B·F·A
NEW HAMPSHIRE
BUSINESS FINANCE AUTHORITY

NOV 20 '12 AM 9:06 DAS

Beaulac

December 5, 2012

His Excellency John H. Lynch
Governor of the State of New Hampshire, and
The Honorable Executive Council
State House
Concord, New Hampshire 03301

**Re: Recommendation for Award of Guarantee under RSA 162-A:13-a: Centrix Bank & Trust and Atlas Advanced Pyrotechnics, Inc.**

Dear Governor and Council:

## REQUESTED ACTION

Holding of a public hearing and passage of a resolution entitled: A RESOLUTION UNDER RSA 162-A:18 AWARDING A STATE GUARANTEE UNDER RSA 162-A:13-a WITH RESPECT TO A LOAN FROM CENTRIX BANK & TRUST TO ATLAS ADVANCED PYROTECHNICS, INC. (For the text of the requested Resolution see Exhibit 1 attached to this letter of transmittal.)

The Business Finance Authority of the State of New Hampshire (the "Authority") respectfully requests that you hold a hearing and make the statutory findings under RSA 162-A:18, with respect to the proposed extension of a guarantee of the State of New Hampshire with respect to certain loan from Centrix Bank & Trust to Atlas Advanced Pyrotechnics, Inc. The loan to be subject to the State's guarantee will in an amount of up to $1,400,000 and the proposed guarantee will be in an amount equal to 50 percent of any deficiency determined to exist after the Lender has diligently pursued specified available collection rights. The Authority recommends your favorable action and submits in support thereof the following materials as designated:

(1) a summary of the transaction

(2) a proposed resolution for adoption by the Governor and Council;

(3) a copy of RSA 162-A:13-a;

(4) a letter from the Executive Director of the Business Finance Authority, explaining the transaction;

(5) a draft of the Guarantee Agreement which when executed and delivered will evidence the Authority's and the State's obligation to pay the amount guaranteed;

(6) a commitment letter from the Authority dated October 17, 2012;

FINANCING FOR NEW HAMPSHIRE'S FUTURE

2 PILLSBURY STREET, SUITE 201
CONCORD, NEW HAMPSHIRE 03301-4954
603-415-0190 • FAX: 603-415-0194

(7) the resolution adopted by the Authority on October 15, 2012, which recommends that the Governor and Council award the proposed guarantee;

(8) a summary of required statutory findings of the Governor and Council with reference materials to support each finding; and

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

Respectfully Submitted,

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

By: _____
Jack Donovan
Executive Director

See Attached Exhibits
mbd\wag\atlasreq

# LOAN SUMMARY

**REQUEST - 50%** BFA Guaranty under Working Capital Guaranty Program

**BORROWER – Atlas Advanced Pyrotechnics, Inc.**

**LOCATION -** Old Sharon Road
Jaffrey, New Hampshire 03452

**TYPE OF BUSINESS** – Wholesale/Retail – Fireworks
Firework displays

**LENDER -** Centrix Bank & Trust
1 Atwood Lane
Bedford, New Hampshire 03110

**AMOUNT OF LOAN -** $1,400,000

**TYPE OF LOAN** – Line of Credit

**PURPOSE** – Support working capital needs of the company

**COLLATERAL** – First security interest on all business assets.

cmc\wag\atlas(summary

**A RESOLUTION UNDER RSA 162-A:18**
**AWARDING A STATE GUARANTEE UNDER RSA 162-A:13-a**
**WITH RESPECT TO A LOAN FROM**
**CENTRIX BANK & TRUST TO**
**ATLAS ADVANCED PYROTECHNICS, INC.**

WHEREAS, the Governor and Council (the "Governor and Council") of the State of New Hampshire (the "State") have received from the Business Finance Authority of the State of New Hampshire (the "Authority") its written recommendation that the Governor and Council make certain findings and determinations pursuant to RSA 162-A:18 with respect to the award of a guarantee of the Authority in an amount equal to fifty percent (50%) of the principal amount of a loan up to $1,400,000 from Centrix Bank & Trust to Atlas Advanced Pyrotechnics, Inc. pursuant to RSA 162-A:13-a (the Working Capital Loan Guarantee Program or the "WAG Program");

WHEREAS, the proposed guarantee would require the pledge of the full faith and credit of the Authority in an amount not to exceed fifty percent (50%) of the proposed financing;

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

WHEREAS, the Governor and Council have received all the documentation and information with respect to the proposed award of the Authority's guarantee which they have requested; and

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

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Findings and Determinations. On the basis of the documentation and information received by the Governor and Council, and after a public hearing, the Governor and Council find:

(a) Special Findings.

(i) The award of the guarantee as proposed will contribute significantly to the success of the financing.

(ii) Reasonable and appropriate measures have been taken to minimize the risk of loss to the Authority and to ensure that any private benefit from the award of the guarantee will be only incidental to the public purpose served thereby.

(b) General Findings.

(i) The award of the guarantee as proposed will serve a public use and provide a public benefit.

(ii) The award of the guarantee as proposed is within the policy of, and the authority conferred by RSA Chapter 162-A.

(iii) The award of the guarantee as proposed will preserve or increase the social welfare or economic prosperity of the state and one or more of its political subdivisions, and will promote the general welfare of the state's citizens.

(iv) The award of the guarantee as proposed will promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment.

2. Approval. The Governor and Council approve the Authority's taking such further action under the Act with respect to the award of the guarantee as may be required and authorize the Authority to take such further action with respect to such proposed execution as is necessary and appropriate to carry out the proposed transaction.

3. Effective Date. This resolution shall take effect upon its passage.

Passed and Agreed to December 5, 2012.

_____
The Governor

_____
Councilor

_____
Councilor

_____
Councilor

_____
Councilor

_____
Councilor

mbd\wag\atlasgcres.req

**162-A:13-a Working Capital Loan Guarantee Program.**

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans which meet the requirements set forth in this section. Such state guarantee shall not at any time exceed 75 percent of the maximum principal amount that may be borrowed under the terms of the loan, plus interest and related reasonable collection expenses with respect to such loan. For purposes of this section, the term "loan" shall include, but not be limited to, revolving credit arrangements that provide for advances and repayment of principal based on the quality and amount of certain assets of a borrower, including rights to receive payments under contracts to provide services or products. The full faith and credit of the state shall be pledged for any such guarantee; provided that the guarantee shall not cause the contingent credit limit of RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender, and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. Any loan guaranteed under this section shall meet the following requirements:

(a) The agreement establishing the loan shall provide for adequate monitoring of collateral by the lender in accord with reasonable commercial practices; provided, however, that for loans the maximum principal amount of which may not exceed $500,000, the authority may provide alternative monitoring measures that reduce the costs of monitoring the loan.

(b) If the principal amount that may be borrowed under the loan may vary based on the quality and amount of specific assets of the borrower, then the repayment of the loan shall be secured by a first priority security interest in such specific assets.

(c) If the principal amount that may be borrowed under the loan may vary based on the quality and amount of specific assets of the borrower, then the agreement establishing the loan shall provide that the maximum amount of principal that may be advanced shall not exceed:

(1) Ninety percent of the borrower's accounts and accounts receivable which arise in the ordinary course of the borrower's business and which are not more than 90 days old from the due date of the invoice; and

(2) Sixty percent of the borrower's inventory valued at lower of cost or market value.

(d) The maximum principal amount available under the loan to any borrower shall not exceed $2,000,000.

IV. The amount payable under a guarantee awarded under this program may be based upon the percentage of the maximum principal amount available under a loan, and as may be determined by the authority, need not be reduced in proportion to any reduction in the principal balance of the loan.

V. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

B·F·A
NEW HAMPSHIRE
BUSINESS FINANCE AUTHORITY

December 5, 2012

His Excellency John H. Lynch
Governor of the State of New Hampshire, and
The Honorable Executive Council
State House
Concord, New Hampshire 03301

**RE: Award of State Guarantee with Respect to a Certain Loan from Centrix Bank & Trust (the "Lender") to Atlas Advanced Pyrotechnics, Inc. (the "Borrower")**

Dear Governor and Council:

The purpose of this letter is to describe and explain the lending transactions with respect to which the guarantee of the State of New Hampshire is recommended by the Business Finance Authority.

1. **Statutory Authority.** RSA 162-A:13-a authorizes the Authority to establish a "Working Capital Loan Guarantee Program" (the "WAG Program") to assist and encourage banking institutions to loan money to certain businesses operating within New Hampshire. Under this statutory authority, the Authority may recommend the award of a guarantee by the State of New Hampshire of the recovery of amounts loaned to certain businesses. The statute also provides that, upon the Authority's recommendation, the Governor and Council may, after holding a public hearing and making certain findings, approve such recommendation and award the guarantee.

2. **Concept of the WAG Program.** The Authority has developed the WAG Program as a significant part of its programs intended to facilitate the recapitalization of the New Hampshire business community. In general, unlike the other programs, the WAG Program focuses on assisting larger businesses which offer significant employment opportunities to New Hampshire residents. Encouraging and stabilizing the working capital financing available to such businesses should achieve the substantial public purpose of creating and preserving key economic infrastructure within the State.

3. **The WAG Program Guarantee.** In general, the Authority's WAG Program seeks to encourage lenders to loan money to businesses by assuming a portion of the risk that, if a business fails, the lender will not recover all of the funds loaned to the business after pursuing all available collection rights. Accordingly, if any deficiency is determined to exist after a lender has pursued all of its available rights and remedies, the WAG Program guarantee would provide for the repayment of a portion of such deficiency to the lender. This formulation of the WAG Program guarantee ensures that the Authority is not required to enter the business of collection against failed loans; rather such activities remain the obligation of the lenders.



