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STATE OF NEW HAMPSHIRE
 DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
 DIVISION of PARKS and RECREATION
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June 4, 2013

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

REQUESTED ACTION

1. Authorize the Department of Resources and Economic Development, Division of Parks and Recreation to enter into a license agreement with the Blue Ocean Society for Marine Conservation (BOS) to occupy available space within the North Pavilion at the Seashell Complex at Hampton Beach State Park in Hampton, NH, that shall be used as a marine education center operated by the BOS to allow park visitors to learn about marine life, local and maritime history, and actions they can take to protect the marine environment, upon Governor and Executive Council approval through May 31, 2016.
2. Further authorize the Department to accept an annual facility use fee of \$5,960.00, plus 10% commission on gross income from private event fees collected and retail sales in Year One, and an additional 10% commission on gross income from admission fees collected in Year Two and Year Three, paid by the BOS in accordance with the terms of the license agreement.

EXPLANATION

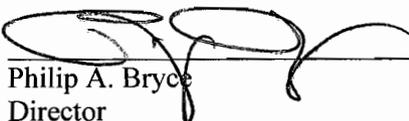
In April 2013, the Division of Parks and Recreation advertised a Request for Proposals (RFP) from qualified individuals, firms or organizations to occupy the space available at the Seashell Complex located at Hampton Beach State Park and provide value-added products/services to state park visitors. Two (2) organizations attended the requisite facility tour and submitted a proposal. A five (5) person selection committee comprised of members from DRED and one member from the seacoast business community reviewed and scored the proposals, in which the BOS scored the highest for financial capacity and organizational stability. A copy of the scoring summary is attached for your information and convenience.

The services and programs offered by the BOS furthers the Division's mission, pursuant to RSA 216-A:1, wherein the Division seeks "...to make its park areas and facilities accessible to the public for recreational, education, scientific, and other uses consistent with their protection and preservation..." and "...to encourage and support tourism and related economic activity within the State."

The Office of the Attorney General has reviewed and approved the license as to form, substance, and execution.

Respectfully submitted,

Concurred, *JM*


 Philip A. Bryce
 Director


 Jeffrey J. Rose
 Commissioner

JJR/PAB/ttl

RFP - North Pavilion Proposal Scoring Sheet: May 2, 2013

Blue Ocean Society						
	Operation Plan	Revenues	References	TOTAL		
	Max Points (35)	Max Points (35)	Max Points (30)			
Gail Wolek	30	30	30	90		
Deputy Director						
Jude David	30	35	30	95		
Event & Facility Manager						
Gary Bashline	30	35	30	95		
Asst. Regional Manager						
Skip Windemiller	30	30	30	90		
Oceanside Real Estate						
A. J. Dupere	30	30	30	90		
NH Div. of Forest & Lands						
	150	0	0	150		
Grand Total				460		

RFP - North Pavilion Proposal Scoring Sheet: May 2, 2013

Explore the Ocean World

	Operation Plan Max Points (35)	Revenues Max Points (35)	References Max Points (30)	TOTAL
Gail Wolek Deputy Director	20	25	20	65
Jude David Event & Facility Manager	30	35	25	90
Gary Bashline Asst. Regional Manager	35	35	30	100
Skip Windemiller Oceanside Real Estate	35	25	30	90
A. J. Dupere NH Div. of Forest & Lands	32	30	30	92
	152	0	135	
Grand Total				437

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT
DIVISION OF PARKS AND RECREATION**

LICENSE AGREEMENT

In accordance with RSA 227-H:9 and RSA 216-A:3, III, this License Agreement ("License") is entered into by and between the State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation ("State" or "Division") and the Blue Ocean Society for Marine Conservation ("BOS"), 143 Pleasant Street, Portsmouth, NH 03801.

