditions, warranties or covenants of the Loan Documents.

7.4. Default to Third-Party Creditors. The occurrence of any event such that any material indebtedness of Borrower or Guarantor to any lender other than the Lender, whether presently existing or hereafter arising, could be accelerated, notwithstanding that such acceleration has not taken place; failure of the Borrower or Guarantor to pay its debts as they become due, as applicable.

7.5. Bankruptcy. Any action by or against the Borrower or Guarantor, either voluntary or otherwise, under any state or federal Bankruptcy or insolvency laws or an assignment by the Borrower or Guarantor for the benefit of creditors generally.

7.6. Appointment of Receiver. The ordering, appointment or election of a receiver, assignee or trust mortgagee for all or substantially all of the property of the Borrower or Guarantor.

7.7. Action for Relief of Debtors. Commencement by or against the Borrower or Guarantor of any proceeding, judicial or otherwise, intended for the relief of debtors, including but not limited to, extensions, compositions, or partial liquidations.

7.8. Judgment. Final judgment for the payment of money, not covered at least eighty percent (80%) by insurance proceeds, in excess of [Ten Thousand Dollars (\$10,000)] shall be rendered against the Borrower or Guarantor and remain undischarged for a period of thirty (30) days, during which execution shall not be effectively stayed.

7.9. Death/Dissolution/Merger. If the Borrower or Guarantor shall die (if an individual), dissolve or liquidate, or be dissolved or liquidated, or cease to legally exist, or merge or consolidate, or be merged or consolidated with or into any other entity.

7.10. Assignment. Any attempt by Borrower or Guarantor to assign its rights under the Loan Documents or any advance made or to be made hereunder from the Loan or any interest therein.

7.11. Adverse Change. The occurrence of any event or circumstance with respect to Borrower or Guarantor such that the Lender shall believe in good faith that the prospect of payment of all or any part of the Loan or the performance by Borrower or Guarantor under this Agreement or any other agreement between the Lender and Borrower is impaired or there shall occur any material adverse change with respect to the business or financial condition of Borrower or Guarantor.

7.12. Cross-Default. The occurrence of any event of default beyond applicable notice and grace periods under any agreement between the Lender and Borrower or instrument or paper given by Borrower or Guarantor to the Lender, whether such agreement, instrument, or paper now exists or hereafter arises (notwithstanding that the Lender may not have exercised its rights upon default under any such other agreement, instrument or paper).

Upon the occurrence of any event of default, all of the obligations of the Borrower or Guarantor under the Loan Documents will immediately become due and payable without

demand, notice or protest, all of which are hereby expressly waived. Thereafter, the Lender may proceed to protect and enforce its rights, at law, in equity, or otherwise, against the Borrower or Guarantor or any endorser or guarantor of the aforementioned obligations individually as specified in the related loan documentation, and may proceed to liquidate and realize upon any of its Collateral in accordance with the power of sale or with the rights of a secured party under the Uniform Commercial Code or any other applicable law, or under any agreement between the Borrower or Guarantor and the Lender or any agreement between the Guarantor or endorser of any of the Borrower's or the Guarantor's obligations to the Lender.

8. Indemnifications.

8.1. General Indemnification. To the extent permitted by law, the Borrower [and the Guarantor] (collectively, the "Indemnitors") shall jointly and severally indemnify, defend and hold harmless the Lender against and from any and all claims, judgments, damages, penalties, fines, assessments, costs and expenses, liabilities and losses (including without limitation damages for the loss or restriction on the use of the Premises, sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees) resulting or arising during the term of the loan:

a. from any condition of the Premises, including any building structure or improvement thereon;

b. from any breach or default on the part of the Indemnitors in the performance of any mortgage lien or agreement to be performed pursuant to the terms of the Loan, or from any act or omission of the Indemnitors or any of their agents, contractors, servants, employees, subloans, licensees or invitees; or

c. from any accident, injury or damage whatsoever caused to any person occurring during the term of the loan, on the Premises or areas adjacent thereto.

8.2. Environmental Protection. The Indemnitors shall jointly and severally indemnify, defend and hold harmless the Lender against and from all claims, judgments, damages, penalties, fines, costs and expenses, liabilities and losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on the use of the Premises, and sums paid in settlement of claims, reasonable attorney's fees, consultant's fees and experts' fees) resulting or arising from discharges, emissions, spills, release, storage, or disposal of any hazardous substances or any other action by the Indemnitors or any sublessee or assignee of the Indemnitors, giving rise to any liability (civil or criminal) or responsibility of the Lender under federal, state or local environmental laws.

This indemnification includes, without limitation, any and all claims, judgments, damages, penalties, fines, costs and expenses, liabilities and losses incurred by the Lender in connection with any investigation or site conditions, or any remedial or removal action or other site restoration work required by any federal, state or local governmental unit or other person for or pertaining to any discharges, emissions, spills, release, storage or disposal of hazardous substances arising or resulting from any act or omission of the at the Premises.

The provisions of this Section 8 shall survive the expiration or termination of the

Loan and the Loan Documents.