2 PILLSBURY STREET, SUITE 201
CONCORD, NEW HAMPSHIRE 03301-4954
603-415-0190 • FAX: 603-415-0194

4. **Guarantee Agreements.** RSA 162-A:13-a requires the Authority to implement its WAG Program through "guarantee agreements" among the Authority, the State, the lender and the borrower. These agreements must meet minimum requirements established by statute, provide for the pledge of the full faith and credit of the State to support its guarantee and minimize the risk of loss to the State.

5. **Centrix Bank & Trust/Atlas Advanced Pyrotechnics, Inc. Transaction.** With the above general background in mind, we proceed to describe the proposed financing transactions with respect to which the Authority has recommended the award of a WAG Program guarantee.

The guarantee has been requested with respect to one term revolving line of credit in the maximum available principal amount of up to One Million Four Hundred Thousand Dollars ($1,400,000) (the "Loan").

Atlas Advanced Pyrotechnics, Inc is a management company for Atlas Pyrovison Productions, Inc., and Atlas Fireworks, Inc. The companies are located in Jaffery, NH where they employ 25 full time employees and 200 seasonal employees. The company provides fireworks display shows, and is a wholesaler and retailer of fireworks. The Loan proceeds are to be used by Atlas Advanced Pyrotechnics, Inc. to provide working capital support for inventory purchases.

The Loan is in the principal amount of up to $1,400,000. The Loan will be secured by a first security interest on accounts receivable and inventory of the company, the commercial guaranties of Atlas Pyrovison Productions, Inc., and Atlas Fireworks, Inc., and the unlimited personal guarantee of Stephen Pelkey.

The Borrower will repay the Loan in monthly installments of interest calculated at a variable rate of interest to be established by the Bank.

6. **Scope of Recommended Guarantee.** The Authority is recommending the award of a guarantee of the Loan described above in an amount equal to 50% of any deficiency determined to exist after the Lender has diligently pursued all available collection rights. Accordingly, if the Borrower defaults under the Loan and after pursuing all collection rights a deficiency of $1,400,000 is determined to exist under the Loan, the Authority and the State would be obligated to pay the Lender 50% percent of such amount (or $700,000). By so limiting the Lender's risk, the Authority hopes to facilitate the provision of this important financing.

7. **Terms of the Guarantee Agreement.** The terms and conditions of the guarantee commitment are to be expressed in a "Guarantee Agreement" among the Authority, the State, the Lender and the Borrower. This agreement, to be substantially in the form submitted to the Governor and Council with this letter, includes the following terms and conditions which incorporate all statutory requirements.

(a) Maximum Guarantee. As noted, the guarantee would not exceed 75% percent of the principal amount of the Loan and accordingly would satisfy the statutory require-

ment that the guarantee not exceed 75 percent of the principal of the Loan plus interest thereon. This 75 percent limitation, along with the requirement that a lender pursue all available collection rights prior to calling on the Authority or the State to make a guarantee payment, is intended to minimize risk of loss to the State.

(b) Authority Payment First, Then State. Any payment with respect to the guarantee would be made first from funds available to the Authority. Only after the Authority has determined that it does not have sufficient funds to pay the guarantee amount would the State be required to pay on the guarantee obligation.

(c) Use of Loan Proceeds. The proceeds of the Loan must be used as provided in the commitment letter and described above.

(d) Right of Acceleration. The Authority and the State will have the ability to demand that the Loan be accelerated in the event that the Borrower defaults on his obligations and does not cure such a default within 60 days.

(e) Fees and Expenses of the Authority. The Lender will be required to pay: (1) a closing fee of one percent (1%) of the maximum guarantee amount at the time the Loan transaction is consummated; and (2) an annual fee to the Authority equal to one percent (1%) of the maximum principal amount of the Loan availability as of the close of the immediately preceding anniversary date multiplied by the Guarantee Percentage. All legal expenses incurred by the Authority in connection with the provisions of the guarantee must be paid by the Lender.

(f) Subrogation Rights. The State and the Authority, to the extent either is required to pay on the guarantee, shall be subrogated to the rights of the Lender.

(g) Notice of Lender's Intent. The Lender is required to notify the Authority at least nine months prior to the maturity date of the Loan as to whether or not the Lender intends to refinance the outstanding principal balance of the Loan.

(h) Proportionate Reduction in Guarantee. As principal and other amounts are reduced under the Loan, the guarantee obligation of the Authority and the State is reduced.

**8. Maturity Date Requirement.** The statute requires the Loan to mature not later than five years after (a) the date the Loan is made or (b) the date the "project" is placed in service. The proposed loan documents satisfy this requirement.

In summary, all statutory requirements will be embodied and implemented in the proposed transaction and guarantee agreement.

Very truly yours

Jack Donovan, Executive Director
Business Finance Authority

wag\atlaswagreqst

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

## Guarantee Agreement

THIS GUARANTEE AGREEMENT (the "Agreement"), dated _____, ____, has three parties:

(1) the Business Finance Authority of the State of New Hampshire (the "Authority"), a public body corporate and agency of the State of New Hampshire (the "State"), whose address is 14 Dixon Avenue, Suite 101, Concord, New Hampshire, on behalf of the State,

(2) the following financial institution which is directly lending funds:

Centrix Bank & Trust
One Atwood Lane
Bedford, New Hampshire 03110

(the "Lender"), and

(3) the following persons which are borrowing funds from the Lender:

Atlas Advanced Pyrotechnics, Inc.
Old Sharon Road, PO Box 552
Jaffrey, New Hampshire 03452
( the "Borrower").

(4) the affiliates of the Borrower who are guaranteeing the repayment of the loan ("Related Parties")

Atlas Pyrovision Productions, Inc.
Old Sharon Road, PO Box 552
Jaffrey, New Hampshire 03452

Atlas Fireworks Factory, Inc.
Old Sharon Road, PO Box 552
Jaffrey, New Hampshire 03452

Stephen T. Pelkey
316 Nutting Road
Jaffrey, New Hampshire 03452

## FUNDAMENTAL PREMISES FOR THIS AGREEMENT

This Agreement is based on the following fundamental premises:

1. The Authority has been created and established as a public body corporate and agency of the State by Chapter 162-A of New Hampshire's Revised Statutes Annotated, as amended by Chapter 262 of 1992 N.H. Laws (the "Act"), for the purpose of providing for the preservation, establishment and redevelopment of business and industry in the State.

2. The Authority is authorized and empowered under the RSA 162-A:13-a to recommend that Governor and Council of the State of New Hampshire (the "Governor and Council") award a guarantee of the State of repayment of certain amounts arising under certain indebtedness owed by certain New Hampshire businesses to certain lenders (the "Working Capital Loan Guarantee Program" or WAG Program").

3. The Act provides that such a guarantee awarded under the WAG Program shall be evidenced by a guarantee agreement entered into by the State, the lender and the borrower.

4. The Lender has applied for a guarantee in accordance with and under the Act and the WAG Program with respect to certain indebtedness provided or to be provided to the Borrower.

5. Atlas Advanced Pyrotechnics, Inc., is located in Jaffrey, New Hampshire the company is a wholesaler and retailer of fireworks as well as a display company for fireworks shows. The company employs to 25 full time New Hampshire residents year round and has up to 200 seasonal employees.

6. The Authority has determined that the Borrower provides critical services and contributes significantly to the economy and industry of the State.

7. The Authority has determined that the award of the guarantee in accordance with this Agreement and the Act will contribute significantly to the success of the proposed financing.

8. The Authority has determined that the award of the guarantee in accordance with this Agreement and the Act will preserve, maintain and enhance the State's economic infrastructure and social welfare.

9. The Authority has determined that the award of the guarantee in accordance with this Agreement and the Act will promote the orderly development of business activities and create or preserve employment opportunities within the State.

10. The Authority has determined that the award of the guarantee in accordance with this Agreement will be subject to reasonable and appropriate measures which will minimize the

risk of loss to the State and will ensure that any private benefit from the award of the guarantee will be only incidental to the public purpose to be served by such guarantee.

11. The Authority has determined that the award of the guarantee in accordance with this Agreement and the Act will serve a public use and provide a public benefit.

## TERMS AND CONDITIONS OF THIS AGREEMENT

The Authority, on behalf of the State, the Lender and the Borrower agree as follows:

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

(a) "Acceleration Date" means the date on which the Lender accelerates all or any portion of the obligations of the Borrower under the Loan by providing written notice of demand and acceleration to the Borrower.

(b) "Affiliate of the Borrower" means any person or entity directly or indirectly controlled by the Borrower or directly or indirectly controlling the Borrower. For purposes of this definition, a person controls another person if such person directly or indirectly, or acting through or in concert with one or more persons: (i) owns, controls, or has the power to vote 50 percent or more of any class of voting securities or interests of the other person; (ii) controls in any manner the election or appointment of a majority of the directors or management of the other person; or (iii) has the power to exercise a controlling influence over the management or policies of the other person.

(c) "Affiliate of the Lender" means any entity which would be treated as an affiliate of the Lender for purposes of applicable federal law.

(d) "Authority's Service Fee" means the fee of the Authority to be paid by the Lender to the Authority for its own use as such fee is specified in Schedule 1(d) attached to this Agreement.

(e) "Authority's Legal Fees and Expenses" means reasonable legal fees and expenses incurred by the Authority in connection with the preparation, negotiation, execution and delivery of this Agreement.

(f) "Call Date" means the date on which each and every Collection Activity with respect to the Loan shall have been completed by the Lender to the extent commercially practicable or waived in writing by the Authority.

