

**TOWN COUNCIL AGENDA**  
**May 18, 2015**  
**7:00 P.M.**

The Town Council meeting will be held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth Road, Londonderry, NH. Regular meetings are cablecast live and videotaped for the convenience of our viewers at home. 7:00 PM

**A. CALL TO ORDER**

**B. PUBLIC COMMENT**

- 1.) Professional Firefighters of Londonderry Local 3160  
President Introduction  
**Presented by Chief Darren O'Brien**
- 2.) Presentation on Parkland Hospital  
**Presented by CEO Chris Accashian**

**C. PUBLIC HEARING**

**D. OLD BUSINESS**

- 1.) Update on STD/WC Payments  
**Presented by Doug Smith**

**E. NEW BUSINESS**

- 1.) **Order #2015-14** – Expenditure of Maintenance Trust Funds for Various Projects  
**Presented by Kevin Smith**
- 2.) **Resolution #2015-03** – A Resolution Relative to Authorizing Master Lease Purchase Agreement with First Niagara Leasing Inc.  
**Presented by Doug Smith**
- 3.) **Ordinance #2015-04** – An Amendment to the Zoning Ordinance to Rezone Map 10 Lot 92 at 105 Hillside Avenue (**First Reading**)
- 4.) **Ordinance #2015-05** – An Amendment to Municipal Code, Title IV, Chapter XIII, Health/Safety/Welfare, regarding Individual Sewage Disposal Systems (**First Reading**)

**F. APPROVAL OF MINUTES**

Approval of May 4, 2015 Town Council Minutes

**G. OTHER BUSINESS**

1. Liaison Reports
2. Town Manager Report
3. Board/Committee Appointments/Reappointment

**H. ADJOURNMENT**

**I. MEETING SCHEDULE**

- A. Town Council Meeting – **06/01/15** Moose Hill Council Chambers, 7:00PM
- B. Town Council Meeting – **06/15/15** Moose Hill Council Chambers, 7:00PM
- C. Town Council Meeting – **07/20/15** Moose Hill Council Chambers, 7:00PM
- D. Town Council Meeting – **08/17/15** Moose Hill Council Chambers, 7:00PM

# **ORDER #2015-14**

An Order Relative to

## ***EXPENDITURE OF***

## ***MAINTENANCE TRUST FUNDS FOR VARIOUS PROJECTS***

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Reading: 05/18/2015

Adopted: 05/18/2015

***WHEREAS*** voters since 2003 have approved funding for the maintenance and repair of public buildings and grounds in the town; and

***WHEREAS*** by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$380.00 from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

***NOW THEREFORE BE IT ORDERED*** by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$380.00 from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

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John Farrell, Chairman  
Town Council

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Sharon Farrell  
Town Clerk

***A TRUE COPY ATTEST:***  
05/18/2015

**Expendable Maintenance Trust TC Order Request  
for Town Council Meeting \*5/18/15\***

Description	Vendor	Amount
<u>4" Dry System Patch - Town Hall</u> A section of the 4" black iron stand pipe for the attic dry system rusted through, and leaked water on to the 2nd floor hallway. This E M T F request is for the labor/materials to troubleshoot and patch the hole until this section of piping can be replaced.	ASAP - Invoice 2819 E M T F Request Amount	\$ 245.00 \$ 245.00
<u>Remove Unused Exhaust Fan &amp; Wall Repair - Senior Center</u> Removed the through wall fan, insulated, and install clap boards on the exterior wall. This E M T F request is for the labor/materials to remove the fan unit, insulate, and clap board the exterior wall section.	Craig Drouin - Invoice #20150506 E M T F Request Amount	\$ 135.00 \$ 135.00
<b>Total Town Council E M T F Order</b>		<b>\$ 380.00</b>

# RESOLUTION 2015-03

Relative to the  
**AUTHORIZING MASTER LEASE-PURCHASE AGREEMENT  
WITH FIRST NIAGARA LEASING, INC.**

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First Reading: 05/18/2015  
Second Reading: Waived  
Adopted: 05/18/2015

**WHEREAS** the Town of Londonderry (the “Town”) desires to acquire certain miscellaneous equipment during fiscal years 2015 – 2019 in an aggregate principal amount of up to \$3,400,000 (collectively the “Equipment”);

**WHEREAS** the Town desires to finance its acquisition of the Equipment pursuant to a lease-purchase financing arrangement under the authority of RSA 33:7-e, which shall include a “non-appropriation” clause requiring each year’s lease payment to be appropriated by the Town;

**WHEREAS** in order to evaluate options to finance its acquisition of the Equipment by means of such lease-purchase financing arrangement, the Town issued a Request for Proposals dated April 9, 2015 (the “RFP”) with the assistance of its Financial Advisor, Public Financial Management;

**WHEREAS** in response to the RFP, the Town received a lease-purchase financing proposal from First Niagara Leasing, Inc. (“First Niagara”) dated April 27, 2015 and in the form presented to this meeting (the “First Niagara Proposal”), which was the lowest cost lease-purchase financing proposal received by the Town; and

**WHEREAS** the Town wishes to (i) memorialize its acceptance of the First Niagara Proposal; and (ii) approve the terms of the First Niagara Master Lease-Purchase Agreement and related documents (collectively the “Master Lease-Purchase Agreement”), with the understanding that the subsequent acquisition of Equipment by the Town with proceeds of the Master Lease-Purchase Agreement will be incident to orders for the same approved by the Town Council;

**NOW THEREFORE BE IT RESOLVED** by the Londonderry Town Council, in consideration of the foregoing, it is hereby:

**RESOLVED:** that the First Niagara Proposal is hereby accepted by the Town;

**RESOLVED:** that the Master Lease-Purchase Agreement, in substantially the form presented to this meeting, is hereby approved;

**RESOLVED:** that the execution and delivery of the Master Lease-Purchase Agreement on behalf of the Town by the Town Manager (or such other Town officials as may be specified by the Town’s counsel) is hereby authorized;

**RESOLVED:**

that in the event that the Town uses other available funds to acquire Equipment prior to financing the same under the Master Lease-Purchase Agreement, it intends to use the proceeds of the Master Lease-Purchase Agreement to reimburse itself, such an undertaking constituting an expression of the Town's "official intent" for purposes of Treasury Regulation 1.150-2; and

**RESOLVED:**

that the Town is authorized to take such other steps as are necessary to effectuate the foregoing.

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John Farrell, Chairman  
Town Council

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Sherry Farrell - Town Clerk

( TOWN SEAL )

**A TRUE COPY ATTEST:**  
**05/18/2015**

Town of Londonderry, New Hampshire  
 Capital Lease Proceeds  
 Fiscal Year 2015 Lease

Bidder	Interest Rate	Locked Through	Closing Fees	Total Interest	Call Option	Notes
First Niagra	1.370% (Option 1)	6/11/2015	\$0	\$9,658.50 (Option 1)	Pre-payable in full on any payment date	Will not do an escrow fund
	1.590% (Option 2)			\$15,693.30 (Option 2)		
US Bank	1.736% (Option 1)	6/22/2015	\$0	\$12,238.80 (Option 1)	Pre-payable on any payment date at 103%	Legal opinion; 3 days for credit approval
	1.996% (Option 2)			\$19,700.52 (Option 2)		
TD Bank	1.980% (Option 1)	5/30/2015	\$250	\$13,390.55 (Option 1)	Yield maintenance	0% interest first year; Town will purchase the Equipment for \$1.00; legal opinion
	2.200% (Option 2)			\$21,765.31 (Option 2)		
Citizens Bank	2.585% (Option 1)	5/22/2015	\$0	\$18,456.76 (Option 1)	Pre-payable in full on any payment date	No legal opinion; 1-2 days credit approval
	3.125% (Option 2)			\$31,634.22 (Option 2)		

**TOWN OF LONDONDERRY, NEW HAMPSHIRE  
MASTER LEASE – FISCAL YEARS 2015-2018  
REQUEST FOR PROPOSALS FOR  
A DIRECT PURCHASE BY A FINANCIAL INSTITUTION OF A  
TAX-EXEMPT LEASE**

April 9, 2015

On behalf of the Town of Londonderry, New Hampshire (the “Town”), Public Financial Management, Inc. (“PFM”), as financial advisor to the Town, is seeking proposals from qualified financial institutions and banks to purchase its proposed \$282,000 Capital Lease for Fiscal Year 2015 (the “Lease”) and to enter into a master lease agreement for fiscal years 2016-2019. The 2015 Lease will finance miscellaneous equipment listed in Appendix A. The specific project amounts for fiscal years 2016 through 2019 will be determined in each future fiscal year; however, a preliminary schedule is listed in Appendix B. The anticipated cumulative total for FY 16- FY 19 amounts to approximately \$3.4MM. This list represents the Town’s expectation of future lease purchase financings during this timeframe but does not represent a guaranteed commitment to finance these actual projects.

Please e-mail a PDF version of the proposal by 12 Noon EASTERN TIME on April 27, 2015 to Stephen Maceroni ([maceronis@pfm.com](mailto:maceronis@pfm.com)) and William Fazioli ([fazioliw@pfm.com](mailto:fazioliw@pfm.com)).

Please state the period for which your rate and fee quotes are firm and any closing conditions that are assumed. The expected funding date is May 14, 2015. Please provide any additional information that you regard as relevant to your proposal.

Following the review of the written proposals, the Town may engage in individual discussions and negotiations with one or more institutions that submit proposals. The Town reserves the right to reject any and all proposals. A legal opinion will be provided by the Town’s Bond Counsel

The Town will use its best efforts to answer any questions and provide additional information requested in connection with your response to this Request for Proposals. The information provided by the Town in this Request for Proposals or in connection with it should be considered confidential and should be appropriately controlled. Please direct any questions or request for additional information to:

William Fazioli, Director Public Financial Management, Inc. (401) 709-5112 <a href="mailto:fazioliw@pfm.com">fazioliw@pfm.com</a>
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To assist you in the preparation of your proposal, we have enclosed the following:

- 1) The Town’s audited financial statements for the fiscal years ended 2012-2014
- 2) The Town’s adopted budget summary for FY 2016
- 3) A projected equipment lease of items to be financed in FY 15 and FY 16-19

PFM is not serving as a broker-dealer or placement agent in connection with this financing.  
Thank you.