9. Miscellaneous Provisions.

9.1. Entire Agreement and Waivers. This Agreement, the Commitment (to the extent consistent with this Agreement), the Note, the Security Documents, the Guaranty Documents and the other documents referenced in or related to any of the foregoing constitute the entire Agreement among the Borrower, the Guarantor and the Lender with respect to the Loan and no covenant, term, condition or other provision thereof nor any default in connection therewith may be waived except by an instrument in writing signed by the Lender and delivered personally or by mail to the Borrower. The Lender's failure to exercise or enforce any of its rights, powers or privileges under this Agreement, the Note, any Security Documents or the Guaranty Documents shall not operate as a waiver thereof.

9.2. Joint and Several Liability. If more than one party executes this Agreement as Borrower, or executes a Guaranty as Guarantor, the term "Borrower" or "Guarantor(s)" shall mean all of them and each of them shall be jointly and severally liable.

9.3. Captions. Captions are used for convenience of reference only and are not to be construed as part of the terms of this Agreement.

9.4. Power of Attorney. The Borrower hereby irrevocably appoints the Lender as its attorney-in-fact with power to do any and all things necessary to protect or dispose of the Collateral and all proceeds thereof in any way that Lender sees fit, in full or partial payment of the amounts owed to Lender, and to endorse the name of Borrower upon any notes and checks or other instruments or documents relating to the Collateral.

9.5. Remedies Cumulative. All remedies provided under any of the Loan Documents or afforded by law shall be cumulative and available to the Lender until all obligations of the Borrower to the Lender thereunder have been paid or otherwise satisfied in full.

9.6. Survival of Covenants. All covenants, agreements, representations and warranties made herein or prior to the Closing in connection with the Lender's commitment to make the Loan shall be deemed material and relied on by the Lender or in its behalf, and shall survive the execution and delivery of the Loan Documents. All such covenants, agreements, representations and warranties shall bind and inure to the benefit of the Borrower's and the Lender's respective successors and (with respect to the Borrower, permitted) assigns, whether so expressed or not.

9.7. Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be interpreted in accordance with and governed by the laws of the State of New Hampshire. The Borrower and the Guarantor irrevocably submits to the jurisdiction of any New Hampshire state court or the United States District Court for the District of New Hampshire over any suit, action or proceeding arising out of or relating to this Agreement and agrees that such courts shall have exclusive jurisdiction over any suit, action or proceeding. The Borrower and the Guarantor irrevocably waives, to the fullest extent it may do so under applicable law, any objection it may have or hereafter have to the laying of the venue of any such suit, action or proceeding brought in

any such court and any claim that the same has been brought in an inconvenient forum. The Borrower and the Guarantor irrevocably appoints the Secretary of State of the State of New Hampshire as its authorized agent to accept and acknowledge on its behalf any and all process which may be served in any such suit, action or proceeding, consents to such process being served either (i) by mailing a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to its address appearing on the first page hereof or (ii) by serving the same upon such agent and agrees that such service shall in every respect be deemed effective service upon it. The Borrower and the Guarantor hereby knowingly, voluntarily and intentionally waives any right it may have or hereafter have to a trial by jury in respect of any suit, action or proceeding arising out of or relating to this Agreement.

9.8. Assurance of Execution and Delivery of Additional Instruments. The Borrower and the Guarantor agree to execute and deliver, or to cause to be executed and delivered, to the Lender all such further instruments, and to do or cause to be done all such further acts and things, as the Lender may request or as may be necessary or desirable to effect further the purposes of this Agreement and the collection of the Note and any security therefor.

9.9. Rate of Interest After Due Date. Notwithstanding anything in this Agreement to the contrary, any principal sums and any obligations respecting interest remaining unpaid subsequent to the date when they are due and payable or may become or be declared due and payable pursuant to this Agreement shall bear interest at the rate which is two (2) percentage points per annum greater than that which would otherwise be applicable as set forth in the Note or at the rate set forth in New Hampshire RSA Chapter 336:1 (or successor statute), whichever is greater, until paid in full, irrespective of the commencement of suit or the taking of judgment against the Borrower.

9.10. Waivers and Assents by the Borrower. The Borrower and the Guarantor hereby waives demand, notice, protest, notice of acceptance of this Agreement, notice of Loan made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demands and notice of any description with respect both to liabilities and collateral. The Borrower and the Guarantor also waives any rights to set off with respect to all or any portion of the Loan Proceeds and any further amounts due hereunder. The Borrower and the Guarantor assent to any extension or postponement of the time of payment or any other indulgence; to any substitution, exchange or release of collateral; to the addition or release of any party or person primarily or secondarily liable hereunder or under the Notes; to the acceptance of partial payments thereon; and to the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Lender may deem advisable in its sole and absolute discretion.

9.11. Notices. All notices given hereunder shall be in writing and shall be deemed to be received on the date such notice has been deposited in the United States mails, postage prepaid, certified or registered, return receipt requested, addressed to the Borrower, the Guarantor or the Lender at their addresses appearing on the first page hereof, or to such other address or addresses as the parties may from time to time specify by notice so given.

