

54 STATE



STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
DIVISION of PARKS and RECREATION  
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856  
PHONE: (603) 271-3556 FAX: (603) 271-3553 E-MAIL: nhparks@dred.state.nh.us  
WEB: www.nhstateparks.org

August 7, 2014

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

**REQUESTED ACTION**

Pursuant to RSA 227-H:9, authorize the Department of Resources and Economic Development, Division of Parks and Recreation to exercise its first of three 5-year lease renewal options with the Mount Washington Observatory, North Conway, NH, for a portion of the Sherman Adams Building on top of Mount Washington in the amount of \$300,000 plus 50% of museum admissions earned annually in excess of \$120,000 plus 5% commission on gross fees, sales, and other charges collected for services performed and material sold upon Governor and Executive Council approval for the period of October 2, 2014 through September 22, 2019. The original lease agreement was approved by Governor and Executive Council on September 23, 2009, Item #47B.

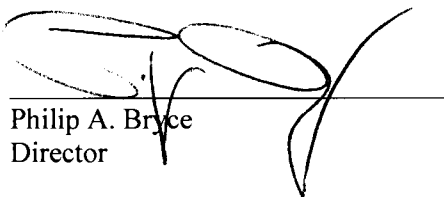
**EXPLANTION**


The original lease agreement provided Mount Washington Observatory the option to renew the lease for three (3) additional 5-year terms subject to the approval of the Governor and Executive Council. This is the first of three renewal option actions taken. All other terms and conditions of the original lease shall remain in full force and effect.

The Attorney General's Office has approved this lease agreement as to form, substance and execution.

Respectfully submitted,

Concurred,

  
Philip A. Bryce  
Director

  
Jeffrey J. Rose  
Commissioner

PAB/JJR/mc



**EXERCISE OF RENEWAL OPTION OF  
LEASE AGREEMENT  
BETWEEN THE  
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT  
AND THE  
MOUNT WASHINGTON OBSERVATORY**

THIS EXERCISE OF RENEWAL OPTION (the "Renewal Option") is made pursuant to the Lease Agreement (the "Lease") as granted according to the terms of the Lease by and between the STATE OF NEW HAMPSHIRE, DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT (the "State" and "DRED"), through its Commissioner, and MOUNT WASHINGTON OBSERVATORY (the "Lessee") having its principal place of business at 2779 White Mountain Highway, PO Box 2310, North Conway, NH 03860.

WITNESSETH:

WHEREAS, the parties have entered into the Lease above mentioned, approved by the Governor and Executive Council on September 23, 2009, Item #47-B, in which the State agreed to lease to the Lessee, and the Lessee agreed to accept, subject to the terms and conditions set forth in said Lease, a portion of the Sherman Adams Building therein identified and described as the premises, located on the Summit of Mount Washington, Sargent's Purchase, County of Coos, State of New Hampshire (the "Premises"), which is owned by the State; and

WHEREAS, pursuant to the provisions of Part 1 of the Lease, the Lessee hereby wishes to exercise the first of its three (3) renewal options provided for in the Lease, for an additional five-year term; and

WHEREAS, the parties hereto agree, pursuant to the exercise of the renewal option, to extend the term of the Lease for an additional five years;

NOW THEREFORE in consideration of the foregoing exercise of the renewal option, and the covenants and conditions contain in the Lease and set forth herein, the parties do hereby agree as follows:

1. Term of Lease

To extend the term of the Lease to September 22, 2019, unless sooner terminated in accordance with the provisions of the Lease, subject to the approval of the Governor and Executive Council.

2. Continuance of Lease

Except as specifically amended and modified by the terms and conditions of this Renewal Option, the Lease and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

*[SIGNATURE PAGE TO FOLLOW.]*

IN WITNESS WHEREOF, the parties hereunto have set their hand on the date herein named:

**MOUNT WASHINGTON OBSERVATORY**

By H. Edmund Bergeron Date: 6/13/14  
Ed Bergeron, President (Duly authorized)  
H. Edmund Bergeron

STATE OF NEW HAMPSHIRE  
COUNTY OF Carroll

On this 18<sup>th</sup> day of June, 2014, before me, H. Edmund Bergeron, the undersigned officer, personally appeared **Ed Bergeron**, known to me or satisfactorily proven to be the person subscribed to the within instrument, and acknowledged that he was duly authorized and executed the **Exercise of Renewal Option** for the purposes therein contained.