Whereas, Hampton Beach State Park ("Park"), located in the town of Hampton, New Hampshire, is owned by the State of New Hampshire and managed through the Division of Parks and Recreation, and

Whereas, the State seeks an innovative partnership with an entity that will support the State's mission, enhance park revenue, and provide value-added products/services to state park visitors within certain space available at the Seashell Complex located at the Park; and

Whereas, the Blue Ocean Society for Marine Conservation is a 501(c)(3) non-profit organization registered (Regn. #14605) with the Attorney General's Office, Charitable Trusts Unit; and is in "Good Standing" with the Secretary of State, Corporate Division (Bus. ID #398085); and

Whereas, BOS promotes conservation of the marine environment through public education, information resources and research; and seeks to provide a marine education center at the Park; and

Whereas, pursuant to RSA 216-A:1, the State seeks "to make its park areas and facilities accessible to the public for recreational, education, scientific, and other uses consistent with their protection and preservation;" and "to encourage and support tourism and related economic activity within the State;" and

Whereas, pursuant to its Ten-Year Strategic Development and Capital Improvement Plan, the State seeks to accomplish the following objectives:

- Enhance revenue potential of existing and possible new recreational opportunities
- Seek support from foundations, businesses, and other entities
- Maximize revenue where compatible with purpose and mission
- Experiment with non-traditional products and pricing
- Develop all facets of programming to enhance the experience
- Establish ways to offer interactive, accessible, and coordinated environmental education and outdoor recreation programs in state parks;

Now therefore, the Division and BOS agree to the following terms:

1. PURPOSE. This License grants BOS exclusive use of certain facilities of the Park, as specifically identified herein, for the purpose of providing a space that shall be used as a marine education center operated by BOS staff, community volunteers, BOS interns and other related BOS staff to allow park visitors to learn about marine life, local and maritime history, and actions that can be taken to protect the marine environment.

2. TERM. The term of this License shall be from date of Governor and Executive Council (G&C) approval through May 31, 2016, unless terminated earlier as provided herein. This License shall not be extended nor is the State under obligation to renew. Any interest in continued operations by BOS shall be negotiated under a new license; however, the State, at its discretion, reserves its right to award any new license through competitive bid.
3. FEES. The following fees and payment conditions shall apply:
 - 3.1. *Facility use fee.* The BOS shall pay an annual facility use fee of \$5,960.00, payable to the "Treasurer, State of New Hampshire." The first payment shall accompany the signed License. All subsequent payments shall be made on the anniversary date of License execution, without demand. Late payments shall incur a \$100.00 late fee, assessed each month until paid.
 - 3.2. *Commission.* The BOS may charge reasonable admission fees to its marine education center and reasonable fees for private, scheduled events held at the Park. All fees shall be comparable to industry standards, subject to State approval. The BOS shall pay the State the below prescribed commission, which shall be paid to the State on or before each January 31, without demand; however, the third year payment (2016 operations) shall be paid to the State on or before June 30, 2016. A copy of admission and booking records, and the financial report used to calculate the payment, shall be included with each payment. Late payments shall incur a \$100.00 late fee, assessed once each late payment occurrence.
 - 3.2.1. Year One (Start of operations through December 31, 2013). The BOS shall:
 - 3.2.1.1. Pay the State 10% of its gross income from all private, scheduled events held onsite at the Park.
 - 3.2.1.2. Retain all admission fees, program fees, and donations collected.
 - 3.2.2. Years Two and Three (January 1, 2014 through May 31, 2016). BOS shall:
 - 3.2.2.1. Pay the State 10% of its gross income from all private, scheduled events held onsite at the Park.
 - 3.2.2.2. Pay the State 10% of its gross income from all admission fees collected.
 - 3.2.2.3. Retain all program fees and donations collected.
 - 3.2.3. Retail Sales. The BOS shall pay the State 10% of its gross income earned from all retail sales generated onsite at the Park. Retail sales shall include but not be limited to merchandise, food and drinks sold separately from private, scheduled event charges, and all other materials items sold onsite.
 - 3.2.4. Exempt from commission. The BOS shall retain all revenue from its onsite program fees, donations, membership fees, and "adopt-a-marine creature" sales; however, BOS shall report to the State all revenue exempt from commission but earned within and upon the Premises and Park.