9.12. Election of Lender. The Lender may exercise its rights with respect to any Collateral without regard to other collateral, guarantors or endorsers or other sources of

reimbursement. Notwithstanding any other provisions contained in this Agreement or the documents related thereto, the Lender's obligation to continue to lend hereunder is subject to it being continually satisfied in its sole judgment that it is then and will continue to be at all times fully and adequately secured under the Security Documents, and if at any time the Lender determines that the Loan will not be adequately secured, in its sole judgment, the Lender may cease to lend or reduce its lending hereunder and/or require the Borrower and/or the Guarantor to provide additional equity in an amount satisfactory to the Lender and/or provide additional collateral satisfactory to the Lender, and should the Borrower or the Guarantor fail or be unable to comply with the Lender's requirements hereunder, the Lender may declare a default hereunder.

9.13. Assignment by Lender. If at any time, by assignment or otherwise, the Lender transfers any liabilities and collateral therefor, such transfer shall carry with it the powers and rights of the Lender under this Agreement with respect to the liabilities and the collateral so transferred and the transferee shall become vested with such powers and rights, whether or not they are specifically referred to in the instrument evidencing the transfer. If, and to the extent that, the Lender retains liabilities and collateral, the Lender shall continue to have the rights and powers herein set forth with respect thereof.

9.14. Rights and Obligations of Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Lender and the Borrower, the Guarantor, their successors and assigns; provided, however, the rights of the Borrower hereunder are not assignable or transferable without the prior written consent of the Lender. All of the rights of the Lender hereunder shall inure to the benefit of any participating Lender or Lenders and its or their successors and assigns.

9.15. Unenforceable Provisions. If any court of competent jurisdiction shall hold any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

9.16. Addenda. Any addendum attached to this Agreement is incorporated herein and made a part hereof. Any representations, warranties, covenants or terms set forth in any addendum hereto are in addition to the representations, warranties, covenants and terms of this Agreement.

9.17. Counterparts. This Loan Agreement may be executed in one or more Counterparts, each of which shall be deemed an original.

9.18. 399-B Compliance. In connection with the loan transaction set forth in this Agreement, the Borrower and the Guarantor are hereby informed and advised pursuant to New Hampshire RSA 399-B that they shall be liable for and shall pay the following charges with respect to the Loan as defined herein.

a. Principal Amount of Loan. The maximum principal amount of the Loan shall be **Three Million and No/100ths Dollars (\$3,000,000.00)**.

b. Interest. Interest shall be paid in arrears monthly on the principal balance then outstanding. Interest shall be paid on the basis of a fixed rate equal to four and three-

quarters percent (4.75%) per annum. Interest shall be calculated on the basis of the actual number of days elapsed over a banking year of 360 days.

c. Loan Payments. Loan payments shall be made in accordance with the terms of the Note. The monthly payments of principal and interest shall be _____ Dollars (\$ _____). On the Maturity Date (as defined in the Note), the Borrower shall pay to the Lender the entire principal balance then outstanding, together with accrued and unpaid interest thereon and any other charges due under the Loan Documents.

d. Origination Fee. None.

e. Prepayment Penalty. The terms of any prepayment penalty or premium are set forth in the Note.

f. Default Interest Rate. In the event of any Event of Default, as defined in this Agreement, the Borrower shall pay and the Lender shall be entitled to collect default interest as further set forth in Paragraph 9.9, above.

g. Late Charges. If any payment of principal or interest is not paid in full within ten (10) days after the same is due, there will be a processing fee on such unpaid amount as further set forth in the Note.

h. Additional Costs and Expenses. The Borrower shall pay certain costs, title insurance premiums, recording and filing fees, attorneys' fees and other expenses in connection with the closing of the transaction, as set forth in the Closing Statement.

9.19. Legal Representation. Hinckley, Allen & Snyder LLP ("Lender's Counsel") is acting as attorney solely for the Lender, with respect to Borrower's loan, and does not represent Borrower or the Guarantor in connection with this loan. Borrower and Guarantor are: (a) responsible for payment of all legal fees and disbursements incurred by Lender's Counsel; and (b) urged to seek independent advice from an attorney of their own choice and engage their own attorney to represent their interests in connection with this transaction.

WITNESS the signatures of the duly authorized representatives of the parties as of the date first above written.

Execution by the Parties:

LENDER:
BUSINESS FINANCE AUTHORITY OF THE
STATE OF NEW HAMPSHIRE

Witness

By: _____
Name:
Its
Hereunto Duly Authorized

Execution by the Parties:

BORROWER:
ROCHESTER ECONOMIC
DEVELOPMENT COMMISSION

Witness

By: _____
Name:
Its
Hereunto Duly Authorized

GUARANTOR:
CITY OF ROCHESTER, NEW
HAMPSHIRE

Witness

By: _____
Name:
Its
Hereunto Duly Authorized

**AS TO THE REPRESENTATIONS AND
WARRANTIES HEREIN, LDI:**

LDI SOLUTIONS, LLC

Witness

By: _____
Name:
Its
Hereunto Duly Authorized

Exhibit A - Property Description

SCHEDULE 4.6 – Permitted Encumbrances and Pre-Existing Debt

GUARANTY AGREEMENT

This GUARANTY AGREEMENT (the "Guaranty Agreement") is entered into as of the _____ day of _____, 2020 by and between the City of Rochester, New Hampshire (the "Guarantor"), a municipality within the State of New Hampshire and the Business Finance Authority of the State of New Hampshire, a public body corporate and agency of the State of New Hampshire (the "State") with a principal place of business at 2 Pillsbury Street, Suite 201, Concord, New Hampshire 03301 (together with its successors and assigns the "Lender").