Notary Public/Justice of the Peace  
My commission expires:

JAIMIE GAGNE, Notary Public  
My Commission Expires: March 24, 2015

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT**

[Signature]  
Witness

By [Signature] Date: 7/7/14  
Jeffrey J. Rose, Commissioner

Approved as to form, substance and execution  
by the Attorney General's Office

[Signature] Date: 8/18/14

Approved by Governor and Council: \_\_\_\_\_ Date: \_\_\_\_\_ Item#: \_\_\_\_\_

JJR/ttl.041714

# State of New Hampshire Department of State

## CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Mount Washington Observatory is a New Hampshire nonprofit corporation formed December 9, 1936. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 1<sup>st</sup> day of August A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State





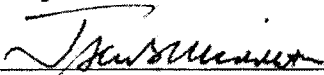
**MOUNT WASHINGTON** OBSERVATORY

PO Box 2310, North Conway, New Hampshire 03860  
Phone: (603) 356-2137 | Fax: (603) 356-0307

*Mount Washington Observatory  
2779 White Mountain Highway  
North Conway, NH 03860*

I, Jack B. Middleton, am the Secretary of the Mount Washington Observatory and hereby certify that the following resolution was adopted by the Board of Trustees on August 27, 2014 and is still in full force and effect:

That the President, Edward Bergeron, is authorized to execute on behalf of the Mount Washington Observatory all documents necessary to extend the October 1, 2009 lease between the Mount Washington Observatory and the State of New Hampshire

  
\_\_\_\_\_  
Jack B. Middleton  
Secretary







# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/12/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

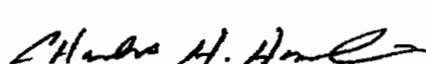
<b>PRODUCER</b> Infantine Insurance P. O. Box 5125  Manchester NH 03108	<b>CONTACT NAME:</b> Claudia Coleman	
	<b>PHONE (A/C No. Ext):</b> (603) 669-0704	<b>FAX (A/C No.):</b>
<b>E-MAIL ADDRESS:</b> ccoleman@infantine.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Citizens Insurance		31534
<b>INSURER B:</b>		
<b>INSURER C:</b>		
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:** 2014-2015 Master                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			ZBV333620106	6/15/2014	6/15/2015	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	X					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 5,000	
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY	<input type="checkbox"/> PRO	<input type="checkbox"/> LOC				\$
A	AUTOMOBILE LIABILITY			ABV315952406	6/15/2014	6/15/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS		<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS		<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
							Towing & Labor \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB			UHV333621405	6/15/2014	6/15/2015	EACH OCCURRENCE \$ 4,000,000
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE \$ 4,000,000
							\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			Coverage "A" State: NH	6/15/2014	6/15/2015	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input checked="" type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below			WDV316084305			E.L. DISEASE - EA EMPLOYEE \$ 500,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
**RE:** Confirmation of Coverage. It is agreed and understood that The State of New Hampshire is included as additional insured on General Liability and Umbrella when required by written contract.

<b>CERTIFICATE HOLDER</b>  State of NH Attn: Torene Tango-Low P.O. Box 1856 Concord, NH 03302-1856	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b>  Charles Hamlin/CC1 

RECEIVED

JUN 13 2014

D.R.E.D.



STATE OF NEW HAMPSHIRE  
 DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
 DIVISION of PARKS and RECREATION  
 172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856  
 PHONE: (603) 271-3556 FAX: (603) 271-3553 E-MAIL: nhparks@dred.state.nh.us  
 WEB: www.nhstateparks.org

9/23/09  
 mtg.

# 47-B DB# 436

September 15, 2009

His Excellency Governor John H. Lynch  
 and the Honorable Executive Council  
 State House  
 Concord, NH 03301

**REQUESTED ACTION**

Pursuant to RSA 227-H:9, authorize the Department of Resources and Economic Development (DRED), Division of Parks and Recreation to enter into a Lease Agreement with **Mount Washington Observatory**, North Conway, NH, for a portion of the Sherman Adams Building on the summit of Mount Washington, Sargent's Purchase, NH, in the amount of \$285,005 plus 50% of summit museum admissions earned annually in excess of \$120,000 and 5% commission on gross fees, sales, or other charges collected by the Observatory for services performed or material sold on the summit, upon Governor and Council approval through October 1, 2014, with the Observatory having the option to renew the lease for three additional five-year terms subject to the terms of the lease and Governor and Council approval.

**EXPLANATION**

This lease will replace the lease approved by Governor and Council on September 29, 1998, item #95. A new lease was negotiated to restructure the rental amount, the payment of museum admission and commission fees, and the tightening of lease conditions and responsibilities.

The Attorney General's Office has approved this agreement as to form and substance.

Respectfully submitted,

Concurred,

Ted Austin  
 Director

George M. Bald  
 Commissioner

TA/ttl091509



**State of New Hampshire  
Department of Resources and Economic Development  
Division of Parks and Recreation**

&

**The Mount Washington Observatory**

**LEASE**

This lease is entered into the 1st day of October, 2009 ("the commencement date), between the STATE OF NEW HAMPSHIRE, by and through its Department of Resources and Economic Development, 172 Pembroke Road, P.O. Box 1856, Concord, New Hampshire, 03302-1856 (hereinafter called the "State"), and the MOUNT WASHINGTON OBSERVATORY, a corporation duly organized and existing under laws of the State of New Hampshire and having its principal place of operations on the Summit of Mount Washington, Sargent's Purchase, County of Coos, State of New Hampshire, and its mailing address as P.O. Box 2310, North Conway, NH (hereinafter called the "Lessee"). This Lease is subject to the approval of the Governor and Executive Council of the State of New Hampshire.