(g) "Claim Preservation Rate of Interest" means the effective rate of interest per annum paid by the Federal Reserve for overnight federal funds transactions with member banks as such rate exists at the beginning of business on the ninety-first day after the Acceleration Date, and as adjusted thereafter every 180 days.

(h) "Collateral" means all of the rights, title and interest to property of the type described in Schedule 1(h) hereto, now or hereafter acquired.

(i) "Collection Activity" means all those commercially reasonable methods of collection required to be employed and completed by the Lender, or its agents, during the Collection Period to achieve the following collection objectives with respect to the Collateral, to the extent the Collateral involves assets or properties described in the following categories, unless completion of any of such collection objectives is waived in writing by the Authority:

(i) Equipment, Inventory and Certain Other Personal Property. The Lender shall sell, assign, or otherwise dispose of, or cause to be sold, assigned or otherwise disposed of, each and every component of equipment, inventory and other personal property which constitutes Collateral and which is not described in paragraph 1(i)(ii) at public auction or private sale, by liquidation sale or other complete disposition, or as if such sale was being made in the ordinary course of the Borrower's business, all as the Lender, or its agents, deems best and in a commercially reasonable manner.

(ii) Accounts Receivable. The Lender shall notify all of the Borrower's account debtors existing as of the Acceleration Date, or thereafter, of the security interests held by the Lender in all of the Borrower's accounts receivable; direct and require that payments on such accounts receivable be made directly to the Lender or Lender's agent; and actively pursue all reasonable methods to collect each and every account receivable or proceeds therefrom (including, but not limited to, the hiring or managing of any collection agency) for a period of 180 days after written notification is sent to such account debtor as set forth above. Notwithstanding anything in this subparagraph that might be interpreted to the contrary, the Lender shall pursue collection of all of the Borrower's accounts receivable in a prudent, diligent and commercially reasonable manner before and after the 180-day period specified in this subparagraph.

(iii) Accounts and Instruments. The Lender shall exercise all rights of set-off against the accounts and instruments of the Borrower held by or in the possession of the Lender, including all checks, money, securities, accounts, bank accounts, deposit accounts and other accounts in the possession of or held by the Lender whether in the name of the Borrower or the name of the Lender, as allowed by law and obtain possession of such proceeds.

(iv) Mortgaged Property. The Lender shall foreclose or otherwise convey or obtain title to all of the Lender's rights, title and interest in and to real property with respect to which the Borrower has delivered to Lender a mortgage deed in accordance with and in full satisfaction of all applicable laws. The completion of such foreclosure shall be evidenced by either the Lender's receipt of the proceeds from the foreclosure sale or title deed to such property held in the name of the Lender or an Affiliate of the Lender, or Lender's agent.

(v) Bankruptcy. If the Borrower files or has filed against it a petition under any chapter of the United States Bankruptcy Code, the Lender shall diligently and prudently pursue its claim in such proceeding until payment of a final distribution with respect to the Loan, if any, of the Borrower's estate to the Lender or until the Lender's claim with respect to the Loan is fixed by confirmation of a plan of reorganization of the Borrower.

(j) "Collection Period" means the period beginning on the Acceleration Date and ending on the Call Date.

(k) "Collection Proceeds" means all cash, funds or other amounts received or realized by the Lender, before reduction for any costs of collection, foreclosure, sale, or other costs of any kind, during the Collection Period arising from the exercise of rights pursuant to the Collateral and any other amounts or funds which are applied against the Loan in accordance with the Loan Documents. For purposes of this paragraph 1(k), the following special rules shall apply:

(i) if the Lender or any Affiliate of the Lender acquires title to any item of the Collateral in partial or full satisfaction of the Loan, the fair market value of such Collateral as determined by an independent appraiser acceptable to both the Lender and the Authority within six months before or after such transaction shall be deemed to be the Collection Proceeds with respect to such Collateral;

(ii) if the Lender receives any consideration other than cash in satisfaction of its claim against the Borrower's estate in accordance with the United States Bankruptcy Code, the fair market value of such consideration as determined by an independent appraiser acceptable to both the Lender and the Authority shall be deemed to be the Collection Proceeds with respect to such consideration;

(iii) if the Lender receives any consideration in satisfaction of its claim against the Borrower's estate in accordance with the United States Bankruptcy Code, and such claim is based in part upon indebtedness other than the Loan, the Authority and the Lender shall agree on a fair and appropriate allocation of such consideration to the Loan and such other indebtedness;

(iv) if, for purposes of subparagraphs (k)(i) and (k)(ii), the parties are unable to agree upon the selection of an independent appraiser, each of the parties shall select an independent appraiser, who shall each determine the fair market value of the Collateral or consideration in question, and the average of such determinations shall be deemed to be the Collection Proceeds with respect to such Collateral or consideration; and

(v) if any portion of the Lender's right, title and interest in and to the Collateral or any portion of the Borrower's obligations under the Loan Documents is avoided pursuant to applicable federal bankruptcy laws with respect to fraudulent trans-

fers and obligations or state fraudulent transfer laws, the value or amount of such avoided portion shall be deemed to constitute Collection Proceeds.

(l) "Effective Date" means the date on which the Loan Documents and this Agreement are executed and delivered.

(m) "Event of Default" means either of the following events if the same shall occur and be continuing after the grace period and notice required (if any) applicable thereto:

(i) any representation or warranty made by the Lender in this Agreement shall prove to have been incorrect when made in a manner which has a material adverse effect on the rights of the Authority or the State under this Agreement; or

(ii) the Lender shall fail to perform or observe any term or covenant on its part to be performed or observed contained in this Agreement in a manner which has a material adverse effect on any rights of the Authority and the State and such failure shall remain unremedied, after written notice thereof shall have been given to the Lender by the Authority or the State, for a period of 30 days.

(n) "Guarantee Percentage" means 50 percent.

(o) "Guaranteed Amount" means the product of the Guarantee Percentage multiplied by the Realized Deficiency Amount.

(p) "Loan" means the obligation described in Schedule 1(p) attached to this Agreement as it may be renewed periodically with the consent of the Authority, provided that any such consent shall not effect the Stated Termination Time as defined in paragraph 7.

(q) "Loan Documents" means the loan and financing documents which are listed and described in Schedule 1(q) to this Agreement, and any other loan, financing, security or other agreements or documents which affect the Lender's rights, duties, immunities or liabilities under the documents listed in Schedule 1(q).

(r) "Public Policy Covenant" means the covenant of the Borrower to be set forth in the Loan Documents as provided in paragraph 10(j) of the Agreement.

(s) "Realized Deficiency Amount" means the sum of:

(i) the outstanding amount of principal owed to the Lender pursuant to the terms of the Loan as of the Acceleration Date; plus

(ii) the outstanding amount of interest owed to the Lender pursuant to the terms of the Loan which has accrued at the Stated Rate of Interest prior to and during the 90-day period ending on the close of business on the ninetieth day following the Acceleration Date; plus

(iii) an amount of interest determined by applying the Claim Preservation Rate of Interest to the sum of those amounts described in paragraphs 1(s)(i) and 1(s)(ii) less any Collection Proceeds during any applicable computation period of the Collection Period, beginning on the 91st day following the Acceleration Date and then beginning and ending on each and every date on which Collection Proceeds are realized; plus

(iv) the amount of reasonable costs incurred by the Lender in the performance and management of each and every Collection Activity and in the preservation of Collateral which remain outstanding as of the Call Date; minus

(v) all Collection Proceeds.

In no event shall the Realized Deficiency Amount include any amount attributable to (A) damages incurred by the Lender as a result of a claim against the Lender for negligence, misconduct or otherwise, or (B) unpaid late charges or unpaid penalty charges imposed by the Lender.

(t) "Stated Rate of Interest" means the rate of interest stated in the Loan which is applicable during any period prior to an event of default under the Loan. Such term shall not include any "default" or "penalty" rate of interest or other late charges which the Loan Documents may require as a result of an event of default.

**2. Guarantee Against Financial Loss by the Authority.** Subject to the terms and conditions of this Agreement, the Authority hereby guarantees the payment of the Guaranteed Amount and shall pay the Guaranteed Amount to the Lender within 30 days after the date on which the Lender provides written notice to the Authority that a Call Date has occurred. Such notice shall be delivered to the Authority not later than 60 days after a Call Date has occurred. Such notice shall include a history certified by an appropriate officer of the Lender of disbursements, payments, accruals of interest, any other charges or costs, and a summary of all Collection Activities undertaken with respect to the Loan Documents. Upon request of the Authority, the Lender shall provide the Authority with such further information as may be reasonably requested by the Authority.

**3. Right to Review Lender's Guarantee Claim**. Upon receipt of the written notice that a Call Date has occurred, the Authority shall have the right to review all aspects of the Loan and the Loan Documents which relate to the determination of the Guaranteed Amount. Prior to expiration of the 30-day period after receipt by the Authority of the written notice that a Call Date has occurred, the Authority shall either approve the payment of the Guaranteed Amount as specified in such notice or shall issue a written notice of proposed adjustment of such Guaranteed Amount to the Lender which shall state the basis for the proposed adjustment. At the time such notice of proposed adjustment is delivered, the Authority shall pay to the Lender the Guaranteed Amount, if any, as proposed in such notice. Upon receiving such a notice of proposed adjustment, the Lender may object to such notice by delivering a written statement of objection to the Authority explaining the basis or bases for such objection within 10 days after receipt of the Authority's no-

tice of proposed adjustment. Within 30 days after receipt of the Lender's written objection, the Board of Directors of the Authority shall determine in its sole discretion whether to adjust the Guaranteed Amount at a meeting duly noticed for such purpose. If the Authority and the Lender are unable to resolve a dispute by other means, the Authority may elect to resolve the dispute by arbitration pursuant to the rules of the American Arbitration Association. The Lender hereby consents to proceeding by means of arbitration. Both parties agree to be bound by any decision issued pursuant to such arbitration. If the Authority does not elect to proceed by arbitration, either party may seek to resolve the dispute by bringing an action in a court of appropriate jurisdiction.