W I T N E S S E T H:

WHEREAS, in accordance with a certain term promissory note in the aggregate principal amount of THREE MILLION DOLLARS (\$3,000,000) (the "Note"), executed pursuant to a Loan Agreement of even date herewith, by and among the Lender, the Guarantor and Rochester Economic Development Commission, a New Hampshire local development organization and an instrumentality of the City of Rochester, New Hampshire (the "Borrower") and related loan documents of even date (collectively, the "Loan Documents"), the Lender has agreed to loan the Borrower THREE MILLION DOLLARS (\$3,000,000) (the "Loan"); and

WHEREAS, the obligation of the Lender to make the Loan to the Borrower is subject to the condition, among others, that the Guarantor shall execute and deliver this Guaranty Agreement; and

WHEREAS, the aforesaid Loan will be beneficial to the Guarantor inasmuch as the proceeds of the Loan to the Borrower will indirectly benefit the Guarantor;

NOW, THEREFORE, in order to induce the Lender to make the Loan to the Borrower pursuant thereto, and for other good and valuable consideration, the receipt of which is hereby acknowledged by the Guarantor, the Guarantor hereby agrees as follows:

1. Guaranteed Obligations. The Guarantor does hereby irrevocably and unconditionally guarantee, on a joint and several basis with any other guarantor, the due and punctual indefeasible payment and performance of the following obligations to the Lender (individually, a "Guaranteed Obligation" and together the "Guaranteed Obligations");

(a) Principal of and premium, if any, and interest on the Note, when the same becomes due and payable (subject to any applicable cure period), whether on demand or by acceleration or otherwise;

(b) Any and all other obligations of the Borrower to the Lender under the Loan Agreement, the Loan Documents, the Note and any obligations arising under any now existing or hereafter arising Letter(s) of Credit, foreign exchange contracts, interest rate swap, cap, floor or hedging agreements, or similar agreements or in connection with any Automated Clearing House ("ACH") agreements related to the processing of ACH transactions, together with all fees and expenses, charges and other amounts owing by or chargeable to the Borrower under the ACH agreements;

(c) Any and all reasonable out-of-pocket expenses that may be incurred by the Lender in collecting all or any of the Guaranteed Obligations, including reasonable attorneys' fees; and

(d) Any and all other indebtedness or obligation of any other guarantor under this Guaranty with respect to the Guaranteed Obligations.

2. Demand by the Lender. Upon any failure by the Borrower to punctually pay or perform any Guaranteed Obligation when due, the Lender may make demand upon the Guarantor for the payment or performance of such Guaranteed Obligation and the Guarantor binds and obliges himself to make such payment or performance forthwith upon such demand.

3. Waiver of Demands, Notices, Diligence, etc. The Guarantor hereby assents to all the terms and conditions of the Guaranteed Obligations and waives, to the fullest extent permitted by law, (a) demand for the payment of the principal of any Guaranteed Obligation or of any claim for interest or any part of any thereof (other than the demand provided for in Section 2 hereof); (b) protest of the nonpayment of the principal of any Guaranteed Obligation or of any claim for interest or any part of any thereof; (c) notice of presentment, demand and protest; (d) notice of acceptance of any guaranty herein provided for or of the terms and provisions thereof or hereof by the Lender; (e) notice of any indulgences or extensions granted to the Borrower or any person or party which shall have assumed the obligations of the Borrower; (f) any requirement of diligence or promptness on the part of the Lender in the enforcement of any of its rights under the provisions of any Guaranteed Obligations or this Guaranty; (g) any enforcement of any Guaranteed Obligation; and (h) any right which the Guarantor might have to require the Lender to proceed against any other guarantor of the Guaranteed Obligations or to realize on any collateral security for the Guaranteed Obligations. The waivers set forth in this Section 3 shall be effective notwithstanding the fact that the Borrower ceases to exist by reason of its liquidation, merger, consolidation or otherwise.

4. Obligations of Guarantor Unconditional. (a) The obligations of the Guarantor under this Guaranty Agreement shall be unconditional, irrespective of the validity, regularity or enforceability of any Guaranteed Obligation, and shall not be affected by any action taken under any Guaranteed Obligation in the exercise of any right or remedy therein conferred, or by any failure or omission on the part of the Lender to enforce any right given thereunder or hereunder or any remedy conferred thereby or hereby, or by any waiver of any term, covenant, agreement or condition of any Guaranteed Obligation or this Guaranty Agreement, or by any release of any security or any other guaranty at any time existing for the benefit of any Guaranteed Obligation, or by any sale, lease or transfer by the Guarantor to any person of any or all of the Guarantor's properties, or by any action of the Lender granting indulgence or extension to, or waiving or acquiescing in any default by the Borrower or any guarantor, or any successor to the Borrower or any guarantor or any person or party which shall have assumed its obligations, or by reason of any disability or other defense of the Borrower or any guarantor or any successor to the Borrower or any guarantor, or by any modification, alteration, or by any circumstance whatsoever (with or without notice to or knowledge of the Guarantor) which may or might in any manner or to any extent vary the risk of the Guarantor hereunder, it being the purpose and intent of the Guarantor that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and

all circumstances and shall not be discharged except by payment or performance as herein provided, and then only to the extent of such payment or performance.