**1. DESCRIPTION OF PREMISES / TERM, PAYMENT, AND RENEWAL**

The State hereby agrees to lease to the Lessee, and the Lessee hereby agrees to accept, subject to the terms and conditions hereinafter set forth, the following premises:

A portion of the Sherman Adams Building, so-called, located on the Summit of Mount Washington, Sargent's Purchase, County of Coos, State of New Hampshire, with the right to occupy and maintain the section of said building specifically designed and constructed for Observatory working and living quarters, and a portion of the surface deck immediately above said sections of the building, and the Mount Washington Museum portion in the lower level designed and constructed for educational purposes, all delineated as Observatory Exhibit A, first floor, and Exhibit B, lower level, and the Mount Washington Museum area, together with the right to access the premises over the premises of the State.

The State reserves the right for itself and guests, employees and assigns, with reasonable notice to the Lessee, of passing over said premises at any and all necessary and reasonable times on foot, as they may have occasion, giving due consideration to the use and occupancy of the leased premises. Notice is not required in the case of an emergency or exigent circumstance requiring the need to pass over said premises without the opportunity to provide notice.

To hold and enjoy the aforesaid premises and rights for a term of five (5) years from the commencement date, unless this Lease is sooner terminated under the provisions of this indenture, in consideration of the Lessee paying therefore to the State a base rental of One Dollar (\$1) per year, plus an additional annual rental amount of Forty Five Thousand Dollars (\$45,000) for the first year of the Lease (year one), and Sixty Thousand Dollars (\$60,000) for each subsequent year of the Lease (year two, three, four, five), in equal monthly installments by check made payable to "The State of New Hampshire," mailed to the address provided in paragraph 26. The base rental amount is due on the commencement date, and, thereafter, annually during the Lease term on the anniversary of the commencement date. The annual rental amount is due in twelve (12) equal monthly installments beginning on the commencement date, with each monthly payment due on the first day of each successive month.

The Lessee may, at its option, renew this Lease for three (3) additional five-year terms, for a base rental amount of One Dollar (\$1) per year, and an annual rental amount of Sixty Thousand Dollars (\$60,000) per year payable in equal monthly installments, by giving written notice via certified mail to the State one hundred and eighty (180) days in advance of the termination date of the current lease term, subject to the terms of the renegotiation provision herein. Renewal of this Lease is subject to the approval of the Governor and Executive Council of the State of New Hampshire.

Should the Lessee exercise its second renewal option according to the preceding paragraph (i.e. during lease year 10 for lease years 11 - 15), either party shall have the right to renegotiate paragraphs 1, 2, 3, 10, 17, & 18, of this Lease prior to the second renewal taking effect. To exercise this renegotiation provision, within thirty (30) days of receipt of the Lessee's written notice of its intention to exercise its second renewal option, either party shall notify the other party in writing of its intention to renegotiate the referenced paragraphs. Thereafter the parties shall renegotiate the terms of these paragraphs in good faith. Should the parties be unable to come to agreement on revised lease terms within sixty (60) days of the written notice to renegotiate the referenced paragraphs, either party may request mediation in writing. Should mediation be requested, within thirty (30) days of the request for mediation the parties shall jointly select a neutral third party who shall serve as a mediator between the parties on the renegotiation issue. The parties shall schedule mediation session(s) as are reasonably necessary to discuss the issue(s) in dispute and shall renegotiate in good faith with the mediator. The parties shall share the costs of the mediator equally. Should the parties fail to agree to revisions/amendments to these paragraphs by the termination date of the lease term, whether through their own negotiation or with the assistance of a mediator, the Lease shall end on the termination date. Should the parties fail to timely exercise their right to renegotiate, the Lease shall renew on its then-existing terms.

Nothing herein prevents the parties from amending the terms of this Lease in writing at any point during the Lease term, with any necessary approval from the Governor and Executive Council.

## 2. HEAT, WATER, UTILITY CHARGES

During the term hereof the Lessee shall pay for all electricity and heat for the leased premises each year, with the exception of heat and utilities for the Mount Washington Museum. Electricity and heat will be invoiced by the State on or around the 27<sup>th</sup> of each month of the lease term. Payment shall be due to the State within thirty (30) days of the date of the State's invoice. A payment received by the State after thirty (30) days of the date of the State's invoice shall be considered a late payment. Three (3) consecutive late payments, or eight (8) late payments anytime over a term of the Lease, shall constitute a material breach of the Lease. Should a payment not be received by the State within thirty (30) days of the date of the State's invoice, the State may send the Lessee a written demand for payment. Should the State not receive payment from the Lessee within fifteen (15) days of the date of the State's written demand, it shall constitute a nonpayment. A nonpayment of utilities by the Lessee shall constitute a material breach of the Lease. The State will review annual rates after the first of the year and said rates will be set and effective by March 1<sup>st</sup> of each year of the lease term for the forthcoming year.