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**2015 TERM SHEET**

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**Issuer:** Town of Londonderry, New Hampshire (the “Town”)

**Issue Description:** Fiscal Year 2015 Capital Lease (the “Lease”)

**Par Amount:** \$282,000

**Min. Denomination:** \$100,000

**Financial Advisor:** Public Financial Management, Inc.

**Bond Counsel:** Devine Millimet and Branch

**Proposal Due Date:** April 27, 2015

**Expected Council Award:** May 4, 2015

**Expected Closing/  
Funding Date:** May 14, 2015

**Interest Payments:** Annually on each May 14 commencing May 14, 2016.

**Term:** **Option 1:** 4 years – Fixed Rate  
**Option 1:** 6 years – Fixed Rate

**Principal Payments:** Annual equal on each May 14 commencing May 14, 2016  
(Amortization schedule is included in Appendix A)

**Interest Calculation:** 30/360

**Bank Qualification:** The Town will designate the Lease as a “qualified tax exempt obligations” for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

**Ratings:** The Lease will not be rated. The Town’s current general obligation bond ratings with is Aa2 (stable)

**Master Lease Term:** The Town plans to enter into terms of 3, 5 or 10 years master lease agreement with the winning bidder. Please provide the calculation for your proposed interest of the master lease agreement for a lease with a 3,5 or 10 year term based on the 3,5 and 10 Year Interest Rate Swap Rate. Future leases are expected to be designated as “qualified tax exempt obligations”. The Lessor may reserve the right to re-negotiate their lease rate if future leases are not qualified.

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**REQUEST FOR PROPOSALS INFORMATION:**

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If you are interested in a direct purchase of the Town's proposed 2015 capital lease, please submit a comprehensive proposal describing your qualifications, outlining all anticipated costs and detailing the material terms and conditions of the principal legal documents. Outlined below are the items of information that should be specifically included in your firm's response.

1. **Name of Bank:** \_\_\_\_\_
2. **Maximum Commitment Amount (up to):** \$ \_\_\_\_\_
3. **Annual Interest Rate:**
  - a. **Option 1:** \_\_\_\_\_
  - b. **Option 2:** \_\_\_\_\_
4. **All-In Interest Rate:** (include all purchaser's fees)
  - a. **Option 1:** \_\_\_\_\_
  - b. **Option 2:** \_\_\_\_\_
5. **Interest Rate Index:**
  - a. Please provide the calculation for your proposed interest rate based on the Four Year Interest Rate Swap Rate (Option 1) and the Six Year Interest Rate Swap Rate (Option 2) as of Thursday, April 23, 2015 as published by the Federal Reserve (<http://www.federalreserve.gov/releases/h15/update/>). **If you are willing to lock the proposed rate for a period of time, please provide the expiration date for the interest rate provided.**
6. **Total Cost to be Financed:** \_\_\_\_\_ (including cost of issuance)
7. **Total Interest Cost Over Term:** (including repayment of principal amount)
  - a. **Option 1:** \_\_\_\_\_
  - b. **Option 2:** \_\_\_\_\_
8. **Purchaser's Costs:** \_\_\_\_\_
9. **Total Cost to Town Over Term:** (including repayment of principal amount)
  - a. **Option 1:** \_\_\_\_\_
  - b. **Option 2:** \_\_\_\_\_
10. **ATTACH REQUIRED AMORTIZATION SCHEDULE**
11. **Prepayment Provisions:**
  - a. Please describe the terms and calculation methodology for any proposed pre-payment penalties (if any). Please provide definitions of key terms, as necessary.
12. **Other Conditions:**
  - a. Please detail any other conditions that would be required of the Town. Please define any terms necessary to understand these conditions.

**13. Other Fees:**

- a. Proposers must also identify any costs associated with this bid and cap these costs. These costs will be taken into account in determining the all inclusive cost of borrowing.

- i. Purchaser's Counsel     \$ \_\_\_\_\_

- ii. Other Expenses             \$ \_\_\_\_\_

**14. Reporting Requirements:**

- a. Please explain any reporting requirements that would be required of the Town.

**15. Personnel:**

- a. Please provide the contact information (email, address, phone, fax) of the individuals who will be working with the Town.

**16. Timing:**

- a. Please note the Bank's timing to receive internal credit approval upon receipt of mandate.

**17. Conflicts of Interest:**

- a. Please describe any conflicts of interests that could impact the contemplated transaction.

**The undersigned Proposer certifies that this proposal is firm for 45 days from the date of submittal indicated below. Fees and Expenses are to be paid only if the transaction is closed.**

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

Title: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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**APPENDIX A – FY 2015 EQUIPMENT LIST:**

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<b>Department</b>	<b>Item</b>	<b>Cost</b>
Fire	Ambulance	\$240,000
Fire	Ford Expedition	42,000
<b>TOTAL</b>		<b>\$282,000</b>

**Four Year Amortization**

Year 1	70,500
Year 2	70,500
Year 3	70,500
Year 4	70,500

**Six Year Amortization**

Year 1	\$47,000
Year 2	\$47,000
Year 3	\$47,000
Year 4	\$47,000
Year 5	\$47,000

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**APPENDIX B – FY 2016- 2019 EQUIPMENT LIST:**

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<b>Department</b>	<b>Item</b>	<b>Cost</b>
Fire	Ariel	\$1,586,000
Fire	Pumper	648,370
Fire	Pumper	580,000
Fire	Ambulance	252,000
Fire	Ford F350	37,000
Police	Interceptor	305,000
<b>TOTAL</b>		<b>\$3,408,370</b>

**Master Lease No. <<ApplicationNum>>**

**MASTER LEASE-PURCHASE AGREEMENT**

Dated as of <<today:dl>>

This Master Lease-Purchase Agreement together with all addenda, riders and attachments hereto, as the same may from time to time be amended, modified or supplemented ("Master Lease") is made and entered by and between <<FunderName>> ("Lessor") and the lessee identified below ("Lessee"), each with the intent to be legally bound.

Lessee: <<LesseeName1>>

1. LEASE OF EQUIPMENT. Subject to the terms and conditions of this Master Lease, Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, all Equipment described in each Schedule signed from time to time by Lessee and Lessor.

2. CERTAIN DEFINITIONS. All terms defined in the lease are equally applicable to both the singular and plural form of such terms. (a) "Schedule" means each Lease Schedule signed and delivered by Lessee and Lessor, together with all addenda, riders, attachments, payment schedules, certificates and exhibits thereto, as the same may from time to time be amended, modified or supplemented. Lessee and Lessor agree that each Schedule (except as expressly provided in said Schedule) incorporates by reference all of the terms and conditions of this Master Lease and may include additional terms and conditions. (b) "Lease" means any one Schedule with the terms and conditions of this Master Lease incorporated into said Schedule so that each Schedule shall create and constitute a stand-alone lease. (c) "Equipment" means the property described in each Schedule, together with all attachments, additions, accessions, parts, repairs, improvements, replacements, substitutions and exchanges therefor or thereto.

3. LEASE TERM. The term of the lease of the Equipment described in each Lease ("Lease Term") commences on the date specified in the Schedule for such Lease and, unless earlier terminated as expressly provided in the Lease, continues until Lessee's irrevocable payment and performance in full of all of Lessee's obligations under the Lease.

4. RENT PAYMENTS.

4.1 For each Lease, Lessee agrees to pay to Lessor the rent payments in the amounts and at the times as set forth in the Payment Schedule attached to the Schedule ("Rent Payments"). A portion of each Rent Payment is paid as and represents the payment of interest as set forth in the Payment Schedule. Lessee acknowledges that its obligation to pay Rent Payments including interest therein accrues as of the accrual date stated in the Schedule or its Payment Schedule ("Accrual Date"); provided, that no Rent Payment is due until Lessee accepts any of the Equipment under the Lease or the parties execute an escrow agreement. Rent Payments will be payable for the Lease Term in U.S. dollars, without notice or demand at the office of Lessor (or such other place as Lessor may designate from time to time in writing).

4.2 If Lessor receives any payment from Lessee later than fifteen (15) days from the due date, Lessee shall pay Lessor on demand as a late charge three per cent (3%) of such overdue amount, limited, however, to the maximum amount allowed by law.

4.3 EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 6 HEREOF OR IN ANY WRITTEN MODIFICATION TO THE LEASE SIGNED BY LESSOR, EACH LEASE IS NON-CANCELABLE AND NON-TERMINABLE AND THE LEASE TERM AND THE OBLIGATION TO PAY RENT PAYMENTS UNDER EACH LEASE SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS AND SHALL NOT BE SUBJECT TO ANY REDUCTION, SETOFF, DEFENSE, COUNTERCLAIM, DEFERMENT, ABATEMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER.

5. DELIVERY; ACCEPTANCE; FUNDING CONDITIONS.

5.1 Lessee shall arrange for the transportation, delivery and installation of all Equipment to the location specified in the Schedule ("Location") by Equipment suppliers ("Suppliers") selected by Lessee. Lessee shall pay all costs related thereto.

5.2 Lessee shall accept Equipment as soon as it has been delivered and is operational. Lessee shall evidence its acceptance of any Equipment by signing and delivering to Lessor the applicable Schedule and an acceptance certificate. If Lessee signs and delivers a Schedule and if all Funding Conditions (defined below) have been satisfied in full, then Lessor will pay or cause to be paid the costs of such Equipment as stated in the Schedule ("Purchase Price") to the applicable supplier.

5.3 Lessor shall have no obligation to pay any Purchase Price unless all reasonable conditions established by Lessor ("Funding Conditions") have been satisfied, including, without limitation, the following: (a) Lessee has signed and delivered the Schedule and its Payment Schedule ; (b) no Event of Default shall have occurred and be continuing; (c) no material adverse change shall have occurred in the Internal Revenue Code of 1986, as amended, and the related regulations and rulings thereunder (collectively, the "Code"); (d) no material adverse change shall have occurred in the financial condition of Lessee; (e) the Equipment is reasonably satisfactory to Lessor and is free and clear of any liens (except Lessor's liens); (f) all representations of Lessee in the Lease remain true, accurate and complete; and (g) Lessor has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to Lessor: (1) the acceptance certificate (2) evidence of insurance coverage required by the Lease; (3) an opinion of Lessee's counsel; (4) reasonably detailed invoices for the equipment, and if such invoices have been paid by Lessee, evidence of payment thereof and evidence of official intent to reimburse such payment as required by the Code; (5) Uniform Commercial Code ("UCC") financing statements naming the Lessee as debtor; (6) copies of resolutions passed by Lessee's governing body authorizing the Lease and incumbency certificates for the person(s) who will sign the Lease; (7) such documents and certificates relating to the tax-exempt interest payable under the Lease (including, without limitation, IRS Form 8038G or 8038GC or evidence of filing thereof with the Internal Revenue Service) as Lessor may request; and (8) such other documents and information previously identified by Lessor or otherwise reasonably requested by Lessor.