**4. Subrogation Rights.** Upon making payment of the Guaranteed Amount pursuant to paragraph 2 of this Agreement, the Authority shall, to the extent it makes such payment, be subrogated to the rights of the Lender with respect to the Loan, the Collateral, and other rights of recovery provided under the Loan Documents with respect to the Loan. Upon payment of the Guaranteed Amount, the Authority may in its sole discretion direct the Lender to assign all rights under Loan Documents with respect to the Loan, without recourse, to the Authority, and the Authority shall then issue to the Lender a certificate of interest evidencing the percentage of the Loan retained by the Lender. Election by the Authority to obtain an assignment of the Loan Documents shall not waive any right of the Authority arising from any negligence, misconduct or violation by the Lender of any provision of this Agreement. The Lender shall provide the Authority with reasonable assistance thereafter as the Authority may request in proceeding with respect to any such collateral, security or other right of recovery, except that such reasonable assistance shall not require the Lender to incur any out-of-pocket expenses. If the Authority receives any funds as a result of enforcement actions taken with respect to any such collateral, security or other right of recovery, the Authority shall promptly pay over to the Lender its pro rata share of such amount, after reduction for any reasonable out-of-pocket expenses incurred by the Authority in taking such enforcement actions.

**5. State Guarantee.**

(a) Guarantee Commitment. Subject to the terms and conditions of this paragraph 5 and this Agreement, the State hereby guarantees the payment of the Guaranteed Amount, and for the performance of such guarantee the full faith and credit of the State are pledged. The State's guarantee obligation hereunder shall be solely with respect to the principal and interest of the Loan, subject to the limitations and adjustments contained in this Agreement, including the provisions for the determination of the Realized Deficiency Amount contained in paragraph 1(s) of this Agreement.

(b) Claim on Guarantee. If the Authority does not have moneys sufficient to pay the Guaranteed Amount as determined pursuant to paragraphs 2 and 3 of this Agreement at the time such payment becomes due, the Authority shall notify the State of such deficiency (the "Remaining Deficiency Amount") by telephone or telecopy, which notice shall be confirmed in writing, with a copy to the Lender. Such notice shall specify the amount of the Remaining Deficiency Amount. If additional moneys for the payment of such Remaining Deficiency Amount become available to either the Authority or the Lender prior to such payment but after the giving

of notice, the Authority or the Lender shall notify the State and such additional moneys shall be applied to reduce such Remaining Deficiency Amount, and, if the State also disburses funds covering the amount of such additional moneys, the Authority or the Lender shall promptly remit an amount equal to such additional moneys to the State.

(c) Payment by the State. No later than 3:00 P.M. on the 30th day after receipt by the State of the notice specified in paragraph 5(b), the State shall pay the Remaining Deficiency Amount stated in the notice directly to the Lender.

(d) Subrogation. In addition to all other rights granted the State under this Agreement, the Authority and the Lender hereby agree that the State shall, to the extent it makes payments of the Guaranteed Amount, be subrogated to the rights of the Lender with respect to the Loan, the Collateral, and other rights of recovery provided under the Loan Documents with respect to the Loan. Such subrogation rights shall be coextensive with the subrogation rights of the Authority under paragraph 4 hereof and shall not increase or otherwise affect the Borrower's liability under the Loan Documents.

**6. Recovery by Lender Subsequent to Payment of Guaranteed Amount.** If subsequent to receiving payment of the Guaranteed Amount pursuant to paragraph 2 or paragraph 5 of this Agreement the Lender shall recover any amount with respect to the Loan, the Lender shall promptly pay to each of the State and the Authority the share of such recovered amount which reflects the payment of the Guaranteed Amount made by each party (the aggregate share to equal the Guarantee Percentage multiplied by such recovered amount), less a proportionate share of any reasonable out-of-pocket expenses incurred by the Lender in recovering such amount.

**7. Guarantee Termination Date.** The obligation of either the Authority or the State to guarantee or make payment of any amount to the Lender pursuant to paragraph 2 or paragraph 5 of this Agreement shall expire on the earliest to occur of: (i) the date upon which the Authority receives a written certificate executed by the Lender which states that all indebtedness under the Loan Documents entitled to the benefits of such guarantee payment has been fully paid; (ii) the date upon which the Authority receives a written certificate executed by the Lender which states that the Lender agrees to terminate the obligations of the State to make a guarantee payment; (iii) the date on which an Event of Default shall have occurred; and (iv) fifth anniversary of the effective date, (the "Stated Termination Time"). Provided, however, that if the Borrower defaults under the Loan Documents prior to or as of the fifth anniversary of the Effective Date and the Lender provides timely written notice to the Authority prior to five days after the Stated Termination Time that such default has occurred, then the obligations of the State and the Authority to guarantee or make payment to the Lender pursuant to paragraph 2 of this Agreement shall continue until the later to occur of: (i) the date upon which the Authority receives a written certificate executed by the Lender that such default has been cured; or (ii) the date on which the Authority or the State makes payment of its guarantee obligation, if any, pursuant to the terms of this Agreement.

**8. Conditions Precedent to the Guarantee Obligation.** The obligation of either the State or the Authority to make payment to the Lender pursuant to paragraph 2 or paragraph 5 of

this Agreement shall not become effective until the following conditions precedent shall have been satisfied or waived in writing by the Authority:

(a) Receipt of Documents. The Authority shall have received the following, each dated the date of delivery thereof (unless otherwise specified below), in form and substance satisfactory to the Authority:

(i) Counterparts to this Agreement, duly executed by the Lender and the Borrower.

(ii) Executed copies (or duplicate copies thereof certified as of the Effective Date by the Lender to be a true copy) of each of the Loan Documents, duly executed by the parties thereto.

(iii) Certified copies of the actions or resolutions of the Board of Directors or other appropriate authority of the Lender and the Borrower approving this Agreement and the Loan Documents, and of all documents evidencing other necessary corporate action, if any, with respect to the execution, delivery and performance by the Lender and the Borrower of this Agreement and the Loan Documents.

(iv) A certificate of a duly authorized officer of the Borrower certifying that Schedule 11(i) to this Agreement includes a description of all pending or known threatened actions or proceedings affecting the Borrower or its properties before any court, government agency or arbitrator, which may, if adversely determined (A) purport to affect the legality, validity or enforceability of the Loan Documents or (B) materially adversely affect the financial condition, properties, prospects or operations of the Borrower.

(v) An balance sheet of the Borrower as of May 31, 2007, and certified financial statements of the Borrower setting forth the results of operations of the Borrower for the fiscal period ending on such date, together with pro forma adjustments thereto, certified by the President or Treasurer of the Borrower that such pro formas were prepared in good faith and on reasonable assumptions, in form and substance satisfactory to the Authority, reflecting the proposed capital structure of the Borrower on the Effective Date after giving effect to the Loan and the transactions contemplated by the Loan Documents.

(vi) A certificate signed by the appropriate loan officer of the Lender, certifying that appropriate officials of the Lender have reviewed the balance sheet, financial statements and financial projections described in the prior subparagraph and that the figures, statements and conclusions therein are, to the best of Lender's knowledge, reasonable.

(vii) Favorable opinion of Counsel to the Borrower, in substantially the form of Schedule 8(a)(viii) attached hereto and as to such other matters as the Authority may reasonably request.

(viii) Such other instruments, certificates, opinions, surveys and other documents as the Authority may reasonably request, all in form and substance acceptable to the Authority.

(b) Loan Documents Effective. Each of the Loan Documents, which shall be in form and substance acceptable to the Authority, shall be in full force and effect and all conditions to making advances thereunder shall have been satisfied.

(c) Fees and Expenses. The Lender shall have paid all Authority Service Fees and all Authority Legal Fees and Expenses, to the extent then due and payable.

(d) Good Title. The Borrower shall have good and marketable title to the Collateral in fee simple and full possession thereof, free and clear of all liens and encumbrances except such encumbrances expressly excepted by the Authority.

(e) Loan Document Borrowing Limits. If the maximum principal amount of the Loan may vary based on the quality and amount of specific assets of the Borrower, the Loan Documents shall provide that the maximum principal amount of the Loan that may be advanced shall not exceed the sum of:

(i) 75 percent of eligible accounts receivable and Borrower's accounts which arise in the ordinary course of the Borrower's business and which are not more than 90 days old from the date of the invoice and 50 percent of eligible inventory with an increase of $300,000 seasonally from March through May based on real estate equity..

**9. Representations and Warranties of the Authority.** The Authority represents and warrants:

(a) Valid Existence. The Authority is validly organized and existing as a public body corporate and agency of the State.

(b) Due Authorization, No Violation. The execution, delivery and performance by the Authority and the State of this Agreement are within the powers of the Authority and the State, have been duly authorized by all action necessary on the part of the Authority and the State, and do not and will not contravene any law or legal or contractual restriction binding on or affecting the Authority and the State.

**10. Representations and Warranties of the Lender.** The Lender represents and warrants:

(a) Valid Existence and Qualification. The Lender is a bank duly organized and validly existing under the laws of the State of New Hampshire. The Lender is duly qualified to do business in, and is in good standing in, all other jurisdictions where the nature of its business or the nature of property owned or used by it makes such qualifications necessary.