(b) For purposes of this Guaranty and notwithstanding contrary provisions in any document executed by Lender and the Borrower, all Guaranteed Obligations shall be deemed immediately accelerated, without notice or demand, and shall become immediately due and owing upon occurrence of any of the foregoing events:

- (i) in the event the Borrower, or the Guarantor, or any of them, makes an assignment for the benefit of creditors, files a petition in bankruptcy, has an order for relief entered against it or any of them, petitions or applies to any tribunal for a receiver or any trustee of any substantial part of its or their property; or commences any proceeding related to the Borrower, or the Guarantor, or any of them, under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the Borrower, or any Guarantor, or any of them, any such proceeding, which proceeding is not dismissed within ninety (90) days of its commencement; or the Borrower, or any Guarantor, or any of them, by any act indicates its consent to, approval of, or acquiescence to any such proceeding or the appointment of any receiver of, custodian or trustee for the Borrower or the Guarantor or any substantial part of its or their property, or the Borrower, or upon the issuance of any attachment or execution against the Borrower, or any Guarantor or any of them, or any governmental agency or instrumentality shall seize, appropriate, condemn, occupy or interfere in any manner with any of the Borrower's, or the Guarantor's, or any of their, operation of, all or any substantial portion of its property, or such property or any right of the Borrower therein shall be subject to judicial process or condemnation or forfeiture proceedings; or,
- (ii) sale, exchange, or any other transfer of any of the Guarantor's property, except in an arm's length transfer for adequate consideration, and which does not result in any material diminution in any Guarantor's net worth, or the substantial diminution of its net worth as the same exists as of the date hereof, without the prior written consent of Lender.

5. Continuing Nature of Guaranty. The obligation of the Guarantor under this Guaranty Agreement shall continue in full force and effect, notwithstanding any intermediate or temporary payments or settlement of the whole or any part of the Guaranteed Obligations. This Guaranty Agreement shall not be discharged until such time as (i) all Guaranteed Obligations shall be finally and indefeasibly paid in full, (ii) all covenants, terms, conditions and undertakings of the Guarantor shall be complied with and performed, and (iii) the Lender shall deliver a final discharge in writing to the Guarantor. In the event of any discontinuance or termination of this Guaranty Agreement in any manner, all indebtedness and obligations included within the term Guaranteed Obligations under Section 1 herein (including, without limitation, the Note and the Loan Documents) executed, issued, drawn or made by, or for the account of, the Borrower or any of its agents purporting to be dated on or before the date of such discontinuance or termination becomes known to the Lender, and all advances and payments made pursuant thereto even though

made after such date, shall form part of the Guaranteed Obligations for which the Guarantor shall be liable under the terms hereof.

6. Subordination of Claims of Guarantor; Security. Any claim against the Company or any guarantor to which the Guarantor may be or become entitled (including, without limitation, claims by subrogation or otherwise by reason of any payment or performance by the 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.

In addition to any other security given by the Guarantor to the Lender, after the occurrence of an Event of Default which has not been cured within any applicable cure period, the Lender 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 the Guarantor and any proceeds thereof (including proceeds of sales provided for below) now or hereafter in the possession of the Lender for any purpose, including safekeeping or pledge for this or any other liability of the Guarantor, and including any balance on deposit or otherwise for the account of, to the credit of, or belonging to the Guarantor.

The Lender is hereby authorized and empowered, at its option, at any time after the Guaranteed Obligations become payable, to sell, assign and deliver any securities or property at any time given unto or left in the possession or custody of the Lender for any purpose (including safekeeping or pledge for this or any other liability of any of the Guarantor) by or for the Guarantor, or in which the Guarantor may have an interest, at public or private sale, for cash or upon credit, or for future delivery, all at the option of the Lender, upon thirty (30) days prior written notice to the Guarantor.

7. Notices, etc. All notices, demands, requests or other communications required or permitted under the terms of this Guaranty shall be in writing and, unless and until otherwise specified in a written notice by the party to whom notice is intended to be given, shall be sent to the parties at the respective addresses set forth in the preamble to this Guaranty.

Notices may be given on behalf of any party by its legal counsel.

Each such notice, demand, request or other communication shall be deemed to have been properly given for all purposes if (i) delivered against a written receipt of delivery, (ii) mailed by certified mail of the United States Postal Service, return receipt requested, postage prepaid, (iii) delivered to a nationally recognized overnight courier service for next business day delivery, or (iv) hand delivered, to its addressee at such party's address as set forth in the preamble thereof.

Each such notice, demand or request shall be deemed to have been given upon actual receipt of first refusal of the addressee to accept delivery.