## 6. TERMINATION FOR GOVERNMENTAL NON-APPROPRIATIONS.

6.1 For each Lease, Lessee represents and warrants: that it has appropriated and budgeted the necessary funds to make all Rent Payments required pursuant to such Lease for the remainder of the fiscal year in which the Lease Term commences; and that it currently intends to make Rent Payments for the full Lease Term as scheduled in the applicable Payment Schedule if funds are appropriated for the Rent Payments in each succeeding fiscal year by its governing body. Without contractually committing itself to do so, Lessee reasonably believes that monies in an amount sufficient to make all Rent Payments can and will lawfully be appropriated therefore. Lessee directs the person in charge of its budget requests to include the Rent Payments payable during each fiscal year in the budget request presented to Lessee's governing body for such fiscal year; provided, that Lessee's governing body retains authority to approve or reject any such budget request. All Rent Payments shall be payable out of the general funds of Lessee or out of other funds legally appropriated therefore. Each Lease shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Lease, and no liability on account thereof shall be incurred by the political subdivision beyond the amount of such monies. No Lease is a general obligation of Lessee. Neither the full faith and credit nor the taxing power of Lessee are pledged to the payment of any amount due or to become due under a Lease. It is understood that neither any Lease nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of such Lease.

6.2 If Lessee's governing body fails to appropriate sufficient funds in any fiscal year for Rent Payments or other payments due under a Lease and if other funds are not legally appropriated for such payments, then a "Non-Appropriation Event" shall be deemed to have occurred. If a Non-Appropriation Event occurs, then: (a) Lessee shall give Lessor immediate notice of such Non-Appropriation Event and provide written evidence of such failure by Lessee's governing body; (b) on or before the Return Date, Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the affected Lease, at Lessee's sole expense, in accordance with Section 21 hereof; and (c) the affected Lease shall terminate on the Return Date without penalty to Lessee, provided, that Lessee shall pay all Rent Payments and other amounts payable under the affected Lease for which funds shall have been appropriated, provided further, that Lessee shall pay month-to-month rent at the rate set forth in the affected Lease

for each month or part thereof that Lessee fails to return the Equipment under this Section 6.2. "Return Date" means the last day of the fiscal year for which appropriations were made for the Rent Payments due under a Lease.

**7. LIMITATION ON WARRANTIES. LESSOR IS NOT THE MANUFACTURER, DEVELOPER, PUBLISHER, DISTRIBUTOR, LICENSOR OR SUPPLIER OF THE EQUIPMENT AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY OF THE EQUIPMENT OR AS TO THE VALUE, DESIGN, QUALITY, SUITABILITY, PERFORMANCE, CONDITION, USE, CAPACITY OR DURABILITY OF ANY OF THE EQUIPMENT, IT BEING UNDERSTOOD THAT THE EQUIPMENT IS BEING LEASED "AS IS" AND THAT ALL SUCH RISKS BE BORNE BY LESSEE.** For and during the Lease Term, Lessor hereby assigns to Lessee any manufacturer's or Supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) Lessee selected the Equipment and represents that the Equipment is suitable for Lessee's purposes and all Equipment will have been purchased by Lessor in accordance with Lessee's specifications from Suppliers selected by Lessee and such equipment shall be operated and used solely at Lessee's risk, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or supplier's product warranties or guaranties, (d) no manufacturer or supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or supplier or any representative of said parties shall not be binding upon Lessor.

#### 8. TITLE; SECURITY INTEREST.

8.1 Upon Lessee's acceptance of any Equipment under a Lease, title to the Equipment shall vest in Lessee, subject to Lessor's security interest therein and all of Lessor's other rights under such Lease including, without limitation, Sections 6, 20 and 21 hereof.

8.2 As collateral security for the Secured Obligations (as defined below), Lessee hereby grants to Lessor a first priority security interest in any and all of the Equipment (now existing or hereafter acquired) and any and all proceeds thereof. Lessee authorizes Lessor to take any action deemed necessary by Lessor to perfect Lessor's security interest, including, without limitation, the filing of UCC-1 financing statements or marking or tagging the Equipment to indicate Lessor's lien thereon. If requested by Lessor, Lessee shall obtain a landlord and/or mortgagee's consent and waiver with respect to the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment, and maintain such markings during the Lease Term, to clearly disclose Lessor's security interest in the Equipment. Upon termination of a Lease through exercise of Lessee's option to prepay pursuant to Section 15 or through payment by Lessee of all Rental Payments and other amounts due with respect to such particular Equipment, Lessor's security interest in such Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the termination of Lessor's security interest in such Equipment.

8.3 "Secured Obligations" means Lessee's obligations to pay all Rent Payments and all other amounts due and payable under all present and future Leases and to perform and observe all covenants, agreements and conditions (direct or indirect, absolute or contingent, due or to become due, or existing or hereafter arising) of Lessee under all present and future Leases.

9. PERSONAL PROPERTY. All Equipment is and will remain personal property and will not be deemed to be affixed or attached to real estate or any building thereon.

10. MAINTENANCE AND OPERATION. Lessee agrees it shall, at its sole expense: (a) repair and maintain all Equipment in good condition and working order and supply and install all replacement parts or other devices when required to so maintain the Equipment or when required by applicable law or regulation, which parts or devices shall automatically become part of the Equipment; and (b) use and operate all Equipment in a careful manner in the normal course of its operations and only for the purposes for which it was designed in accordance with the manufacturer's warranty requirements, and comply with all laws and regulations relating to the Equipment. If any Equipment is customarily covered by a maintenance agreement, Lessee will furnish Lessor with a maintenance



agreement by a party reasonably satisfactory to Lessor, if requested. No maintenance or other service for any Equipment will be provided by Lessor. Lessee will not make any alterations, additions or improvements ("Improvements") to any Equipment without Lessor's prior written consent unless the Improvements may be readily removed without damage to the operation, value or utility of such Equipment, but any such Improvements not removed prior to the termination of the applicable Lease shall automatically become part of the Equipment.

11. LOCATION; INSPECTION. Equipment will not be removed from, or if Equipment is rolling stock its permanent base will not be changed from, the Location without Lessor's prior written consent. Lessor may, upon notice to Lessee, enter the Location or elsewhere during normal business hours to inspect the Equipment and confirm compliance with the Lease.

## 12. TAXES.

Lessee shall pay when due all Taxes which may now or hereafter be imposed upon any Equipment or its ownership, leasing, rental, sale, purchase, possession or use, upon any Lease or upon any Rent Payments or any other payments due under any Lease. If Lessee fails to pay such Taxes when due, Lessor shall have the right, but not the obligation, to pay such Taxes. If Lessor pays any such Taxes, then Lessee shall, upon demand, immediately reimburse Lessor therefore. "Taxes" means any and all present and future taxes, levies, duties, assessments or other governmental charges that are not based on the net income of Lessor, whether they are assessed to or payable by Lessee or Lessor, including, without limitation (a) sales, use, excise, licensing, registration, titling, gross receipts, stamp and personal property taxes, and (b) interest, penalties or fines on any of the foregoing. Lessee shall file all personal property tax returns if and as required by local law with respect to the Equipment and if requested by Lessor, deliver any applicable sales tax exemption certificates.

## 13. RISK OF LOSS.

13.1 Lessee bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part from any reason whatsoever ("Casualty Loss") while the Equipment is in transit and for the duration of the Lease Term. No Casualty Loss to any Equipment shall relieve Lessee from the obligation to make Rent Payments or to perform any other obligation under any Lease. Proceeds of any insurance recovery will be applied to Lessee's obligations under this Section 13.

13.2 If a Casualty Loss occurs to any Equipment, Lessee shall immediately notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, immediately repair the same.

13.3 If Lessee determines that any item of Equipment has suffered a Casualty Loss beyond repair ("Lost Equipment"), then Lessee shall either: (a) immediately replace the Lost Equipment with similar equipment in good repair, condition and working order free and clear of any liens (except Lessor's liens), in which event such replacement equipment shall automatically be Equipment under the applicable Lease, and deliver to Lessor true and complete copies of the invoice or bill of sale covering the replacement equipment; or (b) on the earlier of, 60 days after the Casualty Loss or the next scheduled Rent Payment date, pay Lessor (i) all amounts owed by Lessee under the applicable Lease, including the Rent Payments due on or accrued through such date plus (ii) an amount equal to the Termination Value as of the Rent Payment date set forth in the Payment Schedule to the applicable Lease. If Lessee is making such payment with respect to less than all of the Equipment under a Lease, then Lessor will provide Lessee with the pro rata amount of the Rent Payment and Termination Value to be paid by Lessee with respect to the Lost Equipment and a revised Payment Schedule.

13.4 To the extent not prohibited by applicable law, Lessee shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorney's fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. Whether or not covered by insurance, and without limiting the foregoing, Lessee hereby assumes responsibility for (a) the selection, manufacture, purchase, acceptance or rejection of the Equipment and the ownership of the Equipment, (b) the condition of the Equipment sold or otherwise disposed of after possession by Lessee, (c) the conduct of Lessee, its officers, employees and agents, (d) any claim, loss, cost or expense involving alleged damage to the environment relating to the Equipment, including, but not limited to investigation, removal, cleanup and remedial costs, and (e) any strict liability under the laws or judicial decisions of any

state or the United States. These obligations of Lessee shall survive any expiration or termination of this Master Lease and any Lease. Lessee shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses (including attorney's fees and expenses), damages or losses which arise directly from events occurring after any Equipment has been returned by Lessee to Lessor in accordance with the terms of the applicable Lease or which arise directly from the gross negligence or willful misconduct of Lessor.

#### 14. INSURANCE.

14.1 (a) Lessee at its sole expense shall at all times keep all Equipment insured against all Casualty Losses for an amount not less than the Termination Value of the Equipment as set forth in the Payment Schedule to the applicable Lease. Proceeds of any such insurance covering damage or loss of any Equipment shall be payable to Lessor as loss payee. (b) Lessee at its sole expense shall at all times carry public liability and third party property damage insurance in amounts reasonably satisfactory to Lessor protecting Lessee and Lessor from liabilities for injuries to persons and damage to property of others relating in any way to any Equipment. Proceeds of any such public liability or property insurance shall be payable first to Lessor as additional insured to the extent of its liability, and then to Lessee.