(b) Due Authorization, No Violation. The execution, delivery and performance by the Lender of this Agreement and each Loan Document are within the Lender's powers, have been duly authorized by all necessary action, and do not and will not contravene (i) the Lender's charter or by-laws or (ii) any law or legal or contractual restriction binding on or affecting the Lender.

(c) Agreement and Loan Documents Valid and Binding. This Agreement and each of the Loan Documents when delivered will be legal, valid and binding obligations of the Lender enforceable against the Lender in accordance with their respective terms; subject to the qualification, however, that the enforcement of rights and remedies herein and contained in the Loan Documents is subject to bankruptcy and other similar laws of general application affecting the rights and remedies of creditors and to the effect of general principles of equity, including (without limitation) concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law).

(d) Possession of Loan Documents. The Lender has in its possession an original executed version of each and every Loan Document, except as set forth in Schedule 10(d) hereto.

(e) No Default. Immediately upon making the Loan, to the best of Lender's knowledge, neither the Borrower nor any Affiliate of the Borrower will be in material violation or default of any terms or conditions of any of the Loan Documents, any other agreement between the Lender and the Borrower or any Affiliate of the Borrower or any obligation of the Borrower or any Affiliate of the Borrower to the Lender.

(f) Compliance with Lending Laws. The Lender has complied in all material respects with all applicable federal and state laws, statutes, rules and regulations pertaining to the making of the Loan.

(g) True Documents. No application, exhibit, schedule, report or other written information provided by the Lender or its agents to the Authority in connection with the negotiation, execution and closing of this Agreement knowingly contained when made any material misstatement of fact or knowingly omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances under which they were made.

(h) Lender's Credit Decision. The Lender acknowledges that it has, independently and without reliance upon the Authority or any of the Authority's officers, employees or agents, and based upon such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into the Loan and the Loan Documents. The Lender further acknowledges that the Authority, its officers, employees or agents, have not directly or indirectly controlled or influenced the Lender's decision to enter into the Loan and the Loan Documents.

(i) No Other Agreements. There does not exist, nor has the Lender entered into any additional, side or collateral agreement with the Borrower relating to the Loan which are not fully set forth in the Loan Documents.

(j) Public Policy Loan Covenant. The Loan Documents contain a covenant in substantially the following form that the Borrower shall not, without the consent of the Authority, sell, lease, transfer or otherwise dispose of all or substantially all of its assets (whether in a single transaction or series of transactions during any consecutive 12-month period) other than in the ordinary course of the Borrower's business in accordance with ordinary and customary terms and conditions.

(k) No Governmental Action Necessary. No authorization, approval, exemption, or consent by any governmental or public body or authority is required in connection with the Lender's consummation of the transactions contemplated under the Agreement and the Loan Documents to be performed by the Lender.

(l) No Actions Pending. There are no actions, proceedings or investigations pending or, to the best of the Lender's knowledge, threatened against the Lender before any court, government agency or other tribunal which might materially and adversely affect the performance by the Lender of its obligations under, or the validity or enforceability of the Agreement or the Loan Documents.

**11. Representations and Warranties of the Borrower.** The Borrower represents and warrants:

(a) Valid Existence and Qualification. Atlas Advanced Pyrotecnichics, Inc. is a corporation duly organized, validly existing and in good standing under the laws of the State of New Hampshire.

(b) Due Authorization, No Violation. The execution, delivery and performance by the Borrower of this Agreement and each Loan Document are within the Borrower's powers, have been duly authorized by all necessary action, and do not and will not contravene (i) the Borrower's organizational documents (if any) or (ii) any law or legal or contractual restriction binding on or affecting the Borrower.

(c) Agreement and Loan Documents Valid and Binding. This Agreement and each of the Loan Documents when delivered will be legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms; subject to the qualification, however, that the enforcement of rights and remedies herein and contained in the Loan Documents is subject to bankruptcy and other similar laws of general application affecting the rights and remedies of creditors and to the effect of general principles of equity, including (without limitation) concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law).

(d) No Default. Immediately upon making the Loan, to the best of Borrower's knowledge, neither the Borrower nor any Affiliate of the Borrower will be in material violation or default of any terms or conditions of any of the Loan Documents or any other agreement between the Lender and the Borrower or any Affiliate of the Borrower or any obligation of the Borrower or any Affiliate of the Borrower to the Lender.

(e) True Documents. No application, exhibit, schedule, report or other written information provided by the Borrower or its agents to the Authority in connection with the negotiation, execution and closing of this Agreement knowingly contained when made any material misstatement of fact or knowingly omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances under which they were made.

(f) Borrower's Credit Decision. The Borrower acknowledges that it has, independently and without reliance upon the Authority or any of the Authority's officers, employees or agents, and based upon such documents and information as it has deemed appropriate, made its own analysis and decision to enter into the Loan and the Loan Documents. The Borrower further acknowledges that the Authority, its officers, employees or agents, have not directly or indirectly controlled or influenced the Borrower's decision to enter into the Loan and the Loan Documents.

(g) No Other Agreements. There does not exist, nor has the Borrower entered, into any additional, side or collateral agreement with the Lender relating to the Loan which are not fully set forth in the Loan Documents.

(h) No Litigation or Governmental Proceeding. Except as set forth in Schedule 11(i) hereto, there is no pending or known threatened action or proceeding (including, without limitation, any action or proceeding relating to any environmental protection laws or regulations) affecting the Borrower or its properties before any court, governmental agency or arbitrator, which may, if adversely determined, (A) affect the legality, validity, or enforceability of this Agreement or any of the Loan Documents or (B) materially adversely affect the financial condition, properties, prospects or operations of the Borrower as a whole.

(i) Taxes Current. The Borrower has filed all tax returns (federal, state and local) required to be filed and paid taxes shown thereon to be due, including interest and penalties, or, to the extent the Borrower is contesting in good faith an assertion of liability based on such returns, has provided adequate reserves in accordance with generally accepted accounting principles for payment thereof.

**12. Covenants of the Lender.**

(a) Affirmative Covenants. On and after the Effective Date so long as the obligation to guarantee the Loan created under this Agreement shall remain in force, the Lender will, unless the Authority shall otherwise consent in writing:

(i) Preservation of Existence. Preserve and maintain its corporate existence.

(ii) Compliance with Laws, Etc. Comply in all material respects with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, including without limitations any such laws, rules, regulations and orders relating to banks and banking companies.

(iii) Inspection Rights. At any time and from time to time upon reasonable notice, permit the Authority and its employees and representatives to examine and make copies of and abstracts from the records and books of account of and the Lender and to discuss the affairs, finances and accounts of the Lender with the Lender and its officers, directors and accountants, to the extent that such inspection reasonably relates to the Loan and the Loan Documents; provided, however, that the Authority shall not copy or extract any information from such files unless (i) the information is protected from disclosure pursuant to RSA Chapter 91-A (the "Right to Know Law"), in which case the Authority agrees to invoke the confidentiality provisions of the Right to Know Law, (ii) if such information cannot be so protected, the consent of the Borrower has been obtained, or (iii) the information is within the public domain.

(iv) Keeping of Books. Keep proper records and books of account in which full and correct entries shall be made of all activity relating to the Loan and the transactions contemplated by the Loan Documents, in accordance with good accounting practices consistently applied.

(v) Notification of Default. Notify the Authority promptly of any default or event of default under the terms of the Loan Documents or any other agreement between the Lender and the Borrower, or as soon as practicable upon realization by the Lender of an anticipated default or event of default by the Borrower under the terms of the Loan Documents or any other agreement between the Lender and the Borrower.

(vi) Correspondence and Reports. Provide the Authority with copies of any and all annual financial statements, financial reports, balance sheets, and income statements received by the Lender from the Borrower and all reports concerning the financial status of the Borrower prepared by the Lender or a Lender's agent and forwarded by the Lender to the Borrower.

(vii) Annual Loans Transaction Reports. Provide the Authority with an annual status report concerning the Loan on or before the fifteenth day of April of each year indicating disbursements, payments, accruals of interest and any other charges or costs undertaken with respect to the Loan.

(viii) Monthly Collection Reports. After any date on which the Borrower defaults in its obligations under the Loan Documents, provide the Authority with a

monthly status report concerning the status of the Lender's efforts to cure such default or to realize upon any collection rights under the Loan Documents.

(ix) Copies of Loan Documents. Provide the Authority with copies of all Loan Documents and any and all amendments thereto as executed and, if applicable, recorded in the appropriate filing or recording offices.

(x) Servicing. Service the Loan in accordance with the Lender's standard policies and procedures, and in accordance with the standard of loan servicing employed by the Lender for its commercial loan portfolio generally.

(xi) Pursuit of Payment. Proceed diligently to collect all payments due under the Loan and the Loan Documents as and when the same shall become due and payable and promptly discharge all the obligations of the Lender under each of the Loan Documents.

(xii) Commercially Reasonable Collection Activities. Pursue each and every Collection Activity in a prudent, diligent and commercially reasonable manner.

(xiii) Fees and Expenses. Pay, or cause to be paid, the Authority Service Fee and all Authority Legal Fees and Expenses when such fees shall become due.

(xiv) Acceleration. Accelerate and declare all obligations of the Borrower under the Loan Documents with respect to the Loan immediately due and payable on the 60th day after receiving written notice from the Authority directing the Lender to take such action after a default or an event of default has occurred under the terms of the Loan Documents, unless such default has been cured prior to such 60th day.

(xv) Monitoring Collateral. Monitor the value and quality of the Collateral in accordance with reasonable commercial practices.

(xvi) Loan Documents. Any security interest granted by the Loan Documents shall provide senior priority benefit to the Loan over any other obligation secured thereby.

