

Moultonboro Hospitality, LLC
Attn: Sharafat Shaikh, Manager/Registered Agent
P.O. Box 366
Moultonborough, NH 03254

**ADMINISTRATIVE FINE
No. AF 14-003**

RE: Rodeway Inn Moultonboro water system
340 Whittier Hwy, Moultonborough, NH
PWS ID# 1618150

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Water Division (the “Division”) and Moultonboro Hospitality, LLC, parties to the above-captioned matter, and request the Commissioner to accept the following proposed settlement in this matter. In support of this motion, the parties state as follows:

1. Pursuant to RSA 485, the Department of Environmental Services (“DES”) regulates public water supplies. Pursuant to RSA 485:3, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Ws 300 (“Drinking Water Rules”) to implement this program. Beginning in 2007 the Drinking Water Rules are being redesignated as “Env-Dw,” as each chapter is readopted.
2. RSA 485:58, IV authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 485 or any rule adopted pursuant thereto, and to establish a schedule of fines for such violations.
3. Moultonboro Hospitality, LLC owns real property located at 340 Whittier Highway in Moultonborough, New Hampshire (the “Property”).
4. Moultonboro Hospitality operates the Rodeway Inn Moultonborough hotel on the Property which provides lodging and serves coffee and tea for at least 25 people, is open year-round and is served by a public water system (the “Water System”). Sharif Shaikh is the point of contact for issues related to the Water System.
5. Moultonboro Hospitality is the owner of the Water System.
6. After a lengthy history of non-compliance with RSA 485 and the Drinking Water Rules, on January 7, 2013, DES issued Administrative Order No. 13-001 WD (the “Order”) to Moultonboro Hospitality pursuant to RSA 485:58 documenting five bacteriological monitoring violations, one significant deficiency violation, and seven public notice violations. Pursuant to the Order, Moultonboro Hospitality was required to submit proof of public notice for failure to correct the significant deficiency identified by DES on March 12, 2012, or be in compliance with an approved

CAP. Pursuant to the Order, Moultonboro Hospitality was also required to submit drinking water samples to a state-accredited laboratory in accordance with the Water System's Master Sampling Schedule, and timely comply with public notification requirements between January 1, 2013; and January 31, 2015; dates inclusive. The Master Sampling Schedule was incorporated by reference into the Order and made enforceable thereunder. DES has no record that the Order was appealed. The Order remains in full force and effect.

7. On April 3, 2014, the Division issued Notice of Proposed Administrative Fine No. AF 14-003 (the "Notice") to Moultonboro Hospitality, LLC, seeking fines totaling \$14,000 for violations of RSA 485 and the Drinking Water Rules.

8. Specifically, in the Notice the Division cited Moultonboro Hospitality for violating Env-Dw 708.02 and Env-Dw 709.07(a) by failing to submit water samples from the Water System for bacteria analysis in July and October 2010, and July 2011, as set out in the Order. Moultonboro Hospitality also violated Env-Dw 709.10(a) by failing to submit four repeat water samples from the Water System for bacteria analysis within 24 hours of receiving notice from DES on January 26, 2012, as set out in the Order. Moultonboro Hospitality also violated Env-Dw 717.11(b) by failing to submit a bacteria groundwater sample in April 2012, within 24 hours of notification from DES, as set out in the Order. Pursuant to RSA 485:58, the Division sought a fine of \$2,000 for these bacteria monitoring violations set out in the Order.

9. In the Notice, the Division also cited Moultonboro Hospitality for violating Env-Dw 801.11 by failing to submit proof of public notice to DES for the July and October 2010, and July 2011 bacteria monitoring violations within 40 days of receiving notice of each violation from DES, as set out in the Order. Moultonboro Hospitality also violated Env-Dw 801.18 by failing to submit proof of public notice to DES for the February, March and April 2012 bacteria MCL violations of the Water System; and by failing to submit proof of public notice to DES for the significant deficiency treatment technique violation, within 40 days of receiving each notice of the violation from DES, as set out in the Order. Pursuant to RSA 485:58, the Division sought a fine of \$2,000 for the public notice violations set out in the Order.

10. In the Notice, the Division also cited Moultonboro Hospitality for violating Env-Dw 720.06(a) by failing to correct a significant deficiency, or be in compliance with an approved CAP for the deficiency identified on March 12, 2012, within 120 days of notification from DES of the significant deficiency, as set out in the Order. Moultonboro Hospitality also violated RSA 485, the Drinking Water Rules, and the Order by failing to submit proof of proper public notice to DES for the treatment technique violation within 15 days of the date of the Order. Pursuant to RSA 485:58, the Division sought a fine of \$2,000 for the violation of the Order.

11. In the Notice, the Division also cited Moultonboro Hospitality for violating RSA 485 and the Drinking Water Rules by failing to submit all four repeat water samples, including a groundwater sample, from the Water System for bacteria analysis within 24 hours of receiving notice from DES on October 30, 2013. Pursuant to RSA 485:58, the Division sought a fine of \$2,000 for this violation.

12. In the Notice, the Division also cited Moultonboro Hospitality for violating RSA 485 and the Drinking Water Rules by failing to submit all five routine water samples from the Water System for bacteria analysis in November 2013. Pursuant to RSA 485:58, the Division sought a fine of \$2,000 for this violation.