14.2 All insurers shall be reasonably satisfactory to Lessor. Lessee shall promptly deliver to Lessor satisfactory evidence of required insurance coverage and all renewals and replacements thereof. Each insurance policy will require that the insurer give Lessor prompt written notice of any amendment to or cancellation of such policy and will require that Lessor's interests remain insured regardless of any act, error, misrepresentation, omission or neglect of Lessee. The insurance maintained by Lessee shall be primary without any right of contribution from insurance which may be maintained by Lessor.

15. PREPAYMENT OPTION. Upon thirty (30) days' prior written notice by Lessee to Lessor, and so long as there is no Event of Default then existing, Lessee shall have the option to prepay Lessee's obligation under a Lease in whole, but not in part, on any Rent Payment due date by paying to Lessor all Rent Payments then due (including accrued interest, if any) for such Lease plus the Termination Value amount set forth on the Payment Schedule to such Lease for such date. Upon satisfaction by Lessee of such prepayment conditions, Lessor shall release its lien on such Equipment and Lessee shall retain its title to such Equipment "AS-IS, WHERE-IS," WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE, except for a representation that such Equipment is free and clear of any liens created by Lessor.

16. LESSEE'S REPRESENTATIONS AND WARRANTIES. With respect to each Lease and its Equipment, Lessee hereby represents and warrants to Lessor that: (a) Lessee has full power, authority and legal right to execute and deliver this Master Lease and each Lease and to perform its obligations under the Master Lease and each Lease, and all such actions have been duly authorized by appropriate findings and actions of Lessee's governing body; (b) the Lease has been duly executed and delivered by Lessee and constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms; (c) the Master and each Lease is authorized under, and the authorization, execution and delivery of the Lease complies with, all applicable federal, state and local laws and regulations (including, but not limited to, all open meeting, public bidding and property acquisition laws) and all applicable judgments and court orders; (d) the execution, delivery and performance of each Lease and compliance with the provisions thereof by Lessee does not conflict with or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease or other instrument to which Lessee is a party or by which Lessee is bound or any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Lessee or any of its activities or properties; (e) there is no pending, or to the best of Lessee's knowledge threatened, litigation of any nature which may have a material adverse effect on Lessee's ability to perform its obligations under the Lease, including, without limitation, (i) seeking to restrain or enjoin the delivery of this Lease or of other agreements similar to Lease; (ii) questioning the authority of Lessee to execute this Lease, or the validity of this Lease, or the payment of principal of or interest on, this Lease; (iii) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of this Lease; or (iv) affecting the provisions made for the payment of or security for this Lease; (f) Lessee is a state, or a political subdivision thereof, as referred to in Section 103 of the Code duly organized and existing under the Constitution and the laws of the state in which Lessee is located (the "State"), and Lessee's obligation under the Lease constitutes an enforceable obligation issued on behalf of a state or a political subdivision thereof; (g) no lease,

rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time during the past ten (10) years has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year, (h) no event has occurred which would constitute a default or an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years; (i) Lessee or Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the current fiscal year, and such moneys will be applied in payment of all Rental Payments due and payable during such current fiscal year; (j) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the applicable Lease Term; and (k) Lessee presently intends to continue each Lease hereunder for its entire Lease Term and to pay all Rental Payments relating thereto.

17. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS. Lessee hereby represents, covenants and warrants to Lessor on the date hereof, and on each Accrual Date, as follows:

(a) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a political subdivision.

(b) During the Lease Term, the Equipment shall be used by Lessee only for the purpose of performing essential governmental use and public functions within the permissible scope of its authority.

(c) Lessee shall comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103, 148 and 149 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rent Payments and shall not use or permit the use of the Equipment in such a manner as to cause any Lease to be a "private activity bond" under Section 141(a) of the Code. Lessee covenants and agrees that it will use the proceeds of each Lease as soon as practicable and with all reasonable dispatch for the purpose for which each Lease has been entered into, and that no part of the proceeds of any Lease shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in manner which, if such use had been reasonably anticipated on the date of issuance of any Lease, would have caused any portion of any Lease to be or become "arbitrage bonds" within the meaning of Section 103(b)(2), Section 148 or Section 149 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use.

(d) Unless a separate certificate regarding arbitrage, in form and substance reasonably satisfactory to Lessor, is delivered by Lessee:

(1) the estimated total costs, including taxes, freight, installation, cost of issuance, of the Equipment shall not be less than the total principal amount of the Rent Payments;

(2) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rent Payments, or (ii) that may be used solely to prevent a default in the payment of the Rent Payments;

(3) the Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the end of the Lease Term;

(4) there are no obligations of Lessee which (i) are being sold within 15 days of the Accrual Date; (ii) are being sold pursuant to the same plan of financing as any Lease; and (iii) are expected to be paid from substantially the same source of funds;

(5) the officer or official who has executed this Master Lease and each Lease on Lessee's behalf is familiar with Lessee's expectations regarding the use of the Equipment and expenditure of the proceeds of each Lease; and to the best of his/her knowledge, information and belief, the facts and estimates set forth herein are accurate and the expectations of Lessee set forth herein are reasonable;

(e) if Lessor either (i) receives notice, in any form, from the Internal Revenue Service or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor, that Lessor may not exclude any Interest paid under any Lease from its Federal gross income (each an "Event of Taxability"), the Lessee shall pay to Lessor upon demand (x) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the Interest due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by such Lease through the date of such event and (y) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor; and

(f) upon Lessor's request, Lessee shall provide Lessor with current financial statements, budgets, and proof of appropriation for the ensuing Fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement and each Lease as may be reasonably requested by Lessor.

## 18. ASSIGNMENT/LIENS.

18.1 Lessee shall not assign, transfer, pledge, hypothecate, nor grant any lien on (other than Lessor's lien), nor otherwise dispose of, any Lease or any Equipment or any interest in any Lease or Equipment.

18.2 Lessor may assign its rights, title and interest in and to any Lease or any Equipment, and/or may grant or assign a security interest in any Lease and its Equipment, in whole or in part, to any party at any time. Any such assignee or lienholder (an "Assignee") shall have all of the rights of Lessor under the applicable Lease. **LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR.** Unless otherwise agreed by Lessee in writing, any such assignment transaction shall not release Lessor from any of Lessor's obligations under the applicable Lease. An assignment or reassignment of any of Lessor's right, title or interest in a Lease or its Equipment shall be enforceable against Lessee only after Lessee receives a written notice of assignment which discloses the name and address of each such Assignee; provided, that such notice from Lessor to Lessee of any assignment shall not be so required if Lessor assigns a Lease to any of its direct or indirect subsidiaries. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with the Code and for such purpose, Lessee hereby appoints Lessor (or Lessor's designee) as the book entry and registration agent to keep a complete and accurate record of any and all assignments of any Lease. Lessee agrees to acknowledge in writing any such assignments if so requested.

18.3 Each Assignee of a Lease hereby agrees that: (a) the term Secured Obligations as used in Section 8.3 hereof is hereby amended to include and apply to all obligations of Lessee under the Assigned Leases and to exclude the obligations of Lessee under any Non-Assigned Lease or any Equipment covered by any Non-Assigned Lease; and (b) Assignee shall exercise its rights, benefits and remedies as the assignee of Lessor (including, without limitation, the remedies under Section 20 of the Master Lease) solely with respect to the Assigned Leases. "Assigned Leases" means only those Leases which have been assigned to a single Assignee pursuant to a written agreement; and "Non-Assigned Leases" means all Leases excluding the Assigned Leases.

18.4 Subject to the foregoing, each Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

19. EVENTS OF DEFAULT. For each Lease, "Event of Default" means the occurrence of any one or more of the following events as they may relate to such Lease: (a) Lessee fails to make any Rent Payment (or any other payment) as it becomes due in accordance with the terms of the Lease, and any such failure continues for fifteen (15) days after the due date thereof; (b) Lessee fails to perform or observe any of its obligations under Sections 12, 14 or 18.1 hereof; (c) Lessee fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under the Lease and such failure is not cured within thirty (30) days after receipt of written notice thereof from Lessor; (d) any statement, representation or warranty made by Lessee in the Lease or in any writing delivered by Lessee pursuant thereto or in connection therewith proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; (e) Lessee applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of its assets, or a petition for relief is filed by Lessee under an federal or state bankruptcy, insolvency or similar law, or a petition in a proceeding

under any federal or state bankruptcy, insolvency or similar law is filed against Lessee and is not dismissed within sixty (60) days thereafter; or (f) Lessee shall be in default under any other Lease or under any other financing agreement executed at any time with Lessor.

20. REMEDIES. If any Event of Default occurs, then Lessor may, at its option, exercise any one or more of the following remedies:

(a) Lessor may require Lessee to pay (and Lessee agrees that it shall pay) all amounts then currently due under all Leases and all remaining Rent Payments due under all Leases during the fiscal year in effect when the Event of Default occurs together with interest on such amounts at the rate of eight percent (8%) per annum (but not to exceed the highest rate permitted by applicable law) from the date of Lessor's demand for such payment;

(b) Lessor may require Lessee to promptly return all Equipment under all or any of the Leases to Lessor in the manner set forth in Section 21 (and Lessee agrees that it shall so return the Equipment), or Lessor may, at its option, enter upon the premises where any Equipment is located and repossess any Equipment without demand or notice, without any court order or other process of law and without liability for any damage occasioned by such repossession;

(c) Lessor may sell, lease or otherwise dispose of any Equipment under all or any of the Leases, in whole or in part, in one or more public or private transactions, and if Lessor so disposes of any Equipment, then Lessor shall retain the entire proceeds of such disposition free and clear of any claims of Lessee, provided, that if the net proceeds of the disposition of all the Equipment exceeds the applicable Termination Value of all the schedules plus the amounts payable by Lessee under clause (a) above of this Section and under clause (f) below of this Section, then such excess amount shall be remitted by Lessor to Lessee;

(d) Lessor may terminate, cancel or rescind any Lease as to any and all Equipment;

(e) Lessor may exercise any other right, remedy or privilege which may be available to Lessor under applicable law or, by appropriate court action at law or in equity, Lessor may enforce any of Lessee's obligations under any Lease; and/or

(f) Lessor may require Lessee to pay (and Lessee agrees that it shall pay) all out-of-pocket costs and expenses incurred by Lessor as a result (directly or indirectly) of the Event of Default and/or of Lessor's actions under this section, including, without limitation, any attorney fees and expenses and any costs related to the repossession, safekeeping, storage, repair, reconditioning, sale or other disposition of any Equipment.

None of the above remedies is exclusive, but each is cumulative and in addition to any other remedy available to Lessor. Lessor's exercise of one or more remedies shall not preclude its exercise of any other remedy. No delay or failure on the part of Lessor to exercise any remedy under any Lease shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise of any remedy preclude any other exercise thereof or the exercise of any other remedy.