(b) Negative Covenants. Notwithstanding anything in the Loan Documents to the contrary, on and after the Effective Date so long as the obligation to guarantee the Loan created under this Agreement shall remain in force, the Lender will not, without the prior written consent of the Authority:

(i) No Amendments, Consents, Etc. Amend, modify or supplement or give any consent, acceptance or approval to any amendment, modification or supplement or deviation by any party from the terms of the Loan Documents to the extent the same may in any way affect the Loan.

(ii) No New Agreements. Enter into any agreement with the Borrower to extend new or additional indebtedness in an amount which exceeds $10,000 or to take new or additional collateral or security for any obligation or amend, modify or supplement any other agreement with the Borrower.

(iii) No Preferential Security. Acquire any preferential security, surety or insurance to protect that portion of the Loan which is not subject to the guarantee herein provided.

(iv) No Transfer or Assignment. Transfer, convey or otherwise assign any of the Lender's rights under the Loan and the Loan Documents.

(v) No Release of Collateral. Release or discharge any Collateral.

(vi) No Set-Off Against Other Indebtedness. Apply any funds realized through the set-off of any deposits or accounts of the Borrower, any Affiliate of the Borrower or any guarantor, against indebtedness other than the Loan.

**13. Limitations on Actions by the State and the Authority.** The State and the Authority shall not be required to monitor the financial condition of the Borrower or the condition of any of the Collateral, and, unless otherwise expressly provided in this Agreement, shall not have any responsibilities with respect to notices, certificates or other documents filed with it hereunder. The State and Authority shall not be required to take any action unless indemnity reasonably satisfactory to it is furnished for expenses or liabilities to be incurred therein.

**14. Expenses of the Authority.** The Lender shall pay when due the Authority's Service Fee as set forth in Schedule 1(d) to this Agreement and shall prepay or reimburse the Authority within 30 days after notice for all expenses (including reasonable attorney's fees) incurred by the Authority as a result of undertaking any activity at the request of the Lender in connection with this Agreement. Any fees, expenses, reimbursements or other charges which the Authority may be entitled to receive from the Lender hereunder, if not paid when due, shall bear interest at 15 percent per annum. In addition to such interest, if any fees, expenses, reimbursements or other charges which the Authority may be entitled to receive from the Lender hereunder remain unpaid on the 30th day after the due date, a late charge equal to five percent of the unpaid amount shall be assessed against the Lender. Acceptance of payment of any such fees, expenses, reimbursements or other charges shall not constitute any waiver by the Authority or the State of any negligence or other malfeasance on the part of the Lender.

**15. Actions by the Authority.** Any action which may be taken on behalf the Authority hereunder shall be deemed sufficiently taken if taken on its behalf by its Chairman, its Vice Chairman, or its Executive Director, or by any other director, officer or agent whom it may designate from time to time.

**16. Matters to be Considered by the Authority.** In approving, concurring in or consenting to action or in exercising any discretion or in making any determination under this

Agreement, the Authority may consider the interests of the public, which shall include the anticipated effect of any transaction on tax revenues and employment, as well as the interests of the other parties hereto; provided, however, nothing herein shall be construed as conferring on any person other than the other parties any right to notice, hearing or participation in the Authority's consideration, and nothing in this paragraph shall be construed as conferring on any of them any right additional to those conferred elsewhere herein. Subject to the foregoing, the Authority shall not unreasonably withhold any approval or consent to be given it hereunder.

17. **State May Act on Behalf of Authority.** The State may take or omit to take any action authorized or permitted to be taken or omitted by the Authority hereunder as if the State were the Authority.

18. **Amendments.**

(a) Without the Borrower's Consent. The Authority and the Lender may in writing from time to time, without the consent of the Borrower, amend this Agreement in regard to matters or questions arising under this Agreement as shall not be inconsistent with the provisions of this Agreement and which shall not materially adversely affect the interests of the Borrower.

(b) With the Borrower's Consent. The parties may in writing from time to time amend this Agreement.

19. **Agreement Not for the Benefit of Other Parties.** This Agreement is not intended for the benefit of and shall not be construed to create rights in parties other than the Authority, the State and the Lender. With the exception of rights herein expressly conferred, if any, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give the Borrower or any other party other than the Authority, the State and the Lender any legal or equitable right, remedy or claim under or in respect to this Agreement or any covenants, conditions or provisions herein contained; this Agreement and all the covenants, conditions, and provisions being intended to be and being for the sole and exclusive benefit of the Authority, the State and the Lender. The Borrower acknowledges that the entire benefit derived by the Borrower under this Agreement is the Authority's execution of this Agreement and the making of the Loan by the Lender.

20. **Lender's Waiver of Set-Off Rights.** Notwithstanding any express or implied right of set-off provided to the Lender by any depository agreement or any other agreement, the Lender hereby waives any and all right to set-off, by reason of any claim against the State or the Authority whether arising under this Agreement or otherwise, against any funds held in any account or deposit maintained in the Lender's possession in the name of either the State of the Authority.

21. **Lender's Waiver and Release and Indemnification.**

(a) Waiver and Release. The Lender hereby forever releases and discharges the State and the Authority and all of their directors, officers, employees, agents, attorneys and

their successors and assigns (each, a "Released Person") from any and all claims, obligations, causes of action, debts, liabilities and set-offs of every name, nature and description, both in law and at equity, including but not limited to claims of contribution and indemnity, that Lender had, may now have, or may in the future have against the Authority or the State (except to the extent such claims arise from the gross negligence or willful misconduct of the Released Person):

(i) by reason of or in connection with the execution, delivery and performance of any of the Loan Documents or any transaction contemplated thereby (other than the obligations of the Authority and/or the State expressly created under this Agreement), or the use by the Borrower or the Lender of the proceeds of the Loan; or

(ii) in connection with or resulting from the utilization, storage, disposal, treatment, generation, transportation, release or ownership of any hazardous or toxic waste or substance (A) at, upon or under any property of the Borrower or any Affiliate of the Borrower or (B) by or on behalf of the Borrower or any Affiliate of the Borrower at any time and in any place.

(b) Indemnification. The Lender shall defend, indemnify and hold harmless the State and the Authority, and all of their directors, officers, employees, agents, attorneys and their successors and assigns (each, an "Indemnified Person") from and against all claims, damages, losses, liabilities, costs or expenses (including reasonable attorney's fees and expenses, whether or not such Indemnified Person is named as a party to any proceeding or investigation or is otherwise subjected to judicial or legal process arising from any such proceeding or investigation) which any of them may incur or which may be claimed against any of them by any person or entity (except to the extent such claims, damages, losses, liabilities, costs or expenses arise from the gross negligence or willful misconduct of the Indemnified Person) in connection with, resulting from or arising out of (or which may be claimed to arise out of) the acts or omissions of the Lender in connection with the transactions contemplated by this Agreement, the Loan or the property or business of the Borrower.

**22. Borrower's Waiver and Indemnification.**

(a) Waiver and Release. The Borrower hereby forever releases and discharges the State and the Authority and all of their directors, officers, employees, agents, attorneys and their successors and assigns (each, a "Released Person") from any and all claims, obligations, causes of action, debts, liabilities and set-offs of every name, nature and description, both in law and at equity, including but not limited to claims of contribution and indemnity, that Borrower had, may now have, or may in the future have against the Authority or the State (except to the extent such claims arise from the gross negligence or willful misconduct of the Released Person):

(i) by reason of or in connection with the execution, delivery and performance of any of the Loan Documents or any transaction contemplated thereby, or the use by the Borrower or the Lender of the proceeds of the Loan; or

(ii) in connection with or resulting from the utilization, storage, disposal, treatment, generation, transportation, release or ownership of any hazardous or toxic waste or substance (A) at, upon or under any property of the Borrower or any Affiliate of the Borrower or (B) by or on behalf of the Borrower or any Affiliate of the Borrower at any time and in any place.

(b) Indemnification. The Borrower shall defend, indemnify and hold harmless the State and the Authority, and all of their directors, officers, employees, agents, attorneys and their successors and assigns (each, an "Indemnified Person") from and against all claims, damages, losses, liabilities, costs or expenses (including reasonable attorney's fees and expenses, whether or not such Indemnified Person is named as a party to any proceeding or investigation or is otherwise subjected to judicial or legal process arising from any such proceeding or investigation) which any of them may incur or which may be claimed against any of them by any person or entity (except to the extent such claims, damages, losses, liabilities, costs or expenses arise from the gross negligence or willful misconduct of the Indemnified Person):

(i) by reason of or in connection with the execution, delivery and performance of any of the Loan Documents or any transaction contemplated thereby, or the use by the Borrower or the Lender of the proceeds of the Loan; or

(ii) in connection with or resulting from the utilization, storage, disposal, treatment, generation, transportation, release or ownership of any hazardous or toxic waste or substance (A) at, upon or under any property of the Borrower or any Affiliate of the Borrower or (B) by or on behalf of the Borrower or any Affiliate of the Borrower at any time and in any place.

**23. Applicable Law.** This Agreement shall be governed by the laws of the State of New Hampshire.

**24. Entire Agreement.** This Agreement, together with the accompanying documents, expresses the entire understanding, and the entire agreements of the parties with respect to the subject matter hereof, and it supersedes any and all prior agreements, representations or understandings, whether written or oral, with respect to the subject matter hereof.

**25. Counterparts.** This Agreement may be executed and delivered in several counterparts, each of which shall be deemed to be an original, but such counterparts together shall constitute one and the same instrument.

**26. Severability.** In the event any clause or provision hereof shall be held to be invalid by any court of competent jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions hereof.

**27. Captions.** The captions of this Agreement are for convenience only and shall not affect the construction hereof.

**28. Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the Authority, the Borrower and the Lender and their respective successors and assigns subject to the limitations contained herein.