13. Finally, in the Notice the Division cited Moultonboro Hospitality for violating RSA 485, the Drinking Water Rules, and the Order by failing to submit proof of public notice to DES for the October and November 2013 bacteria monitoring violations within 40 days of receiving notice from DES of each violation. Pursuant to RSA 485:58, the Division sought a fine of \$2,000 for each of these violations of the Order for a total of \$4,000 for these two violations.

14. In order to settle this matter, the Division and Moultonboro Hospitality, LLC have agreed to the terms of this Settlement Agreement (“Agreement”), as set forth herein.

15. Moultonboro Hospitality, LLC agrees to pay the proposed fine in the amount of \$14,000, subject to the following terms:

a. Of the proposed fine in the amount of \$14,000, DES agrees to suspend 50%, in the amount of \$7,000, provided that Moultonboro Hospitality remains in compliance with this Agreement, RSA 485, the Order, and the Drinking Water Rules for a period of two years from the effective date of this Agreement. If Moultonboro Hospitality fails to maintain compliance during the two-year period, or fails to fully comply with the terms of this Agreement the amount suspended, \$7,000, shall become immediately due and payable in full. If Moultonboro Hospitality maintains compliance with the terms of this Agreement and with RSA 485, the Order, and the Drinking Water Rules for the prescribed two-year period, the suspended portion of the fine shall be waived;

b. Moultonboro Hospitality may receive credit for up to 50% of the remaining amount of the fine due, \$3,500, by undertaking the Supplemental Environmental Project (“SEP”) further described in the addendum to this Agreement. The SEP shall be credited at a 1:2 ratio (i.e., for every one dollar spent on the SEP up to \$1,750, two dollars is credited toward payment of the total fine due, up to a maximum credit of \$3,500.) The SEP is not otherwise required by any local, state, or federal statute, regulation, order, consent decree, permit or other agreement. If the total contribution towards completion of the SEP by Moultonboro Hospitality within 90 days of the date of this Agreement does not reach the \$1,750 commitment, then any remainder of the fine amount due, not paid through SEP credits will be paid to DES in accordance with the following paragraph; and

c. Moultonboro Hospitality agrees to pay the remaining 50% of the unsuspended portion of the fine, in the amount of \$3,500, in 23 monthly payments, in the amount of \$150 each, commencing on November 1, 2014; and, a final payment of \$50 due on October 1, 2016, in accordance with the following paragraph.

16. Any payments due and payable, or that become due and payable, pursuant to the preceding paragraph shall be paid by certified check made payable to “Treasurer, State of New Hampshire” and mailed to: **DES Legal Unit, Attn: Compliance Attorney, P.O. Box 95, Concord, NH 03302-0095.**

17. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

18. By executing this Agreement, Moultonboro Hospitality, LLC waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement

may be entered into and enforced by a court of competent jurisdiction.

19. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Moultonboro Hospitality, LLC, the Director of the Water Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

20. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

Moultonboro Hospitality, LLC

[Signature]
COPY

By: Sharafat Shaikh, Manager
Duly Authorized

6/27/14
Date

DES Water Division

[Signature]
COPY
Eugene J. Forbes, P.E., Director
Water Division

6/30/14
Date

This Motion to Accept Settlement agreement is granted this 1st day of July, 2014.

[Signature]
COPY
Thomas S. Burack, Commissioner
Department of Environmental Services

To complete the proposed SEP and be eligible for SEP credits against the administrative fine, Moultonboro Hospitality, LLC may help support the Lake Winnepesaukee Watershed Association (LWWA) by donating up to \$1,750 to the “Lake Winnepesaukee Watershed Association.”

Background: LWWA has been working with the town and state to improve water quality in Moultonborough for many years. Presently, the LWWA is working on a number of sites around the lake. At these sites (including Suissevale and States Landing, among others), the Project Partners plan to implement one or more Best Management Practices (BMPs). These projects involve several BMPs; the removal of sediment from Moultonborough Bay Inlet, stabilization and improvement of the boat launch, installation of several rain gardens and vegetative buffer plantings.

Long term operation and maintenance will be the responsibility of the town and performed by their Department of Public Works. This funding would help to increase the rain garden plantings, expand the size of the rain gardens, and/or include more erosion control plantings in areas that need them to prevent erosion.

Contact Information:

Patricia Tarpey, Executive Director
Lake Winnepesaukee Watershed Association
P.O. Box 1624
Meredith, NH 03253
(603) 581-6632
ptarpey@winnepesaukee.org

The SEP shall be credited at a 1:2 ratio (i.e., for every one dollar spent on the SEP up to \$1,750, two dollars is credited toward payment of the total fine due, up to a maximum credit of \$3,500.) The SEP is not otherwise required by any local, state, or federal statute, regulation, order, consent decree, permit or other agreement. If the total contribution towards completion of the SEP by Moultonboro Hospitality, LLC at the time of the execution of this Agreement does not reach the \$1,750 commitment by the deadline, then any remainder of the fine amount due, not paid through SEP credits, will be immediately paid to DES in accordance with paragraph #16 of the Agreement.