21. RETURN OF EQUIPMENT. If Lessor is entitled under the provisions of any Lease, including any termination thereof pursuant to Sections 6 or 20 of this Master Lease, to obtain possession of any Equipment or if Lessee is obligated at any time to return any Equipment, then (a) title to the Equipment shall vest in Lessor immediately upon Lessor's notice thereof to Lessee, and (b) Lessee shall, at its sole expense and risk, immediately de-install, disassemble, pack, crate, insure and return the Equipment to Lessor (all in accordance with the highest applicable industry standards) at a reasonable location in the continental United States selected by Lessor. Such Equipment shall be in the same condition as when received by Lessee (reasonable wear, tear and depreciation resulting from normal and proper use excepted), shall be in good operating order and maintenance as required by the applicable Lease, shall be free and clear of any liens (except Lessor's lien) and shall comply with all applicable laws and regulations. Until Equipment is returned as required above, all terms of the applicable Lease shall remain in full force and effect including, without limitation obligations to pay Rent Payments and to insure the Equipment. Lessee agrees to execute and deliver to Lessor all documents reasonably requested by Lessor to evidence the transfer of legal and beneficial title to such Equipment to Lessor and to evidence the termination of Lessee's interest in such Equipment.

22. LAW GOVERNING. Each Lease shall be governed by the laws of the State.

23. WAIVER OF TRIAL BY JURY. LESSOR AND LESSEE EACH WAIVE ITS RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS MASTER LEASE AND EACH LEASE, THE EQUIPMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION OR PROCEEDING TO WHICH LESSEE OR LESSOR MAY BE PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. LESSOR AND LESSEE AGREE THAT OUR RESPECTIVE RIGHT TO JURY TRIAL IS WAIVED AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY, OF THIS MASTER LEASE AND EACH LEASE OR ANY PROVISION OF THIS MASTER LEASE AND EACH LEASE. THIS WAIVER IS MADE KNOWINGLY, WILLINGLY AND VOLUNTARILY BY LESSOR AND US WHO EACH ACKNOWLEDGE THAT NO REPRESENTATIONS HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, TO THIS MASTER LEASE AND EACH LEASE.

24. NOTICES. All notices to be given under any Lease shall be made in writing and either personally delivered or mailed by regular or certified mail or sent by an overnight courier delivery company to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notices shall be deemed to have been received five (5) days subsequent to mailing or upon delivery by such courier.

25. FINANCIAL INFORMATION. As soon as they are available after their completion in each fiscal year of Lessee during any Lease Term, Lessee will deliver to Lessor upon Lessor's request the publicly available annual financial information of Lessee and such other information as Lessor may reasonably request.

26. SECTION HEADINGS. All Section headings contained herein or in any Schedule are for convenience of reference only and do not define or limit the scope of any provision of any Lease.

27. EXECUTION IN COUNTERPARTS. This Master Lease, each Lease and each Schedule to this Master Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which shall be deemed one instrument. If more than one counterpart of each Schedule is executed by Lessee and Lessor, then only one may be marked "Lessor's Original" by Lessor. A security interest in any Schedule may be created through transfer and possession only of: the sole original of said Schedule if there is only one original; or the counterpart marked "Lessor's Original" if there are multiple counterparts of said Schedule.

28. ENTIRE AGREEMENT; WRITTEN AMENDMENTS. Each Lease, together with the exhibits, schedules and addenda attached thereto and made a part hereof and other attachments thereto constitute the entire agreement between the parties with respect to the lease of the Equipment covered thereby, and such Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of any Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

29. U.S. PATRIOT ACT. Lessor notifies Lessee that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56), that Lessor is required to obtain, verify and record information that identifies Lessee, which information includes the name and address of Lessee and other information that will allow such Lessor to identify Lessee in accordance with the USA Patriot Act.

30. FURTHER ASSURANCES. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Agreement. Lessee hereby authorizes Lessor to file any financing statement or supplements thereto as may be reasonably required for correcting any inadequate description of the Equipment hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Master Lease.

LESSEE:

<<LesseeName1>>

↳ By: \_\_\_\_\_

Title: <<LesseeUdef031>> \_\_\_\_\_

<<LesseeAddress11>> <<LesseeAddress21>>  
(Street Address)

<<LesseeCity>>, <<LesseeStateCode>> <<LesseePostalCode>>  
(City, State, Zip)

LESSOR:

<<FunderName>>

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

Title: Authorized Representative

726 Exchange Street, Suite 900  
(Street Address)

Buffalo, New York, 14210  
(City, State, Zip)

**CERTIFICATE OF INCUMBENCY**

Lessee: <<LesseeName1>>

Lessor: <<FunderName>>

Master Lease Purchase Agreement Dated \_\_\_\_\_ Master Lease No. \_\_\_\_\_

I, the undersigned Secretary/Clerk identified below, do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of the above Lessee (the "Lessee"), a political subdivision duly organized and existing under the laws of the state of \_\_\_\_\_, that I have the title stated below, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the Lessee holding the offices, for the terms, set forth opposite their respective names.

[NOTE: Use the same titles as authorized representatives stated in Resolutions.]

Name	Title	Term	Signature
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Name	Title	Term	Signature
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The Lessee did, at a [regular/special] meeting of the governing body of Lessee held on [\_\_\_\_\_] by resolution or ordinance duly enacted, in accordance with all requirements of law, approved and authorized the execution and delivery of the Equipment Lease and the documents and certificates associated therewith by any of the above-named representatives of Lessee.

IN WITNESS WHEREOF, I have duly executed this certificate and affixed the seal of such Lessee as of the date set forth below.

↓ \_\_\_\_\_  
Signature of Secretary/Clerk of Lessee

[SEAL]

↓ Print Name: \_\_\_\_\_

↓ Official Title: \_\_\_\_\_

↓ Date: \_\_\_\_\_

[NOTE: If the Secretary/Clerk is also the authorized representative that executes a Lease-Purchase Agreement/documents by the above incumbency, this certificate must also be signed by a second officer.]



**ORDINANCE #2015-04**  
*AN AMENDMENT TO THE ZONING ORDINANCE  
RELATING TO REZONING MAP 10, LOT 92  
105 HILLSIDE AVENUE*

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*WHEREAS* the Planning Board has received a request to rezone the above-referenced parcel from Agricultural-Residential (AR-I) to the zoning classification Multi-Family Residential (R-III); and

*WHEREAS* the Planning Board has recommended that the Town Council act favorably upon the request WITH CONDITIONS, including that the rezoning would take affect only upon final Planning Board approval and signature of the associated site plan; and

*WHEREAS* the rezoning would allow the construction of more affordable housing in Londonderry for seniors and families at a lower density than permitted under the Town's Workforce Housing Ordinance; and

*WHEREAS* the requested rezoning will create a transition between the Commercial II (C-II) Zone to the northwest, west and southwest of the parcel to the Agricultural-Residential (AR-I) zone to the east and southeast.

*NOW THEREFORE BE IT ORDAINED* by the Town Council of the Town of Londonderry that the Zoning Ordinance be amended to reflect the rezoning of Map 10 Lot 92 from Agricultural-Residential (AR-I) to the zoning classification Multi-Family Residential (R-III) with the conditions that there be no more than 57 units in the development, that there be no greater than six units per building attached in a row house configuration, and to become effective ONLY upon final Planning Board approval and signature of the associated site plan.

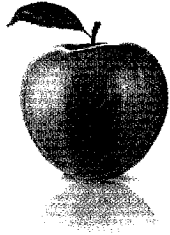
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John Farrell - Chairman  
Town Council

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Sharon Farrell  
Town Clerk

(TOWN SEAL)



**Town of Londonderry  
Planning and Economic Development Department**

268B Mammoth Road  
Londonderry, NH 03053  
Phone 603.432.1100 x 134  
[www.londonderrynh.org](http://www.londonderrynh.org)

**To:** Town Council  
**CC:** Building Department  
**From:** Cynthia A. May, ASLA  
**Date:** May 15, 2015  
**Subject:** **Rezoning Recommendation from the Planning Board  
Map 10 Lot 92**

On May 13, 2015, the Planning Board held a public hearing relative to the Zoning Ordinance and Zoning Map.

The Planning Board, by unanimous vote, recommends to the Town Council to approve rezoning Map 10 Lot 92 from the current zoning classification Agricultural-Residential (AR-I) to the zoning classification Multi-Family Residential (R-III), with the conditions that there be no more than 57 units constructed, that there be no greater than six units per building attached in a row house configuration, and that the approval be subject to Planning Board approval of a site plan.

The proposed rezoning would provide the Town with a greater variety in its housing stock, something called for in the 2013 Master Plan and reflected in current discussions with the Planning Board regarding zoning ordinance amendments. It would also provide a reasonable transition between the C-II uses to the west and the AR-I uses to the north and east.

A copy of the application, staff recommendation to the Planning Board, and the Planning Board minutes are attached.

Please feel free to contact me if you have any questions.



TOWN OF LONDONDERRY

Community Development Department  
Planning & Economic Development Division



268B Mammoth Road  
Londonderry, New Hampshire 03053  
Phone: (603) 432-1100, x134 Fax: (603) 432-1128

# REZONING APPLICATION

Name of Applicant: Hillside Senior Housing LLC (on behalf of Joseph Caldarola) V E

Name of Lot Owner: Hillside Senior Housing LLC  
(If different)

Address: 39 Blossom Rd. Windham, NH 03087

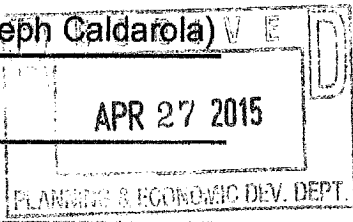
Telephone #: 603 560-502 or 603 674 5204

Tax Map # 10 Lot # 92  
(Please list all if multiple lots are involved)