**29. Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall be deemed sufficiently given or served if given in writing, mailed by first class mail, postage prepaid and addressed as follows:

(a) If to the Authority, addressed to:

Business Finance Authority of the
State of New Hampshire
2 Pillsbury Street, Suite 201
Concord, New Hampshire 03301
Attn: Executive Director

(b) If to the State, addressed to:

State of New Hampshire
Department of Treasury
State House Annex
Room 121
Concord, New Hampshire 03301
Attn: State Treasurer

(c) If to the Lender, addressed to:

Ms. Heather Leach
Centrix Bank & Trust
One Atwood Lane
Bedford, New Hampshire 03110

(d) If to the Borrower, addressed to:

Mr. Stephen Pelkey
Atlas Advanced Pyrotechnics, Inc.
Old Sharon Road, PO Box 552
Jaffrey, New Hampshire 03452

The parties may from time to time by notice in writing to the others designate a different address or addresses for notice hereunder.

Executed on the day and year first above written.

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

_____
Witness

By:_____
Name:
Title:

**STATE OF NEW HAMPSHIRE**
**BY: BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE (Pursuant to RSA 162-A:13-a, II)**

_____
Witness

By:_____
Name:
Title:

**CENTRIX BANK & TRUST**

_____
Witness

By:_____
Name:
Title:

**ATLAS ADVANCED PYROTECHNICS, INC.**

_____
Witness

By:_____
Name:

Title:

**ATLAS PYROVISION PRODUCTIONS, INC.**

_____
Witness

By:_____
Name:
Title:

**ATLAS FIREWORKS FACTORY, INC.**

_____
Witness

By:_____
Name:
Title:

**STEPHEN P. PELKEY**

_____
Witness

By:_____
Name:

## LIST OF SCHEDULES

| | |
|---|---|
| Schedule 1(d). | Authority's Service Fee. |
| Schedule 1(h). | List of Collateral. |
| Schedule 1(p). | Loan Guarantee Obligations. |
| Schedule 1(q). | List of Loan Documents. |
| Schedule 8(a)(viii). | Borrower's Counsel Opinion. |
| Schedule 10(d). | Excepted Loan Documents. |
| Schedule 11(i). | List of Actions Or Proceedings. |

cmc\wag\atlasagr.g&c

B·F·A
NEW HAMPSHIRE
BUSINESS FINANCE AUTHORITY

**CONFIDENTIAL COMMERCIAL AND FINANCIAL INFORMATION**

October 17, 2012

**VIA E- MAIL**

Ms. Heather Leach
Vice President
Centrix Bank & Trust
One Atwood Lane
Bedford, NH 03110

**Re: Centrix Bank & Trust - Atlas Advanced Pyrotechnics, Inc.**

Dear Ms. Leach:

The Business Finance Authority (the "Authority") has approved in principle the application submitted by Centrix Bank & Trust (the "Lender") with respect to Atlas Advanced Pyrotechnics, Inc. (the "Company"). Accordingly, the Authority is prepared to proceed with discussions to implement a credit enhancement package, subject to the general terms and conditions set forth in this letter. This letter is an expression of the Authority's intent to recommend that the Governor and Council approve the credit enhancement as described in this letter, and upon such approval to award such credit enhancement only based upon the information the Lender and the Company have submitted. Any obligation to recommend the award of a credit enhancement will arise only upon the satisfactory preparation, execution and delivery of documentation in form and substance satisfactory to the Authority.

In reaching its decision, the Authority has reviewed all information submitted in the application and has had full interviews with key management at the Company. We have acquired an understanding of the Company's financial situation and the Lender's proposed participation in the Company's capitalization as the primary secured creditor. Of course, as we proceed, we will require further information.

**Policy Background**

The Authority has determined that the Company offers important employment opportunities to New Hampshire residents and provides critical service which is very important to the health and vitality of New Hampshire's economy. The Authority's commitment to provide the credit enhancement for the Company reflects this fundamental determination that the proposed transactions will serve a public use and provide a public benefit. Indeed, the State's Constitution requires that any pledge of credit enhancement clearly serve a public purpose, with any benefit to private parties being merely incidental to this public objective.



2 PILLSBURY STREET, SUITE 201
CONCORD, NEW HAMPSHIRE 03301-4954
603-415-0190 • FAX: 603-415-0194

The Authority was created to offer credit enhancements to struggling New Hampshire businesses. The Working Capital Asset Guarantee Program established under Chapter 162-A of New Hampshire's Revised Statutes Annotated, as amended by Chapter 262 of 1992 New Hampshire Laws (the "Act") imposes a number of key limitations which are included below as part of the Authority's proposed credit enhancement package. First, the term of indebtedness which is subject to the State's guarantee must be no greater than five years and long enough to ensure a long-term commitment to the future of the Company. Second, the principal amount of the note guaranteed must not exceed $2,000,000. Third, while the statute provides for the maximum guarantee of 75 percent of a loan, the purpose of the Authority to provide economic opportunities for numerous businesses across New Hampshire requires careful allocation of the Authority's overall credit capacity. Accordingly, the Authority is restricted in its power to allocate credit enhancements to any one credit proposal. Fourth, the statute requires a "guarantee agreement" which includes terms and conditions which minimize risk of loss to the State. As you will see, the Authority's proposed credit enhancement package is designed to meet each of these requirements.

**Specific Public Purpose Determination**

Based upon the Authority's preliminary review of information submitted by the Lender and the Company, the Authority believes that the primary obstacle to the successful growth for the Company's operation is the ability to obtain locally based financing. The Authority's proposed commitment is directed to assist in the elimination of this obstacle by providing for a fifty percent (50%) guarantee on a working capital loan of up to $1,400,000 secured by a security interest in accounts receivable, inventory and any other corporate assets deemed necessary.

The Authority believes that this "partnership" approach between the Lender and the Authority will facilitate the success of the necessary new financing and achieve the fundamental public purpose of maintaining the Company's operation in its current form as an important part of the State's economic structure. This determination is consistent with the Authority's general policy with respect to all applications to provide the necessary credit enhancement for a particular case, while at the same time preserving overall credit enhancement capacity to assist with the broad range of financing needs for other New Hampshire businesses and other economic regions of New Hampshire. Further, it is consistent with the fundamental requirement that the Authority's enhancement tools not be used to supplant the private market decisions between banks and borrowers, but rather to assist private market participants in correcting current banking dislocations.

**Terms of Credit Enhancement Proposal**

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

| | |
|---|---|
| **Maximum Guarantee Amount:** | The Authority will recommend a guarantee equal to fifty percent (50%) of any deficiency realized under the $1,400,000 working capital line of credit, which is determined by the Lender to exist after pursuing all available collection rights. |
| **5-Year Term Requirement:** | Under statute, working capital loans subject to a Business Finance Authority Guarantee must have a term which does not exceed five years. |
| **Guarantee:** | Unlimited guarantee of Stephen Pelkey.<br><br>Unlimited guarantee of Atlas Fireworks Factory, Inc.<br><br>Unlimited guarantee of Atlas Pyrovisions Productions, Inc. |
| **Loan Covenants:** | Subject to all conditions and covenants as outlined in any Centrix Bank & Trust Loan Agreement to include but not limited to the following: |

1. The Line of Credit to be renewed annually for renewal by the Bank and the BFA.
2. Atlas Advanced Pyrotechnics, Inc. to provide monthly borrowing base certificates with accounts receivable and accounts payable aging.
3. Annual accountant prepared statements.
4. Advances limited to 75% of eligible accounts receivable and 60% of eligible inventory, and during the months of March through May, $700,000 real estate equity.
5. Collateral: A first security interest on all business assets, specifically: accounts receivable, inventory, equipment, furniture and fixtures.
6. Assignment of Life Insurance on Stephen Pelkey in a minimum amount of $1,000,000.
7. Second real estate mortgage on property located at 320 Daniel Webster Highway, Belmont, NH.
8. Second real estate mortgage on property located at 2 Commerce Lane, Londonderry, NH.
9. Fourth real estate mortgage on property located at 136 Old Sharon Road, Jaffrey, NH.

10. Second mortgage on property located at 941 Route 106, Loudon, NH.

11. Fees: Centrix Bank to pay a one percent (1%) of the Line of Credit availability at closing and one percent (1%) of the Line of Credit availability to be paid annually in arrears.

12. Appropriate insurance coverage on all assets securing debt.

13. Lender to agree to pay all reasonable legal expenses of the BFA preparation and closing of subject credit transaction.

**No Preferential Security:** Our proposal requires that the Authority share equally with the Lender in all collateral securing or any other assets acquired to support credit facilities between the Lender and the Company. Accordingly, proceeds from realization on any collateral (Including set off of any accounts) must be applied first to satisfy obligations which are secured by the Authority's guarantee. Further, the Lender may not hold or acquire any preferential security, surety or insurance to protect its unguaranteed interest in the credit facility.

**Percentage Guarantee:** As indicated above, the Authority's guarantee will be 50 percent of any deficiency on up to a $1,400,000 working capital line of credit finally determined by the Lender after pursuing all available collection rights.

**Determination of Guaranteed Loss:** The loss to which the percentage guarantee applies shall equal the sum of: (1) principal unpaid at the "payment time" (described below); (2) interest accrued under the loan during the 90-day period following the date the Lender accelerates the credit facility (or the date on which the loan matures and remains unpaid) which remains unpaid at the "payment time"; and (3) reasonable out-of-pocket collection costs unpaid at the "payment time". No default or penalty charges or damages paid by the Lender as a result of a legal claim against the Lender may be included in determining the guaranteed loss.