8. Survival of Guaranty, etc. It is agreed that the Guarantor's liability hereunder is joint and several with and independent of any other guarantees at any time in effect with respect

to all or any part of the Guaranteed Obligations to the Lender. It is agreed that Guarantor's liability is independent of any other guaranties at any time in effect with respect to all or any part of the Guaranteed Obligations and that Guarantor's liability and obligations hereunder may be enforced regardless of the existence of any such other guaranties. This Guaranty shall inure to the benefit of and be binding upon the Guarantor and the Lender and their respective successors and assigns, including any subsequent holder or holders of any Guaranteed Obligations, and the term "Lender" shall include any such holder or holders whenever the context permits. This Guaranty Agreement is intended to take effect as a sealed instrument.

9. Lender's Freedom to Deal with the Borrower and Other Parties. The Lender shall be at liberty, without giving notice to or obtaining the assents of the Guarantor and without relieving the Guarantor of any liability hereunder, to deal with the Borrower and with each other party who now is or after the date hereof becomes liable in any manner for any of the Guaranteed Obligations, in such manner as the Lender in its sole discretion deems fit, and to this end the Guarantor gives to the Lender full authority in its sole discretion to do any or all of the following things:

(a) Extend credit, make loans and afford other financial accommodations to the Borrower at such times, in such amounts and on such terms as the Lender may approve;

(b) Vary the terms and grant extensions or renewals of any present or future indebtedness or obligations to the Lender of the Borrower or of any such other party;

(c) Grant the time, waivers and other indulgences in respect thereto;

(d) Vary, exchange, release or discharge, wholly or partially, or delay in or abstain from perfecting and enforcing any collateral, security, guaranty or other means of obtaining payment of any of the Guaranteed Obligations which the Lender now has or acquires after the date hereof;

(e) Accept partial payments from the Borrower or any such other part;

(f) Release or discharge, wholly or partially, any endorser or guarantor; and

(g) Compromise or make any settlement or other arrangement with the Borrower or any such other party.

10. Counterparts. This Guaranty Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of the counterparts shall together constitute one and the same instrument.

11. Governing Law; Jurisdiction, Waiver of Jury Trial. This Guaranty Agreement shall be construed in accordance with and governed by the laws of the State, excluding choice of law rules or rulings. The Guarantor, to the extent that it may lawfully do so, hereby consents to the jurisdiction of the courts of the State and the United States District Court for the District of New

Hampshire, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts, for the purpose of any suit, action or other proceeding arising out of any of its obligations hereunder or with respect to the transactions contemplated hereby, and expressly waives any and all objections he may have as to venue in any such courts.

12. Jury Trial Waiver. GUARANTOR AND THE LENDER (BY ACCEPTANCE OF THIS GUARANTY AGREEMENT) MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREIN, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY AGREEMENT OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF SECURED PARTY RELATING TO THE ADMINISTRATION OF THE LOANS OR ENFORCEMENT OF THE LOAN DOCUMENTS, AND AGREE THAT NEITHER PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE OR HAS NOT BEEN WAIVED.

13. Representations, Warranties and Agreements of the Guarantor. The Guarantor represents and warrants to and agrees with the Lender that, as of the date hereof: [CITY COUNSEL TO CONFIRM/REVISE]

- (a) the Guarantor is authorized by the laws of the State to adopt the proceedings authorizing this Guaranty Agreement (the "Note Proceedings") and to issue the Guaranty, the Guarantor has duly and validly adopted the Note Proceedings, and the Guarantor has complied and will have complied as of the date hereof in all material respects with the Note Proceedings and the laws of the State in connection with the issuance of the Guaranty and has full legal right, power and authority to enter into this Guaranty Agreement;
- (b) by official action of the Guarantor taken prior to or concurrent with the acceptance hereof, the Guarantor has duly authorized, approved and consented to all necessary action to be taken by the Guarantor for: (i) the execution, delivery and performance of this P Guaranty Agreement and the transactions contemplated hereby; (ii) the issuance of the Guaranty upon the terms set forth herein and the Loan Agreement; and (iv) the execution, delivery and due performance of any and all other agreements and instruments that may be required to be executed and delivered by the Guarantor to which it is a party in order to carry out, to give effect to and to consummate the transactions contemplated by this Guaranty Agreement;
- (c) this Guaranty Agreement, when duly authorized, executed and delivered by the parties hereto, will constitute a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with the terms hereof, except to the extent that enforcement hereof may be limited by bankruptcy, insolvency or other laws or legal or equitable principles affecting the enforcement of creditors' rights generally ("Creditors' Rights Limitations");