Date Submitted: 4/23/2015

Current Zoning: AR-I

Proposed Zoning: R-III

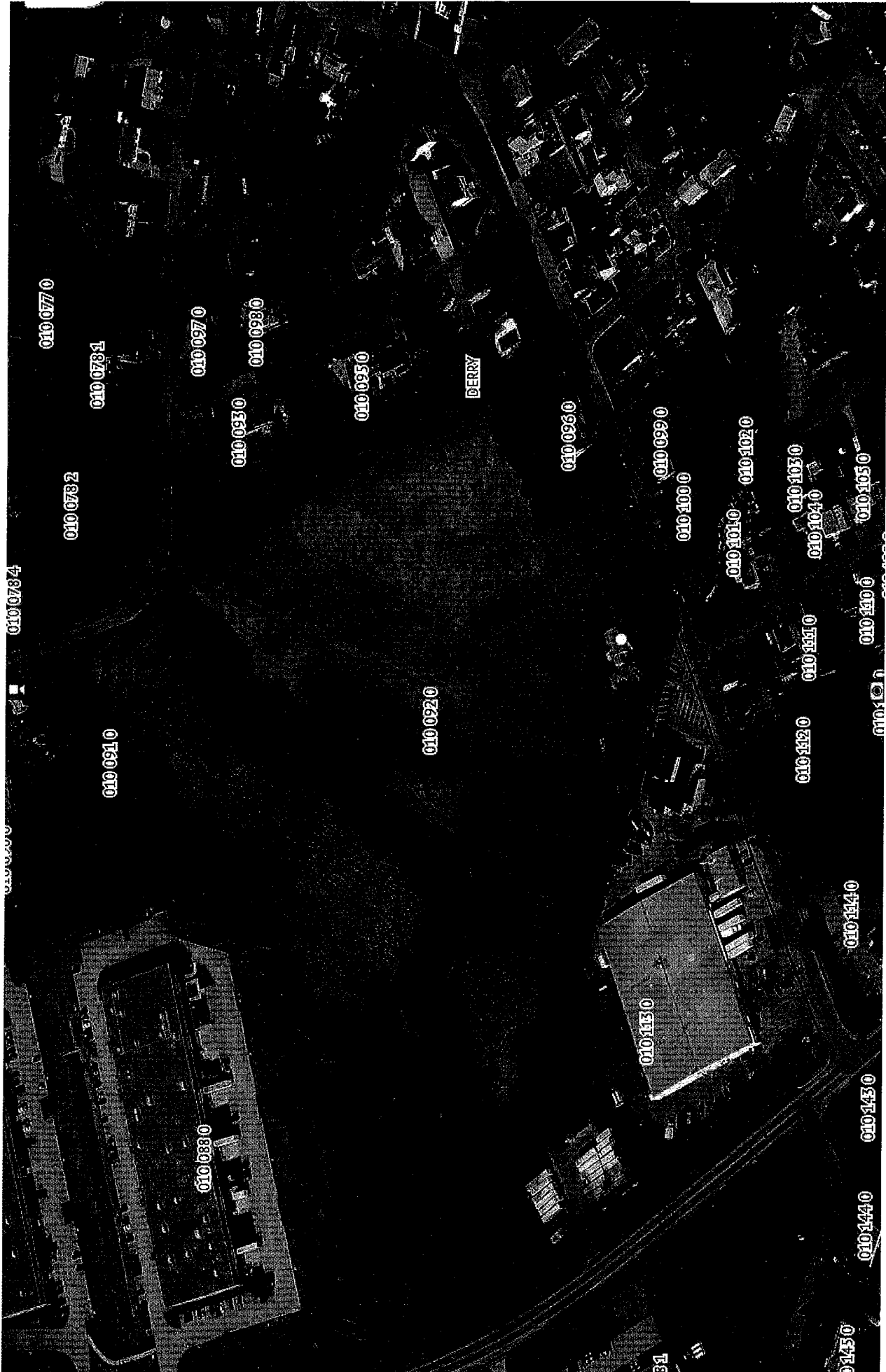


Please explain the purpose and justification for your rezoning request (attach additional sheets if necessary):

R-III will provide a reasonable transition from the adjoining commercial uses to the adjacent single family neighborhood. The Commercial C-2 zone abuts on two sides of the parcel. R-III would allow for two-family and townhomes at a lesser density than permitted under the current Inclusionary Housing Ordinance. The slope of the site lends itself to a mix of senior friendly and family housing types. R-III would allow for development of housing more affordable than single family homes yet without the limitations of Workforce Housing.

Currently the property is permitted for 96 units of Workforce Housing (by variances pertaining to minimum lot size and number of units per year) and Elderly Housing at 6 units per acre (or 57 units). In light of the ongoing work on potential zoning amendments, should this rezoning be granted, the applicant would accept a condition that limits the housing density to the higher of the current elderly housing density (6 units per acre) or the densities established by changes to the zoning ordinance as they pertain to the R-III zone.

Planning Department Comments (to be filled in by Town Staff):



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DERRY

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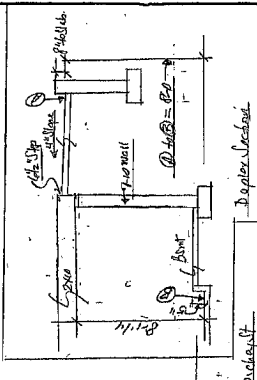
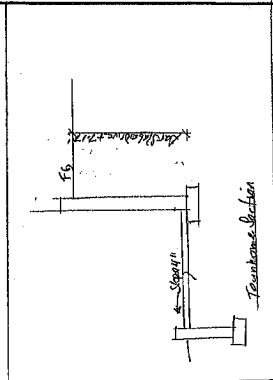
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31



**Legend**

8" Water Main, 8" Hydrant

Sewer Force Main

Sewer - Gravity

Remove Point (Capit. Entrance Basin?)

APPROVED BY	DATE
DESIGNED BY	DATE
CHECKED BY	DATE
PROJECT NUMBER	152-1100
PROJECT NAME	Smith Field Construction
CONCEPT SITE PLAN	

**MEMORANDUM**

To: Planning Board

Date: May 13, 2015

From: Cynthia A. May, ASLA  
Town Planner

Re: Rezoning Request: Map 10 Lot 92 (From AR-I to R-III)

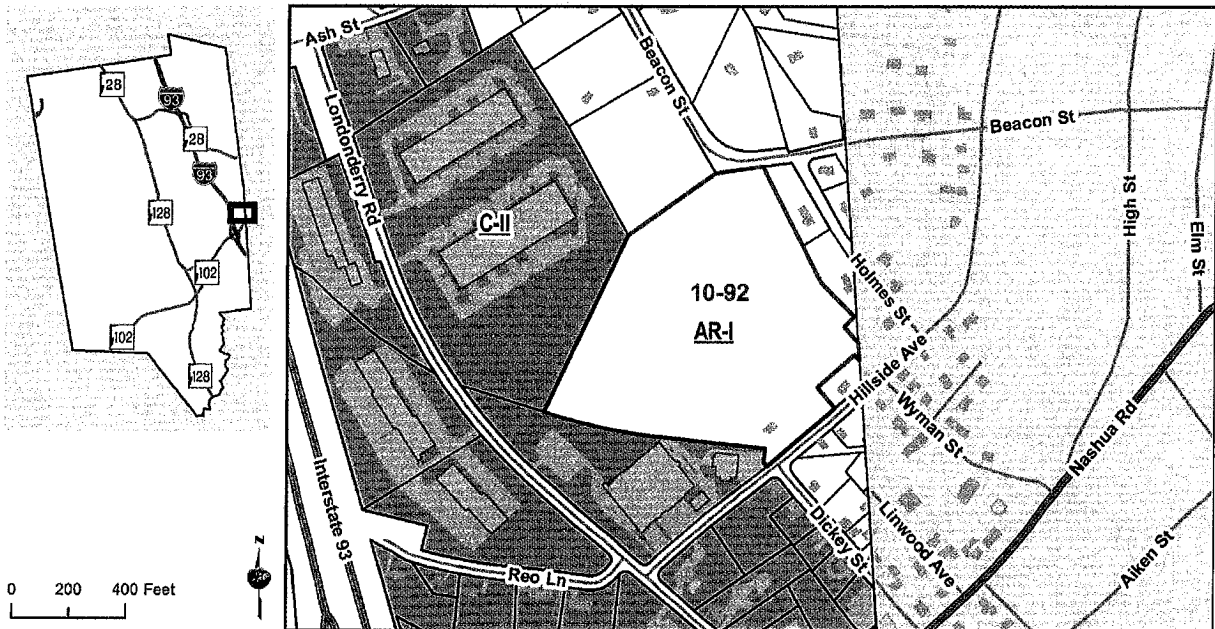
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The Planning & Economic Development Division has reviewed the above referenced rezoning request and we offer the following comments:

**Review Comments:**

The applicant requests the rezoning of the above referenced lot from AR-I to R-III. The parcel is located on Hillside Avenue and abuts the Derry town line. (Please see the map image below).

5/13/2015: Rezoning Application:  
105 Hillside Ave zoning change from AR-I to R-III



The Applicant would like to pursue a mixed development of two-family dwellings and townhomes for families and seniors, but at a lesser density than what is permitted under the Town’s workforce housing ordinance. This would allow the Applicant to offer a housing type more affordable than the typical single family homes in Londonderry. The lot is bordered by Commercial-II (C-II) zoning to the northwest, west and southwest, and by Agricultural-Residential (AR-I) properties to the north, east and southeast, making the R-III zoning resonable as a transitional zone between the two.

**Staff Recommendation:**

The proposed rezoning would provide the Town with a greater variety in its housing stock, something called for in the 2013 Master Plan and reflected in current discussions with the Board regarding zoning ordinance amendments. It would also provide a reasonable transition between the C-II uses to the west and the AR-I uses to the north and east. As such, staff supports a Planning Board **RECOMMENDATION** to the Town Council that they approve the rezoning of Map 10 Lot 92, currently zoned AR-I (Agricultural-Residential), to R-III (Multi-Family Residential) as discussed at the May 13, 2015 Planning Board meeting.

# ORDINANCE 2015-05

An Amendment to Municipal Code, Title IV, Chapter XIII, Health/Safety/Welfare, regarding  
***Individual Sewage Disposal Systems***

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First Reading: 05/18/15  
Second Read/Public Hearing: 06/01/15  
Adopted: 00/00/15

***WHEREAS*** the Section 3.11 of the Town Charter Existing Ordinances of the Town;  
and,

***WHEREAS*** administrative changes require edits to Title IV  
Health/Safety/Welfare, Chapter XIII; and,

***WHEREAS*** Chapter XIII, SECTION VII - FEES FOR PLAN REVIEW, PERMITS,  
INSPECTIONS, needs to be revised to coincide with the latest  
NHDES updates.

B. The designer must submit ~~four (4) sets of plans~~, and the required  
NHDES application for the requested system to the Town for review  
and approval prior to submittal to the State: ~~Three (3) for the NHDES~~  
~~and One (1) plan copy shall be provided for the Town of Londonderry.~~  
Review fee of thirty five dollars (\$35.00) shall accompany each plan  
submitted. If plans are rejected, no additional fees shall be required for  
a second review.