**Payment Time:** The right to call for payment under the guarantee shall arise only after the Lender has pursued and realized all available collection rights against collateral which secures this loan.

**Acceptable Debt Terms:** Documents evidencing the credit facility, other Lender agreements with the Company and security interests must include such other terms, conditions and covenants as may be deemed necessary and advisable by the Authority.

**Subrogation Rights:** The guarantee agreement shall provide that the State may exercise subrogation rights with respect to all rights and security of the Lender with respect to the loan.

**Closing and Annual Fees:** The Lender shall pay a fee to the Authority at closing equal to one percent (1.0%) of the guaranteed portion of the Line of Credit total availabilities. As of each anniversary date after the closing, the Lender shall pay an annual fee equal one(1) percent of the guaranteed portion of total amount of the line of credit available to the company, whether or not it is drawn down, provided that the Lender shall not be required to pay to the Authority the Authority Service Fee after the Acceleration Date as long as the Lender is unable or has waived its rights to collect such Authority Service Fees or amounts comparable to such Authority Service Fees from the Borrower.

**Authority Legal Expenses:** As a condition to proceeding, the Lender shall pay all reasonable legal counsel fees and expenses incurred in the evaluation, preparation and provision of the State's credit participation, even if the transaction is not consummated.

**Legal Opinions:** Counsel to the Company shall provide such opinion at closing of the transactions as to enforceability and other matters reasonably required by the Authority, and the Lender shall obtain title insurance and other assurances concerning the title of the collateral as applicable.

**Ratification and Approval:** The final documentation under which the State and the and the Authority will provide its credit participation shall be subject to ratification of the Board of Directors of the Authority. Of course, as required by RSA 162-A, any guarantee recommended by the Authority shall become effective only upon approval of the Governor and Council.

If the Lender wishes to proceed further to finalize the terms of this proposal, please sign and return this letter to us on or before 2:00 p.m. on November 9, 2012. As noted, any obligation to take action by the Authority will arise only upon satisfactory preparation, execution and delivery of documentation. With your execution of this letter, the Lender agrees that you shall pay the Authority's legal costs described above, even if the transactions are not consummated.

On behalf of the Authority, I look forward to working with the Lender toward a successful stabilization of the Company's capitalization.

Sincerely,

Jack Donovan
Executive Director

Centrix Bank & Trust

By: _____
Name: Heather Heach
Title: Vice President
Date: 11/6/12

swag\2012\AtlasAdvancedCMT

**A RESOLUTION RECOMMENDING THE AWARD OF A GUARANTEE OF THE STATE OF NEW HAMPSHIRE IN CONNECTION WITH FINANCING OF CENTRIX BANK & TRUST TO ATLAS ADVANCED PYROTECHNICS, INC. PURSUANT TO THE AUTHORITY'S WORKING CAPITAL ASSET GUARANTEE PROGRAM**

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

WHEREAS, the Business Finance Authority of the State of New Hampshire (the "Authority") has been requested by Centrix Bank & Trust (the "Lender") to recommend a guarantee by the State of New Hampshire (the"State") with respect to a $1,400,000 line of credit (the "Credit Facility") to Atlas Advanced Pyrotechnics, Inc. ( the "Borrower");

WHEREAS, the Credit Committee of the Board of Directors of the Authority has recommended that a guarantee be provided in accordance with the terms and conditions presented to the Board, in an amount equal to eighty percent of any deficiency determined to exist under the Credit Facility after the Lender has diligently pursued all available collection rights;

WHEREAS, the Authority took official action with respect to the Credit Facility by passing a resolution on October 15, 2012;

WHEREAS, the Authority has been furnished with (a) information and materials about the Borrower and the Credit Facility, (b) evidence that the Lender is willing to proceed with the Credit Facility, (c) the proposed terms and conditions of the Credit Facility, (d) evidence that the fair market value of collateral which will secure the repayment of the Credit Facility equals or exceeds 125 percent of the maximum principal amount of the Credit Facility, and (e) other information, materials and assurances deemed relevant by the Authority;

IT IS HEREBY RESOLVED THAT:

1. Factual Findings. On the basis of the information, materials and assurances received by the Authority and considered by it, the Authority finds:

(a) The Credit Facility consists of a revolving line of credit to Atlas Advanced Pyrotechnics, Inc., of up to $1,400,000.00 secured by a first security on all accounts receivable and inventory of Atlas Advanced Pyrotechnics.

(b) The Borrower is a management company for Atlas Pyrovision Productions, Inc., and Atlas Fireworks, Inc. The companies are located in Jaffery, NH where they employ 25 full time employees and 200 seasonal employees. The company provides fireworks display shows, and is a wholesaler and retailer of fireworks (the "Business").

c) The Business provides critical services in the State and offers significant employment opportunities to residents of the State which contributes significantly to the economy and industry of the State.

2. Special Findings.

(a) The award of the guarantee as proposed will contribute significantly to the success of the financing.

(b) Reasonable and appropriate measures have been taken to minimize the risk of loss to the State and to endure that any private benefit from the award of the guarantee will be only incidental to the public purpose served thereby.

3. General Findings.

(a) The award of the guarantee as proposed will serve a public use and provide a public benefit.

(b) The award of the guarantee as proposed is within the policy of, and the authority conferred by RSA Chapter 162-A.

(c) The award of the guarantee as proposed will preserve or increase the social welfare or economic prosperity of the State and one or more of its political subdivisions, and will promote the general welfare of the State's citizens.

(d) The award of the guarantee as proposed will promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment.

4. Determination and Recommendation. The Authority finds that the award of the guarantee as proposed will serve a public use and provide a public benefit and determines that the award of the guarantee as proposed will be within the policy of, and the authority conferred by the Act. The Authority recommends to Her Excellency, the Governor, and The Honorable Council that they make findings and a determination similar to those set forth above, and for that purpose the Executive Director is authorized, empowered and directed to transmit to the Governor and Council copies of this resolution, the materials received by the Authority with respect to the Credit Facility and any other documentation and information the Governor and Council may request.

5. Authorization of Agreement. The Executive Director is authorized, empowered and directed to deliver to the Lender a letter of intent of the Authority to recommend the award of a guarantee, subject to the parameters, terms and conditions as presented to the Board by the Credit Committee. The Chairman and Executive Director are further authorized, empowered and directed to execute and deliver a guarantee agreement on behalf of the Authority and the State pur-

suant to the requirements of the Act which shall contain parameters, terms and conditions substantially consistent with those presented to the Board by the Credit Committee, but subject to such changes and completion consistent with this resolution as the Chairman or the Executive Director may approve, his signature being conclusive identification of the guarantee agreement completed and authorized by this resolution.

6. Actions not to be Taken Until After Approval by Governor and Council. The actions authorized by paragraph 3 above shall not be taken until such time as the Governor and Council have made the findings and determination required by the Act, it being the intent of the Authority that the various actions on its behalf which are authorized above are subject to the action of the Governor and Council as required by the Act.

7. Other Actions by Officers. The Chairman, Vice Chairman, Executive Director and the Senior Credit Officer are each authorized, empowered and directed to take all other actions and execute, deliver or receive such instruments and certificates as they may determine are necessary on behalf of the Authority in connection with the transactions authorized by the preceding paragraphs of this resolution, but subject in all events to paragraph 6 hereof.

8. Effective Date. This resolution shall take effect upon its passage.

IN WITNESS WHEREOF, I have set hereunto my hand and affixed the seal of the Business Finance Authority of the State of New Hampshire on this 15th day of October, 2012.

BUSINESS FINANCE AUTHORITY
OF THE STATE OF NEW HAMPSHIRE

By: _____
Jack Donovan
Executive Director

cmc\gap\atlasyres

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

The materials appearing in quotations below are extracts from RSA 162-A:18. Dots indicate deleted provisions relating to matters not relevant to this transaction. The complete text of RSA 162-A:18 is attached to this summary.

**General Findings**

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

The proposed guarantee agreement contains commercially prudent financial safeguards and workable provisions designed to lessen the potential of State loss in the event of default by the borrower. (Tab 4) The Authority has determined that the business of the borrower provides critical services in the State and offers significant employment opportunities to residents of the State. (Tab 7) The materials and information furnished and the findings described below support, and enable the making of, this general finding.

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

The proposed guarantee agreement implements and incorporate all statutory requirements. (TABS 3 and 4) The Authority, which is the agency responsible for administration of RSA 162-A, has determined that the proposed transaction and the proposed award of a guarantee satisfy all statutory and policy requirements of RSA Chapter 162-A. (TAB 7) The materials and information furnished and the findings described below support, and enable the making of this finding.

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

The proposed guarantee is a condition of the proposed financing, and if awarded, will facilitate the provision of the proposed financing. (TABS 5 and 7) The borrower which will receive the proposed financing provides critical services in the State and offers significant employment opportunities to residents of the State. (TABS 5 and 7)

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

The borrower which will receive the proposed financing provides critical services in the State and offers significant employment opportunities to residents of the State. (TABS 5 and 7)

**Special Findings**

**5. "The award ... of the guarantee will contribute significantly to the success of the financing."**

The lender will undertake the proposed financing only if the guarantee is awarded. (See the lender's commitment letter, TAB 5.)

**6. "Reasonable and appropriate measures have been taken to minimize the risk of loss to the state and to ensure that any private benefit from the award of the guarantee will be only incidental to the public purpose served thereby."**

The proposed guarantee agreement contains commercially prudent financial safeguards and workable provisions designed to lessen the potential of State loss in the event of default by the borrower. (Tab 4) The Authority has determined that the business of the borrower provides critical services in the State and offers significant employment opportunities to residents of the State. (Tab 7)