- (d) the execution and delivery by the Guarantor of the Guaranty Agreement and compliance with the obligations on the Guarantor's part contained therein and herein will not conflict with or constitute a breach of or default under any material constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, ordinance, resolution, agreement or other instrument to which the Guarantor is a party or to which the Guarantor or any of its properties or other assets is otherwise subject, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or other assets of the Guarantor under the terms of any such law, regulation or instrument, except as provided or permitted by the aforementioned documents;
- (e) all approvals, consents and orders, if any, of any governmental authority, legislative body, board or agency having jurisdiction in any matter that would constitute a condition precedent to or the absence of which would materially and adversely affect the due performance by the Guarantor of its obligations under this Guaranty Agreement and the transactions contemplated hereby and thereby have been, or prior to the date hereof will have been, duly obtained;
- (f) the Guaranty, when issued and delivered in accordance with the Note Proceedings, will be a valid and legally enforceable general obligations of the Guarantor.
- (g) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency or public board or body pending or, to the best knowledge of the Guarantor, threatened adversely affecting the existence of the Guarantor or the entitlement of its elected officials to their respective offices, or that may affect or seeks to prohibit, restrain or enjoin the issuance or delivery of the Guaranty or the execution and delivery of this Guaranty Agreement, or that contests the powers of the Guarantor or any authority or proceedings for the issuance or delivery of the Guaranty or the adoption of the Note Proceedings or the execution and delivery of this Guaranty Agreement;
- (h) the Guarantor is not in violation of or in default (or with the lapse of time and/or receipt of appropriate notice would be in default) under any existing applicable law, court or administrative regulation, judgment, decree, order, agreement, indenture, mortgage, lease or sublease to which the Guarantor or any of its properties is a party or is otherwise bound that would have a material and adverse effect upon the financial condition or operations of the Guarantor or the transactions contemplated by this Guaranty Agreement; and
- (i) to the best of the Guarantor's knowledge, the Guarantor has never defaulted in the payment of the principal of or interest on any of its bonds, notes or other debt obligations.

14. Miscellaneous. All capitalized terms not otherwise defined in this Agreement shall have the same meaning as set forth with the Loan Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Guaranty Agreement as a sealed instrument as of the date first above written.

Witness

By: _____

_____,
Duly Authorized President

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, duly authorized _____ of the City of Rochester, a New Hampshire municipality.

Justice of the Peace/Notary Public
My Commission Expires: _____
Notary Seal

June 24, 2020

Business Finance Authority of
the State of New Hampshire
2 Pillsbury Street, Suite 201
Concord, NH 03301

Loan to Rochester Economic Development Commission

Ladies and Gentlemen:

This letter shall evidence our agreement concerning a proposed loan of the Business Finance Authority of the State of New Hampshire (the "Authority") to Rochester Economic Development Commission (the "Borrower"), a local development organization, in the principal amount of up to Three Million Dollars (\$3,000,000) (the "Loan"). The Authority has issued to the Borrower its commitment to recommend that Governor and Council of the State of New Hampshire approve the Loan.

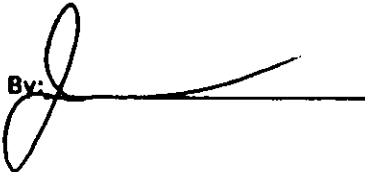
Rochester Economic Development Commission has determined that the Loan would promote orderly development of business in the city of Rochester and is consistent with local and regional development plans and policies. In accordance with RSA 162-A:7, II we agree upon the terms and conditions of the Loan as described in the commitment letter attached hereto as Exhibit A. We understand that no loan will be consummated without approval of Governor and Council of the State of New Hampshire.

Rochester Economic Development Commission

By: 

Business Finance Authority of the State of New Hampshire hereby agrees to recommend that Governor and Council approve the Loan as described above.

Business Finance Authority of the State of New Hampshire

By: 

A RESOLUTION REQUESTING AUTHORIZATION FOR A LOAN BY THE BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE TO ROCHESTER ECONOMIC DEVELOPMENT COMMISSION, A LOCAL DEVELOPMENT ORGANIZATION, PURSUANT TO THE AUTHORITY'S AID TO LOCAL DEVELOPMENT ORGANIZATIONS PROGRAM

I, the undersigned, HEREBY CERTIFY that the following are true and correct.

WHEREAS, THE BUSINESS FINANCE AUTHORITY OF NEW HAMPSHIRE (the "AUTHORITY") has been requested by Rochester Economic Development Commission, a local development organization organized and existing under the laws of the State of New Hampshire (the "LDO"), to make a loan to a local development organization, organized and existing under the laws of the State of New Hampshire, in the principal amount of up to Three Million and no/100 dollars (\$3,000,000.00) (the "Loan") to provide loan capital to the expansion and retention of businesses.

WHEREAS, the Credit Committee of the Board of Directors of the Authority has recommended that the Authority make the Loan in accordance with the terms and conditions presented to the Board pursuant to a Loan Agreement to be executed by the Lender and the Authority;

WHEREAS, the Authority took official action with respect to the Loans by passing a resolution on September 16, 2019;

WHEREAS, the Authority has been furnished with (a) information and materials about the Borrower and the Loan, (b) the proposed terms and conditions of the Loan, (c) certain financial information concerning the LDO; and (d) other information, materials and assurances deemed relevant by the Authority;

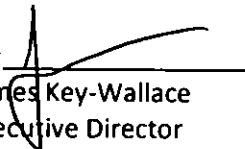
IT IS HEREBY RESOLVED THAT:

1. Factual Findings: On the basis of the information, materials and assurances received by the Authority and considered by it, the Authority finds:
 - a. The Loan would be evidenced by a five year (5) term note to Rochester Economic Development Commission (REDC).
 - b. The Lender would be the Business Finance Authority of the State of New Hampshire.
 - c. The Authority is authorized and empowered under RSA 162-A:7 to make loans recommended by local development organizations to finance the acquisitions of real or personal property.
 - d. The Loan will enable the LDO to further assist in the business development in the city of Rochester.
2. Special Findings:
 - a. The Loan to be made by the Authority is consistent with local or regional development plans or policies.
3. General Findings:
 - a. Making the Loan as proposed will serve a public use and provide a public benefit.