The State shall furnish heat, electricity, and water within limits of the present facilities delineated as Observatory Exhibit A, first floor, and Exhibit B, lower level, and the museum area during the period as outline above. The installation and operation of expanded or additional services shall be at the expense of the Lessee with prior written approval from the State. In the event any interruption should occur in such services, the State shall not be responsible but shall make every effort to restore service as soon as possible.

Telephone, internet, and other such communication service for its own use shall be the responsibility and sole cost of the Lessee. Lessee shall pay for its propane used for cooking purposes.

The State claims all aural and visual broadcast rights on the summit. The use of any such rights by the Lessee shall be subject to State approval by separate written agreement, fees, permits, frequency surveys and other requirements as may be required by the FCC and the State. All requests for the installation of radio transmission equipment above five (5) watts in power shall be pre-approved by the State in writing through separate agreement, which shall not be unreasonably withheld. Lessee agrees to install radio transmission equipment, of any power, of the type and frequency which will not cause measurable interference to the State, other lessees of the premises or neighboring landowners. In the event the equipment of Lessee causes such interference, and after the State has notified Lessee of such interference, Lessee shall take all steps necessary to correct and eliminate the interference. This provision is specifically not intended to limit the right of the Lessee to conduct educational and other programming over the world wide web, or radio/TV broadcasts relating to weather reporting or reporting on the summit activities of the Lessee, equipment testing, instrument siting, and providing services for the National Weather Service.

### 3. USE OF PREMISES

The Lessee's use of the leased premises shall be exclusively for weather, climate, alpine geology, alpine biology, and alpine ecology related scientific research and educational purposes, and such other purposes of the Lessee as may be approved by the State in writing; provided, however, the Lessee shall not carry on any trade or occupation, or make any use of the premises, which will be improper, noisy, offensive, or contrary to any law, ordinance, or regulation of the United States government or any agencies thereof, the State of New Hampshire, or any subdivision thereof authorized to make regulations with respect to Sargent's Purchase, or which will be injurious to any person or property, or which will make void or voidable any insurance on the premises, or which may cause an increased or extra premium to be payable for such insurance.

Should the State wish to permit another tenant or licensee to perform any weather related research/product testing on the summit it will, in the first instance, direct said tenant or licensee to the Lessee, so that the Lessee may have the opportunity to come to an agreement with the tenant or licensee regarding the weather related research/product testing to be performed on the leased premises. Should the Lessee elect not to enter into such an agreement, or should the Lessee fail to enter into an agreement with the tenant or licensee, within thirty (30) days of notice from the State, the State may enter into an agreement with the tenant or licensee to perform such work on the summit. This provision does not apply to weather related research/product testing performed by, or on behalf of, the State of New Hampshire.

### 4. REPAIRS AND MAINTENANCE

The State shall at its own expense keep the exterior and interior of the leased premises, including all glass now installed, furnaces, water pumps, and septic system in tenantable repair, order and condition, unless such repairs are due to Lessee negligence. Damage or loss as a result of fire or other casualty only excepted. Lessee shall be held legally and financially liable for any and all damages, repairs or rehabilitation caused by its operations.

The Lessee shall be fully and solely responsible for, at its expense, all daily maintenance of the leased premises and its equipment, including daily snow removal from the entrance of the four emergency exits. Building maintenance, sanitation and housekeeping shall have the objective of keeping and continuing the facility in as good a condition as on the commencement date of this Lease, recognizing normal wear and tear. The Lessee shall promptly report any and all damage to the premises occasioned by storm, accident, or other such events.

Minor plumbing and electrical repairs or modifications to the leased premises for the Lessee's convenience shall be the Lessee's sole responsibility and expense. Such modifications of existing systems shall only be performed by licensed professional plumbers and/or electricians



and shall be subject to prior written approval by the State, which shall not be unreasonably withheld.

The Lessee shall, at its own expense, maintain all kitchen ductwork and ventilation systems and shall clean such systems annually.

## **5. FIXTURES AND IMPROVEMENTS**

Any improvements or fixtures installed by the Lessee which are affixed to the real estate by nails, screws, or some other detachable means may be removed upon the termination of this lease, provided all damage or defacement of the premises caused by such removal is repaired by the Lessee to the satisfaction of the State. Any improvements or fixtures not so removable, or which are not removed prior to the termination of this lease, shall become the property of the State.

## **6. ALTERATIONS**

The Lessee shall have the option and the right, at its expense, to improve the decor and appearance of the leased premises but shall not make any substantial alterations or any structural changes without the written consent of the State. Any work done by the Lessee shall be done in accordance with all applicable laws and regulations, and in a workmanlike manner.