***NOW THEREFORE BE IT ORDAINED*** by the Londonderry Town Council that the attached  
Municipal Code, Title IV, Chapter XIII, Individual Sewage Disposal Systems are hereby amended  
pursuant to the attachment is hereby adopted.

John Farrell, Chair  
Town Council

( TOWN SEAL )

---

Sharon Farrell, Town Clerk

***A TRUE COPY ATTEST:***  
***06/xx/15***



**CHAPTER XIII - INDIVIDUAL SEWAGE DISPOSAL SYSTEMS**

**SECTION I - AUTHORITY**

The enabling legislation is RSA 485-A. Provisions adopted under this section shall be in addition to any requirements imposed by the state for the installation, inspection and maintenance of sewage disposal systems.

The rules and regulations established by the State of New Hampshire Department of Environmental Services, Subsurface Systems Bureau (NH DES) form a part of this regulation to the extent that said regulations are excepted and added to by the provisions of this entire regulation.

**SECTION II -OBJECTIVE**

To provide regulations for adequate and safe sewage disposal installations which are to be located and constructed so to avoid contaminating any existing or future water source or water supply and to provide for the efficient, effective administration of those regulations.

**SECTION III - GENERAL**

Individual sewage disposal systems shall consist of a house sewer, septic tank, a distribution box, and acceptable leach field.

**SECTION IV – DEFINITIONS**

A. “Designer” - shall mean any individual who has demonstrated a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems, and who holds a current Permitted Designer authorization from the New Hampshire Department of Environmental Services Subsurface Systems Bureau.

B. “Inspector” - shall mean the individual authorized by the Town Council to perform administrative and inspection responsibilities of this section.

**CHAPTER XIII - INDIVIDUAL SEWAGE DISPOSAL SYSTEMS (Cont'd)**

**SECTION IV - DEFINITIONS (Cont'd)**

C. "Installer" - shall mean any individual or firm responsible for installing the subsurface sewage or waste disposal system in accordance with the intent of the approved plan who holds a current Permitted Installer authorization from the New Hampshire Department of Environmental Services Subsurface Systems Bureau.

D. "Owner" - shall mean the person in whose name the ownership of the property is legally recorded. The authority to perform any of the duties as herein described may be transferred to any other person, provided however, that the responsibility for proper performance of said duties shall remain with the property owner.

E. "Town" shall mean the Town Council of the Town of Londonderry or its appointed inspector. Appeals from the administrative decisions of the inspector shall be made directly to the Town Council.

F. NH DES shall mean the New Hampshire Department of Environmental Services Subsurface Systems Bureau.

**SECTION V - RESPONSIBILITY**

A. The designer shall be responsible for the accuracy of all technical data and compliance with all design criteria.

B. In the event of any question or dispute, the NH DES shall make the final determination of the accuracy of such data.

**SECTION VI - LOCATION AND INSTALLATION**

A. Location and installation of the sewage disposal system shall be such that, with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, health hazard or endanger the safety of any domestic water supply.

B. Consideration shall be given to the size and shape of the lot, slope of natural and finished grade, depth and fluctuation of ground water (all seasons of the year), proximity of existing or future water supplies, onsite structures and possible expansion of the system.

**CHAPTER XIII - INDIVIDUAL SEWAGE DISPOSAL SYSTEMS (Cont'd)**

**SECTION VII - FEES FOR *PLAN REVIEW*, PERMITS, INSPECTIONS**

A. No sewage disposal system shall be installed, altered or maintained in the Town of Londonderry unless in conformity with these regulations as well as the pertinent regulations of the State of New Hampshire as may exist, be established or amended.

B. The designer must submit ~~four (4) sets~~ of plans, and the required NHDES application for the requested system to the Town for review and approval prior to submittal to the State: ~~Three (3) for the NH DES and One (1) plan copy~~ shall be provided for the Town of Londonderry. Review fee of thirty five dollars (\$35.00) shall accompany each plan submitted. If plans are rejected, no additional fees shall be required for a second review.

C. A permit for the installation and/or alteration of a sewage disposal system must be obtained from the Town of Londonderry-Health Officer, prior to the commencement of any work on a system.

D. A fee of thirty five dollars (\$35.00) shall accompany every application for a permit for the installation and/or alteration of a sewage disposal system.

E. A permit must be obtained before any drinking well is installed, and must be accompanied by a diagram of the location. A fee of thirty five dollars (\$35.00) must accompany each application.

F. The inspector may require inspections during the course of work at the following intervals:

1. House sewer inspection
2. Excavation (Bed Bottom)
3. Leach Field after placement, prior to backfill.

G. Minimum notice of 24 hours shall be given prior to the start of work or to request inspections of any above listed stages.

**CHAPTER XIII - INDIVIDUAL SEWAGE DISPOSAL SYSTEMS (Cont'd)**

**SECTION VIII - RESPONSIBILITIES**

A. Designer - Responsible for the collection of all necessary technical data relative to any proposed system or alteration; for the design and layout of the systems; for the submitting of all prints and applications as required by the Town of Londonderry and NH DES.

B. Installer - To secure an installation permit and to construct the system or alter an existing system in accordance with all regulations and laws, and to notify the inspector for final inspection before backfilling.

C. Inspector - To maintain a file of all approvals issued by NH DES; to issue permits; to perform any inspections as he deems necessary; to return, within seven (7) days, a copy of the application receipt including any changes to the submitted plans as required or suggested by the inspector; to perform any other duties relative to individual waste disposal systems as specified by the Board of Health.

**SECTION IX - FINES AND PENALTIES**

A. A penalty in accordance with the provisions of RSA 676:17 shall be imposed upon the applicant for failure to comply with these regulations.

B. Each day of continuing failure to comply, after written notice of the violation(s) shall constitute a new offense.

*~~End of Section~~*

# LONDONDERRY TOWN COUNCIL MEETING MINUTES

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1  
2 May 4, 2015

3  
4 The Town Council meeting was held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth  
5 Road, Londonderry, NH.

6  
7 Present: Chairman John Farrell; Councilor Tom Dolan; Vice Chairman Jim Butler; Councilors Tom  
8 Freda and Joe Green; Town Manager Kevin Smith; Executive Assistant Kirby Wade;

9  
10 CALL TO ORDER

11  
12 Chairman Farrell opened the meeting with the Pledge of Allegiance led by the Boy Scouts, James, Nick,  
13 Jake, Sean and Patrick. This was followed by a moment of silence for all those who serve us here and  
14 abroad in uniform and for all first responders, especially Londonderry's first responders.

15  
16 PUBLIC COMMENT

17  
18 Chairman Farrell stated that Police Chief Bill Hart would like to say a few words about Nation Police  
19 Week. Chairman Farrell read in a Proclamation from the Council. Chief Hart read into the record a letter  
20 [see attached].

21  
22 Chairman Farrell mentioned that the Town Managers Office received a letter from to ask for a rehearing  
23 of the decision granting a rezoning application located on map VI, lots 37 and 38 [see attached letter].  
24 The Council approved the rezoning at their April 6<sup>th</sup>, 2015 meeting. It has been suggested that it should  
25 be addressed. The information received from legal council is the applicable statute RSA 677:2 allows  
26 for a party impacted by a Town Council decision in regard to request the rehearing. The Council may  
27 grant a rehearing if in its opinion it's within good reason for a rehearing. Councilor Dolan motioned that  
28 the Council acknowledged the acceptance of the letter and motioned to deny the rehearing. Second by  
29 Vice Chairman Butler. Chair votes 5-0-0.

30  
31 PUBLIC HEARING

32  
33 Chairman Farrell introduced Ordinance #2015-03, an amendment to the Municipal Code, title IV,  
34 chapter V, solid waste recycling. Janusz Czyzowski presented on the Ordinance. Czyzowski stated that  
35 this is to add fees for collection, handling and recycling of limited quantities of mercury containing  
36 lightbulbs originated form small businesses in Londonderry. Disposals of these lightbulbs have been  
37 banned since 2008. They are currently accepted free of charge at the Drop Off Center, but only for  
38 residents. There was a survey provided along 102 and it provided information stating that they are all  
39 using separate companies for the disposals of their bulbs. Motion to approve Ordinance #2015-03 made  
40 by Councilor Dolan and second by Councilor Green. Chair votes 5-0-0.

# LONDONDERRY TOWN COUNCIL MEETING MINUTES

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## NEW BUSINESS

Chairman Farrell introduced Order #2015-12, expenditure of Maintenance Trust Funds for various projects. Town Manager Smith stated that this is for winter maintenance for the Town Hall and other town buildings on April 8<sup>th</sup> and April 9<sup>th</sup>. It's also for fire alarm repair at Town Hall as well as AED battery repair at Town Hall. The rear exit fire door had to be replaces and finally a wall repair at the Senior Center. Motion to approve Order #2015-12 made by Councilor Green and second by Councilor Freda. Chair votes 5-0-0.

## APPROVAL OF MINUTES

Motion to approve the Town Council minutes from April 20, 2015 made by Councilor Dolan and second by Vice Chairman Butler. Chair votes 5-0-0.

## ADJOURNMENT

Motion to adjourn made by Councilor Dolan and second by Councilor Green. **Chair votes 5-0-0.**

Notes and Times by:	Kirby Wade	Date: 05/04/2015
Minutes typed by:	Kirby Wade	Date: 05/06/2015
Approved by:	Town Council	Date: 05/18/2015

# National Law Enforcement Week 2015 Letter

In 1962 President Kennedy proclaimed and Congress established May 15 as National Peace Officers Memorial Day and the week in which it falls as National Police Week. This year it begins this Sunday, May 10, and concludes Saturday, May 16.

Today the headlines, Ferguson, MO, Eric Garner, North Charleston, Baltimore, seem to differentiate police from us as community members. As the police chief here in Londonderry, I felt it important to weigh in.

For fifty three years, since President Kennedy instituted National Police Week we have praised the courage of police men & women who each day step out into a world that surrounds us, but that we as citizens often cannot see. In doing so a police officer, often by herself, stands ready to serve **us** at ultimate cost if necessary.

You will note I said 'us,' not 'you.' The distinction is important to both police & the community we serve, our community, Londonderry.

Police and the community they serve do well to remember: we, the police, are you, the community. Just like you; we bring our kids to the same schools that you do, the same churches, the same soccer games. Our interests as police when we go home are identical to yours, those of the community: to be safe in our homes, and secure in the hope for a good life that each day gives to us as families in this Town, in this State in these States, United.

Policing works best when the interests of the organization and the community it serves are closely aligned.