- b. Making the Loan as proposed is within the policy of, and the authority conferred by, RSA Chapter 162-A.
 - c. Making the Loan as proposed will preserve or increase the social welfare or economic prosperity of the state and one or more of its political subdivisions, and will promote the general welfare of the state's citizens.
 - d. Making the Loan as proposed will promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment.
4. Determination and Recommendation: The Authority finds that making the Loan as proposed will serve a public use and provide a public benefit and determines that making the Loan as proposed will be within the policy of, and the authority conferred by the Act. The Authority recommends to His Excellency, the Governor, and The Honorable Council that they make findings and a determination similar to those set forth above, and for that purpose the Executive Director, Chairman, or Vice Chairman is authorized, empowered and directed to transmit to the Governor and Council copies of this resolution, the materials received by the Authority with respect to the Loan and any other documentation and information the Governor and Council may request.
5. Authorization of Agreement: The Authority hereby authorizes the execution and delivery of a letter of intent of the Authority by the Executive Director or the Senior Credit Officer of the Authority to the Lender, which letter of intent may propose the Loan by the Authority subject to the parameters, terms and conditions as presented to the Board by the Credit Committee. Subject to paragraph 6 below the Executive Director, Chairman or Vice Chairman is authorized, empowered and directed to execute and deliver a loan agreement on behalf of the Authority pursuant to the requirements of the Act which shall contain parameters, terms and conditions substantially consistent with those presented to the Board by the Credit Committee and the terms and conditions established by the Board, but subject to such changes and completion consistent with this resolution as the Executive Director, Chairman or Vice Chairman may approve, his signature being conclusive identification of the loan purchase agreement, and completed and authorized by this resolution.
6. Actions Not to be Taken Until After Approval by Governor and Council: Except for the execution and delivery of the Authority's letter of intent by the Executive Director or the Senior Credit Officer of the Authority to the Lender, the actions authorized by paragraph 5 above shall not be taken until such time as Governor and Council have made the findings and determination required by the Act, it being the intent of the Authority that the various actions on its behalf which are authorized above are subject to the action of Governor and Council as required by the Act.
7. Other Actions by Officers: The Chairman, Vice Chairman, Executive Director, and Senior Credit Officer of the Authority are each authorized, empowered and directed to take all other actions and execute, deliver or receive such instruments and certificates as each of them may determine are necessary on behalf of the Authority in connection with the transactions authorized by the preceding paragraphs of this resolution, but subject in all events to paragraph 6 hereof.
8. Effective Date: This resolution shall take effect upon its passage.

IN WITNESS WHEREOF, I have set hereunto my hand and affixed the seal of the Business Finance Authority of the State of New Hampshire on this 24th day of June, 2020.

BUSINESS FINANCE AUTHORITY
THE STATE OF NEW HAMPSHIRE

By: 
James Key-Wallace
Executive Director

SUMMARY OF REQUIRED STATUTORY FINDINGS OF THE GOVERNOR AND COUNCIL UNDER RSA 162-A:18

The materials appearing in quotations below are extracts from RSA 162-A:18. The complete text of RSA 162-A:18 is attached to this summary.

General Findings

- 1. "The proposed action will serve a public use and provide a public benefit."**

The proposed agreement by and between the Authority and the Borrower (the "Agreement") and the "Note" and the "Security Instruments", as defined in the Agreement contain commercially prudent financial safeguards and workable provisions designed to lessen the potential of the Authority's loss in the event of default by the Borrower. The Authority has determined that the proposed loan would enable Rochester Economic Development Commission to further assist business development opportunity for the city of Rochester. The materials and information furnished and the findings described below support, and enable the making of, this general finding.

- 2. "The proposed action is within the policy of, and the authority conferred by, this chapter."**

The Agreement with Rochester Economic Development Commission implements and incorporates all statutory requirements. The Authority, which is the agency responsible for administration of RSA 162-A, has determined that the proposed loan by the Authority is within the policy of, and the authority conferred by RSA Chapter 162-A. The materials and information furnished and the findings described below support, and enable the making of, this general finding.

- 3. "The proposed action will preserve or increase the social welfare of economic prosperity of the state and one or more of its political subdivisions, and will promote the general welfare of the state's citizens."**

The proceeds of the loan would be used by the Borrower to provide loan capital for the expansion and retention of businesses in the region.

- 4. "The proposed action will promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment."**

The Borrower would utilize the loan capital to support expansion and retention of businesses in the area. The Authority has determined that the proposed loan would promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment.

Special Findings

5. "The loan is consistent with local or regional development plans or policies."

The Borrower, a local development organization, has determined that the loan would provide business development in the city of Rochester. The Authority has determined that the loan is consistent with local or regional development plans or policies.