## **7. RISK OF LOSS**

All property of every kind on the leased premises shall be at the sole risk of the Lessee and the State shall not be liable to the Lessee or any other person for any injury, loss, damage, or inconvenience occasioned by any cause whatsoever to said property.

## **8. INDEMNITY**

The Lessee shall be responsible for any and all claims and/or damages resulting from its, its servants, its agents or its invitees' use of the leased premises and/or other areas in which the Lessee, its servants, agents, or invitees may be permitted to use under the terms of this Lease. To the full extent of the insurance required pursuant to paragraph 10 below, the Lessee agrees to hold harmless and indemnify the State, against all loss, damage, liability, expense, suits, demands and claims, including, but not limited to, cases of injury to third parties or their property, arising out of:

- a. Any improper act, improper failure to act, or negligence of the Lessee, its servants, agents or invitees occurring on the leased premises, or other areas in which the Lessee, its

servants, agents, or invitees may be permitted to use under the terms of this Lease, in conjunction with Lessee's activities under this lease;

- b. Anything owned or controlled by the Lessee, its servants, agents, or invitees and used on the leased premises, or other areas in which the Lessee, its servants, agents, or invitees may be permitted to use under the terms of this Lease, in connection with Lessee's activities under this lease; or
- c. Any nuisance made by the Lessee, its servants, agents, or invitees on the leased premises, or other areas in which the Lessee, its servants, agents, or invitees may be permitted to use under the terms of this Lease, in connection with Lessee's activities under this lease.

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

## 9. DAMAGE OR DESTRUCTION

In the event that the leased premises, or any part thereof, or the building of which they all are a part shall, during said term, be destroyed or damaged by fire, flood, acts of terrorism, war, lightning, wind, weather, or other casualty so that the same shall be thereby rendered unfit for the purposes of the Lessee, the Lessee may terminate this lease at its option. In any event, the State shall not be obligated to rebuild or replace any building wholly or substantially destroyed by fire, flood, acts of terrorism, war, lightning, wind, weather, or other casualty.

In the event that electrical power, fuel oil, or propane delivery systems become damaged, the State will make every reasonable effort to restore such services, but shall not be held responsible for full restoration of such services if severely damaged by fire, flood, acts of terrorism, war, lightning, wind, weather, or other casualty. The State shall have no responsibility whatsoever for any financial losses that the Lessee may suffer as a result of such interruption of services.

## 10. INSURANCE

During the performance of this Lease, the Lessee, at its sole cost and expense and for the mutual benefit of the Lessee and the State, shall carry and maintain the following types of insurance in the amounts specified:

- a. Workers Compensation Insurance covering employees of Lessee from loss or damage because of liability under the Workers Compensation Act.
- b. Comprehensive General Liability Insurance against all claims for injury to or death of persons, or damage to property occurring (or which may be claimed to have occurred) on,

in, or about the premises to be occupied and operated by the Lessee as set forth herein, such insurance to afford minimum protection during the term of this agreement, in limits of not less than \$1,000,000 in respect to bodily injury or death to one person in any one accident and \$2,000,000 in respect of bodily injury or death to one or more persons in one or more accidents and of not less than \$1,000,000 for property damage.

- c. Fire insurance while the building is occupied by the Lessee insuring the leasehold improvements and equipment thereon against loss or damage by fire or damage by other risks now or hereafter embraced by "Extended Coverage" so-called, in amounts not less than eighty percent (80%) of the whole replacement value of said leasehold improvements and equipment.

## **11. INSURANCE RIGHTS**

Neither party will assign, transfer, or set over to its insurer any rights of subrogation against the other because of any payment required to be made under any policy of insurance on the leased premises or the contents thereof and each agrees that a waiver of such subrogation rights will be procured and written into any such insurance policies issued to either party.

## **12. SUBLETTING AND ASSIGNMENT**

The Lessee shall not assign this Lease or sublet the premises, in whole or in part, without the written consent of the State. However, this provision shall not prevent the Lessee from performing and being compensated for work for others, which work may include the testing, operation and exposure of equipment, products and instruments within and/or on the leased premises.

## **13. INSPECTION**

The State or its agent shall have the right to enter the leased premises at reasonable times with reasonable notice to the Lessee, for the purpose of inspecting its condition and/or for making repairs. Notice is not required in the case of an emergency or exigent circumstance requiring the need to enter said premises for inspection and/or repair without the opportunity to provide notice.

## **14. QUIET POSSESSION**

The State covenants and warrants that the State has full right and lawful authority to enter into this Lease for the full term hereof, and for all extensions herein provided, and that the State is lawfully seized of the entire premises hereby leased and has good title thereto free and clear of all tenancies, liens and encumbrances. The State further covenants and warrants that if the Lessee shall discharge the obligations herein set forth to be performed by the Lessee, then the Lessee shall have and enjoy, during the term and any renewal or extension hereof, the quiet and

undisturbed possession of the leased premises together with all appurtenances thereto, for the uses herein described.