It works best when we, as police men & women, actualize and live the aspirational values as human beings that ministers & politicians, priests, teachers & counselors talk about.

Policing works best when we as police men and women treat everyone, always, fairly, remembering always that before the law, those who we arrest are not guilty.

Policing works best when we remember that almost everyone that we come in contact with has had a bad day or is about to have one.

Policing works best in remembering that we must treat every person that we come in contact with decency, respect & dignity. Always. Every call. Every time.

That is how we earn the trust of the community we serve.

It is not an accident that here in Londonderry I believe we have the trust of our community. It is a trust earned over almost a quarter century. It is a trust re-earned

each day, over and over again. It is a trust that can be broken in an instant, if the foundation of trust built over years is not there to support it.

I do not say that because I believe it is true nor because I am hopeful that it is true, or because I want it to be true.

It is supported by these simple facts: there are sixty-one officers who work for the people of Londonderry; they responded to 25,042 calls for service in 2014 (a call for service is when an officer self-initiated her own activity or was dispatched to a call; this doesn't include walk-ins nor does it include telephone calls into the PD with a request).

Not including those minor matters handled immediately by a supervisor, there were fourteen (14) investigated complaints about officer conduct here in Londonderry last year. Eleven (11) were either categorized as not enough evidence or the officer was fully exonerated. Three (3) times out of 25,042 calls the officer was found to be at fault

So it is clear we do not discourage officer complaints; rather we are hopeful that you, our community, will bring your concerns to us. I am not naïve: some will be defensive responses to our legitimate actions. Others will be a concern to us, and we will address it as appropriate. In all cases, we as your public servants will learn from the complaint made.

This, a community that trusts its police service, and a police department that serves its community, does not happen by accident. It is built on a foundation of excellent hiring procedures that seeks good and decent servants, who have the skill set first to be honorable, mature, thoughtful & kind people, and only then good cops.

The frame built on that foundation is training that starts on your first day as Londonderry police and ends the day you retire. The system that keeps it working is strong, well trained, well coached supervision, always balanced, sometimes firm, and always willing to hear the other side and in the face of the facts, change your mind.

It is supported by you & us who live here, the community, with good pay, good benefits a good place to go to work every day. For that we thank you.

So this Police Week, let us take a moment to remember that police are not different than you or me. They go to work every day to a job that is a job. They are you and me. Kids, mortgages, bosses who are a pain in the butt; it is no different in that way.

Their job is different though: each day we ask them to put on an anti-ballistic vest & a gun, go out and solve problems intractable since the beginning of time: drug abuse, violence, theft among others. It is different too in that they seek each day in how they do their job aspirational values, justice, equality before the law, kindness, fairness, courage that we only have to talk about, but that they police have to live.



The do so with full knowledge that if they fail any day, any call could go south, and you may be the criminal, you may be suspended, fired, killed, permanently injured.

For the most part, certainly here in Londonderry, and likely across our country, the cops do a pretty good, even a very good job. When it comes to humans beings, my experience says, that is an achievement.

Best regards,

William Ryan Hart, Jr.  
Chief of Police  
Londonderry, NH



Thomas W. Aylesworth  
(781) 843-5000 Ext. 175  
taylesworth@meeb.com  
Admitted in: MA & NH

April 29, 2015

5/4/15

**BY HAND-DELIVERY**

Londonderry Town Council  
Londonderry Town Hall  
268B Mammoth Road  
Londonderry, NH 03053  
Attn: Mr. John Farrell, Chairman

Re: Motion for Rehearing of Decision Granting Rezoning Application of Property  
Located at Map 6, Lots 37 and 38

Dear Mr. Farrell and Honorable Council Members:

This letter is submitted on behalf of our client, the Kendallwood Townhouse Condominium Association (the "Association"). The Association is the organization of unit owners representing the interests of the Kendallwood Townhouse Condominium (the "Condominium"), an abutter to the properties and 6 and 8 Mohawk Drive (Map 6, Lots 37 and 38) (the "Subject Property") owned by Riverview LLC ("Riverview").

This letter is a motion for rehearing, pursuant to New Hampshire RSA 677:2, of the Londonderry Town Council's decision to grant Riverview's Rezoning Application to change the zoning designation for the Subject Property from a C-IV Zone to a C-I Zone. The Town Council voted to approve Riverview's Rezoning Application at a hearing on April 6, 2015.

The grounds for the Association's motion for rehearing are as follows:

1. The zoning change is unreasonable.

No sound reason exists for the zoning change. Riverview proposes to develop a wine bistro/tapas restaurant at the Subject Property. Riverview could develop this use under a C-IV Zone by applying for and obtaining a Conditional Use Permit from the Londonderry Planning Board. (Zoning Ordinance 2.2.2). It is unreasonable to allow Riverview to develop the Subject Property as a C-I Zone, because the needs of and impacts to the neighborhood were not considered. Evidence was presented to the Town Council at the public hearing that the proposed development is out of character for the neighborhood, not only as to the proposed use, but also as

45 Braintree Hill Office Park, Suite 107, Braintree, MA 02184-8733  
(781) 843-5000 ■ Fax (781) 843-1529 ■ www.meeb.com

to the elevation of the proposed building, which is substantially taller than the low profile residential and commercial buildings in the surrounding area. Moreover, evidence was presented at the public hearing that the front of the Condominium building closest in proximity is only approximately 60 feet to the boundary line shared with the Subject Property. It appears that no other residential building in Londonderry is located so close to a commercial zoned property. Given these circumstances, the Subject Property should remain a C-IV Zone so that the developer must apply for a conditional use permit and demonstrate that each of the standards for a conditional use permit are satisfied—for example, without limitation, that the interests and needs of the neighborhood and community are met, and that the use would not have a substantial adverse effect on the rights of the Condominium owners. (Ordinance Sections 1.5.2 and 2.4.4).

In addition to avoiding a Special Use Permit, the zoning change relieves Rivierview of the 30-foot height limitation under a C-IV Zone. (Zoning Ordinance Section 2.4.4). Rivierview represented to the Town Council at public hearing that it wanted the zoning change to construct a 35 foot-high building. Rivierview, however, presented no information suggesting that its desire to have a taller building is a reasonable basis upon which to grant a zoning change. If a compelling reason exists for a taller building, Rivierview could simply seek a height variance from the Londonderry Zoning Board of Adjustment (“ZBA”) without a zoning change. If Rivierview were to apply for a height variance, then the ZBA would necessarily require Rivierview to demonstrate that the additional building height would not be contrary to the public interest and would satisfy the additional requirements for a variance, RSA 674:33. In the proceeding before the Town Council, however, Rivierview was excused from making any showing in this regard, and the Town Council failed to examine or consider the light and privacy interests of the Condominium.

Granting the zoning change to C-I allows Rivierview, by right, to construct a building up to 50 feet in height pursuant to Ordinance Section 2.4.2, with no consideration whatsoever to the light and privacy interests of the Condominium. Evidence was presented at the public hearing that the abutting Condominium property is ten feet lower in elevation than the Subject Property and that the proposed location of Rivierview’s building will cast an afternoon shadow on the nearest Condominium building, thereby preventing adequate light to the building. Evidence was also presented that the additional building height allowed by the zoning change will substantially interfere with the Condominium resident’s privacy interests, as restaurant patrons will have a line of sight directly into the second story bedroom windows of certain Condominium units. It is unreasonable for the Town Council to grant the zoning change without consideration of the rights and interests of the Condominium, and a rehearing is warranted.

2. The zoning change is unlawful.

The zoning change is unlawful because it is spot zoning. The New Hampshire Supreme Court has defined spot zoning as an area that “is singled out for treatment different from that of similar surrounding land which cannot be justified on the bases of health, safety, morals or general welfare of the community and which is not in accordance with a comprehensive plan.”

Munger v. Town of Exeter, 128 N.H. 196, 198 (1986). Granting the request of a single owner to zone a small area is spot zoning unless it is demonstrated that “there is a public need for it or a compelling reason for it.” Id. Rivierview’s application for a zoning change is a request of a single owner to zone a small area. At the public hearing, Rivierview stated that the main reasons it applied for the zoning change was to make its property more flexible for other uses and more valuable for sale in the event it is unable to develop a wine bistro/tapas restaurant. These reasons, in the absence of any public need or compelling reason, make the zoning change unlawful spot zoning.

At the public hearing, there was no inquiry or discussion by the Town Council concerning a public need, compelling reason, or whether the change is in accordance with a comprehensive plan. Members of the Town Council indicated that they did not believe that changing the Subject Property back to its prior C-I Zone designation could constitute spot zoning, and that the Condominium unit owners had no reasonable expectation of a C-IV Zone because many of them purchased their units when the Subject Property was designated as a C-I Zone. But the law does not recognize any such exceptions to spot zoning. The prior zoning of the Subject Property is irrelevant in the absence of a finding of a public need, compelling reason, and that the change is in accordance with a comprehensive plan.

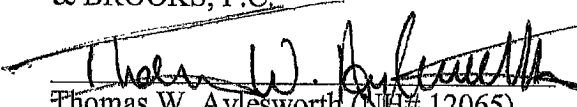
Moreover, the rezoning of the Subject Property is inconsistent with the surrounding land. When the Town Council changed the Subject Property zoning from C-I to C-IV in 2013, it found that the “rezoning will make [6 and 8 Mohawk Drive] consistent with the zoning of the surrounding parcels.” The zoning of the surrounding parcels is no different today than it was in 2013, and therefore the rezoning of the Subject Property back to a C-I Zone necessarily means that the rezoning is inconsistent with the surrounding parcels. The Town Council made the correct decision in 2013 to change the zoning of the Subject Property to C-IV. The C-IV Zone allows for residential and light commercial use, and the Subject Property is surrounded by both commercial and residential uses. The C-IV Zone provides the right balance and transition between these uses, whereas changing the zoning for the Subject Property to C-I ignores the surrounding parcels that are zoned exclusively for residential use.

For all the reasons stated above, the Association respectfully moves for a rehearing on Rivierview’s application for a zoning change and the Town Council’s decision to grant the application.

Respectfully submitted,  
KENDALLWOOD TOWNHOUSE  
CONDOMINIUM ASSOCIATION,

By its attorneys,

MARCUS, ERRICO, EMMER  
& BROOKS, P.C.

  
Thomas W. Aylesworth (NH# 12065)  
taylesworth@meeb.com  
45 Braintree Hill Office Park, Suite 107  
Braintree, MA 02184  
Tel. (781) 843-5000  
Fax (781) 843-1529

cc: Kendallwood Townhouse Condominium Association  
Andrew A. Prolman, Esq.