## **15. JANITORIAL SERVICES**

The Lessee shall be responsible for routine cleaning of the following areas:

- a. All portions of the building used solely for Observatory purposes, including living quarters, observation tower, work rooms, utility rooms etc., as delineated and described herein, and any area on the property provided to the Lessee for temporary use to conduct short-term science and research projects;
- b. The Mount Washington Museum portion of the building and any sales area that might be granted in addition for Lessee's use; and
- c. In the winter, any area impacted by Lessee's visitors or educational program participants.

## **16. SCOPE OF JANITORIAL SERVICES**

The Lessee shall provide routine cleaning for walls, floors, windows, light fixtures, draperies and blinds in the Lessee's designated areas. The Lessee shall also be responsible for maintaining high standards of sanitation in the Observatory portion of the building, and in other areas that are granted in addition for Observatory use, in accordance with the applicable rules and regulations promulgated by the Department of Health and Human Services. The Lessee shall be responsible for collecting and/or picking up garbage from its operations and disposing of the same. The Lessee shall be responsible for transport of its garbage and rubbish off the mountain. The term "routine cleaning" shall include good housekeeping, including, but not limited to, the furnishing of materials and supplies that may be necessary to perform this service.

## **17. BUILDING AND PLANT**

a. **Mount Washington Museum:** The Lessee agrees in the museum section of the Sherman Adams Building, including all areas plus the adjacent conference room so designated by mutual agreement on the architectural plans for the building, to conduct operations according to the following covenants:

- 1) Said museum shall be used primarily for the display of both passive and active educational exhibits for the general public, featuring the weather, history, geology, botany, zoology and ecology of the Presidential Range and related matters. Those activities may include guided tours outside the museum on and about Mount Washington.

2) The Lessee will operate within the museum section, and may operate in any other area that may be granted for that purpose by the State, a counter and storage space for sales of educational materials (books, photos, posters, scientific instruments), Observatory memorabilia (clothing, and other items with an Observatory insignia), and related materials, but no food or beverages shall be offered for sale and/or sold. In order to facilitate delivery of materials to the Mount Washington Museum, the Lessee shall have the ability to utilize the Sherman Adams Building loading dock and elevator, and traverse through the "Pack Room," so-called, en route to the Mount Washington Museum floor. The Lessee's use of the loading dock, elevator, and "Pack Room," as described in the prior sentence shall not interfere with or otherwise impede the State's rights to and/or use of said areas.

3) The Lessee may charge a reasonable admission fee to the Mount Washington Museum. While the Lessee has the right to charge admission fees to the Mount Washington Museum, the State shall not charge any admission fee or other fee to the general public for access to or the use of the Sherman Adams Building. The distribution of admission fees collected/obtained by the Lessee is addressed Paragraph 18.

4) Lessee shall be responsible for the costs of furnishing the interior of the museum section, including costs of providing new and changing exhibits, subject to paragraph 18.

5) The Lessee will have the primary responsibility for the content and quality of the museum exhibits. The State may request that certain exhibits acquired by the State by means of gift or purchase be displayed in the museum. The State shall reimburse the Lessee for the reasonable costs and expenses incurred by Lessee in constructing, installing and displaying such exhibits.

6) All employees of the Lessee, while working in the museum, shall be clad in neat and clean uniforms satisfactory to the State. The employee may satisfy this requirement by wearing a clean and appropriate shirt or vest imprinted with the logo of the Lessee.

**b. Overnight Lodging.** Overnight lodging of Lessee staff, volunteers, members and guests are not to exceed seventeen (17) people. Staff, volunteers, members and guests shall sleep in areas protected by automatic sprinklers only, as depicted in Exhibit B. The Mount Washington Museum shall not be used as an overnight lodging facility. The Lessee, at its own expense, shall satisfy all requirements set forth by the State Fire Marshall's Office and Health and Human Services regarding occupancy rules, safety, food handling, and sanitation. If, during the term of this Lease, the State Fire Marshall's Office determines that the number of permissible overnight visitors is less than seventeen (17) people, the Lessee agrees to abide by the recommendations/directives of the State

Fire Marshall's Office in limiting the number of overnight visitors to be consistent therewith.

c. **Search and Rescue Support.** In recognition of the sometimes extreme conditions on and around the summit and the resulting need to conduct search and rescue (SAR) operations, the Lessee agrees to support the State and other emergency response entities in such operations, as requested. Support shall mean, upon the request of the State, the occasional use of the leased premises by State staff; and the authorized use of, at no cost, Lessee vehicles, garage SAR staging area, and staff time to support SAR operations. The Lessee shall not field an SAR team unless it has the expertise to do so, but shall provide support services through the availability of its resources.

d. **Special Uses.** While the Sherman Adams Building is closed to the public in the winter, the Lessee may utilize the main entrance to the building as its primary entrance for staff and authorized visitors. During this time, the Lessee and its authorized visitors shall have the ability to traverse through the Sherman Adams Building en route to the leased premises, and to use the "Rotunda," so-called, for the temporary storage of authorized visitors' backpacks and gear while visiting. Such entry area, storage area, and items stored shall be maintained in a neat and orderly condition and all times. The Lessee, with the permission of the State, shall also have the ability to utilize the stairway that leads from the concession area down to the lower level of the leased premises for the transport of goods and supplies. The Lessee may provide guided tours on and about State property on and about the summit of Mount Washington. Such tours shall not have access to or through private, work or storage areas of the State or any building or area closed to public access, without prior authorization from the State. The rights provided under this section may be temporarily suspended by the State, with notice to the Lessee, should the State require the use of, or access to, the areas in question.

## 18. ACCOUNTING METHODS AND ADDITIONAL PAYMENTS

- a. Museum Admission: All fees collected/obtained for Museum admissions will be shared between the State and the Lessee as agreed in paragraph b.
- b. Payments: With respect to the Mount Washington Museum admission fees, the following will apply:
  - 1) In January of each year during the lease term, the Lessee shall calculate the total sum of funds earned pursuant to paragraph 18a for the prior calendar year. Disbursements made under paragraphs 2 & 3 below shall be made by February 15 of each year during the lease term for the prior calendar year, or portion thereof.
  - 2) The first One Hundred and Twenty Thousand Dollars (\$120,000) earned annually will be retained by the Lessee;

3) Any amounts earned annually in excess of One Hundred and Twenty Thousand Dollars (\$120,000) shall be divided equally between the State and the Lessee, with the State's share to be deposited in the RSA 227-B:9 Mount Washington Fund to be used for physical plant repairs, building updating and general summit clean-up, or such other improvements pursuant to the statute, and the Lessee's share to be deposited in a restricted fund for Summit museum display maintenance and replacement, with amounts to be removed from that fund also approved by the Mount Washington Commission at a duly constituted meeting.

c. All Other Fees and Sales: In addition to the amounts specified in paragraphs 1 and 18b of the Lease, the Lessee shall pay to the State on an annual basis by February 15 of each year during the lease term, for the prior calendar year, or portion thereof, a five percent (5%) commission on the gross fees, sales, or other charges collected by the Lessee for services performed or material sold on the Summit as defined as follows:

Subject to commission:

- Retail sales
- Educational programs (EduTrips, winter DayTrips)
- Non-staff overnight visits (media, researchers, visiting students)
- Group Observatory tours
- Licensing agreements
- Product testing
- Research contracts (except those with the United States of America, a State, or a political subdivision, which prohibits the payment of commissions or the like)
- Contract services (including, but not limited to, radio/TV broadcasts, equipment testing, instrument siting, except those with the United States of America which prohibits the payment of commissions or the like)

Not subject to commission:

- Fundraising (membership dues, special events, annual appeal)
- Corporate sponsorship
- Grant income (Federal and private)

d. Accounting Records: The Lessee shall maintain such books of account and records, as may be sufficient to show specifically the items of total dollar receipts and such other information as will correctly reflect the results of Mount Washington Museum and Lessee's summit operations. Those books and records shall be available at all reasonable times for inspection by the State and shall be kept by Lessee for at least three (3) years after the year to which they relate.

e. Audits: The State shall have authority to audit at its expense the Lessee's books and records in order to protect the public interest. Such audits shall be subject to supervision by the Director of Accounts, State of New Hampshire, and shall be made at such times as he may deem necessary to protect the State's interests. Lessee shall have the right to be

present during any such audit, and shall timely receive copies of all documents relating to the audit.

- f. Accounting Reports: The Lessee shall submit annually to the Commissioner, Department of Resources and Economic Development, within one hundred and eighty (180) days after the close of its fiscal year, a copy (certified if Lessee obtains one) of its financial statements which will specifically report on the gross amount of Mount Washington Museum revenues and fees, sales, or other charges collected by the Lessee for services performed or material sold on the Summit as defined above.

## **19. SIGNS AND ADVERTISING**

All signs and advertising matter posted at the Leased Premises must be in good taste and acceptable to the State as determined by the Commissioner of the Department of Resources and Economic Development, or his designee as set forth in writing, whose consent will not be unreasonably withheld.

The Lessee conducts very visible, high profile operations, often drawing media attention to the summit of Mount Washington. This widespread publicity has the potential to build awareness of, and ultimately draw more visitations to the summit of Mount Washington. While the Lessee is under no obligation to mention Mount Washington State Park by name in its marketing, advertising, or publicity, the Lessee will make a reasonable effort to draw attention to the Observatory's existence within the State Park on the summit and the cooperative relationship between the Lessee and the State.

## **20. HOURS OF OPERATION**

The museum will be operated, at a minimum, whenever the restaurant facilities in the building are operating, unless the parties agree otherwise.

## **21. RELATION TO THE STATE**

It is the intent of the parties hereto that the Lessee shall be legally considered as an independent contractor and that neither the Lessee nor its employees shall, under any circumstances, be considered servants or agents of the State of New Hampshire, and that neither the State nor the Lessee shall at any time be legally responsible for any acts of omissions on the part of the other, its servants, or invitees resulting in either personal or property damage to any individual, firm or corporation.

## **22. EQUAL OPPORTUNITY**



The Lessee shall not, in employing persons or providing services pursuant to this lease, discriminate on the basis of age, race, color, sex, sexual orientation, national origin, religion, or marital status.

### **23. DEFAULT**

If the Lessee shall violate any of the covenants, conditions, warranties, or provisions contained herein and such violation shall continue unchanged for more than thirty (30) days after notice in writing, or if the Lessee shall be declared insolvent, or shall be adjudicated a bankrupt, or shall assign for the benefit of creditors, or if the premises shall be taken on execution, the State may immediately, or at any time thereafter, and without demand or notice upon the Lessee to quit, elect to enter upon said premises and take possession thereof, whereupon this Lease shall absolutely terminate and it shall be no defense to the Lessee that previous violations of any covenants have been waived by the State, either expressly or by implication. Any such election by the State shall not discharge the Lessee's obligations under this lease.

### **24. RE-DELIVERY OF PREMISES**

The Lessee will peaceably and quietly quit and deliver up to the State or its attorney, or other duly authorized agent, the premises, at the expiration or other termination of this Lease, or any renewal thereof, leaving the premises in as good condition as they now are or may be placed in during the term of this Lease, reasonable and ordinary wear and damage by fire or other casualty excepted. Such delivery shall include all keys to the leased premises, and failure to deliver such keys shall make the Lessee responsible for the expense of lock changes.

### **25. WAIVER**

The parties covenant that the failure of either to insist in any one or more instances upon the strict and literal performance of any of the covenants, terms or conditions of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant, term, condition or option, but the same shall continue and remain in full force and effect. The payment or receipt of rent, with knowledge of the breach of any covenant, term or condition hereof, shall not be deemed to be a waiver of such breach, and no waiver of any covenant, term, condition or provision of this lease, or of the breach thereof, shall be deemed to have been made, unless expressly acknowledged in writing by the party waiving the right or claim over its signature.

### **26. NOTICES**

All notices hereunder by the State to the Lessee shall be given in hand or overnight receipted delivery at 2779 White Mountain Highway, North Conway, or by registered or certified mail, addressed to the Lessee at Post Office Box 2310, North Conway, New Hampshire, or such other address as the Lessee may from time to time give to the State for this purpose and all notices by

the Lessee to the State shall be given in hand or by overnight receipted delivery or by registered or certified mail, addressed to its offices, DRED, Post Office Box 1856, 172 Pembroke Road, Concord, New Hampshire, 03302-1856, or to such other address as the State may from time to time give in writing to the Lessee for this purpose.

## **27. TAXES**

The Lessee agrees to hold the State harmless with respect to and agrees to pay in addition to other payments provided herein, the full amount of taxes levied against the premises subject to this agreement as a consequence of the application of RSA 72:23.1, which provides for taxation of certain State properties used or occupied by persons or entities other than the State. In the event the Lessee shares a larger parcel of land with other lessees or other concessionaires, it shall be obligated to pay only its pro rata share of any such taxes. Failure of Lessee to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said lease or agreement by the State. Lessee claims that its real estate and personal property are exempt from taxation by reason of the provision of RSA 72:23,V, and the provisions of this paragraph shall not be construed to waive any such claim.

## **28. MISCELLANEOUS**

This lease is to be construed as a New Hampshire lease; is to take effect as a sealed instrument; sets forth the entire agreement between the parties; is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns; and may be cancelled, modified, or amended only by written instrument signed by both the State and the Lessee. Any and all modifications and/or amendments to this Lease shall require the approval of the Governor and Council.

Signature Page to Follow

Kenneth Albond 9/15/09  
Witness Date

George M. Bald 9/15/09  
George M. Bald, Commissioner Date  
Dept. Resources and Economic Development

[Signature] 9/12/09  
Witness Date

Drew Landry 9/12/09  
Drew Landry, President Date  
Mount Washington Observatory  
Duly Authorized

[Signature] 9/12/09  
Witness Date

Scott Henley 9/12/09  
Scott Henley, Executive Director Date  
Mount Washington Observatory  
Duly Authorized

Approved as to form, substance, and execution

[Signature] 9/15/09  
Attorney General's Office Date

Approved by Governor and Executive Council at the 09/30, 2009 meeting, item # 47-B.

Attest: \_\_\_\_\_  
Secretary of State's Office

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