3.2.5. External sponsorships (where a company or organization provides financial support in exchange for recognition) to generate revenue to support BOS programs, events, improvements and installations, etc. shall be permitted under this License provided that all such sponsorships are directly related to BOS activities occurring on the Premises and within the Park, including sponsorship by the Hampton Beach Village District and the Hampton Beach Area Commission for the cost of the facility use fees. The Division of Parks shall also be included in such recognition.

4. PREMISES. The BOS shall be granted exclusive use of space available for occupancy located within the North Pavilion at the Seashell Complex at the Park, formerly the State Park Store, in the manner and conditions as stated herein. The space is a net square footage of 430sf, which includes a 48sf bathroom, a 4sf storage closet, and 24 lineal feet of frontage on the east side of Ocean Boulevard (“Premises”), see Attachment A: Floor Plan.

The BOS shall be granted use of two parking spaces, designated by the State, at South Beach from 8 a.m. to 8 p.m. All other BOS employees, volunteers, subcontractors, guests, and visitors may use the State’s general parking area with payment of the State’s customary parking fees and fines.

All facilities, structures, and areas granted for use and operation by the BOS is in “as is” condition, and the State shall not be required or compelled to improve, repair, rehabilitate, or maintain such facilities, structures, and areas prior to or during the BOS’s occupation of same. See Section 16, Improvements and Installations, for allowable improvements to the Premises.

For purposes of this License, “exclusive use” shall mean that the State shall not expressly permit or grant use of the facilities and areas exclusive to the BOS to any other party during the term of this License. “Exclusive use” granted herein is a privilege to use said facilities and areas; and does not represent a real property interest in the land or facilities for which the State shall reserve all rights and privileges.

The BOS acknowledges that it is the general policy of the State that State Park lands are open to the public unless posted as closed or restricted by the State.

5. TAXES. A “license with respect to real property is a privilege to go on premises for a certain purpose, but does not operate to confer on, or vest in, licensee any title, interest, or estate in such property. *Timmons v. Cropper*, 40 Del.Ch. 29, 172 A.2d 757, 759.” (Black’s Law Dictionary, 5th Edition, 1979). A “bare license” is a license “in which no property interest passes to the licensee, who is merely not a trespasser. It is revocable at will.” (Black’s Law Dictionary, 9th Edition, 2009). This License grants certain privileges to the BOS to use said facilities and areas; and does not represent a real property interest in the land or facilities for which the State shall reserve all rights and privileges. Revocation of this License shall be in accordance with the terms set herein, under the section entitled “Termination.”

However, as a consequence of the application of RSA 72:23-I, and should property taxes be levied, the BOS agrees to hold the State harmless with respect to taxes levied against the Premises subject to this License as a consequence of the application of RSA 72:23-I. The BOS agrees to pay in addition to other payments hereunder all properly assessed real and

personal property taxes against the Premises subject to this License in accordance with the provision of RSA 72:23-I. In the event the BOS shares a larger parcel of land with other entities, it shall be obligated to pay only its prorata share of any such taxes. Failure of the BOS to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said License by the State. The BOS shall, in addition, reimburse the State for any taxes paid by the State pursuant to RSA 72:23-I as a result of BOS's failure to pay said taxes.

6. UTILITIES. The State shall provide electricity, water (excluding water for the "touch tank" and other such exhibits), radiant floor heat, air conditioning, and sewage service, but shall estimate the cost of such services and bill the BOS monthly based upon the cost per square foot to operate the building. Upon request of the BOS, the State shall provide the BOS access to the State's utility records. The BOS shall pay the State for such utility expenses within 30 days of invoice date. Late payments shall incur a \$25 late fee, assessed once each late payment occurrence.

The BOS shall arrange and pay for its communications, internet, and electronic data services directly, and shall be responsible for the removal and disposal of its trash and recyclables.

Onsite storage of fuels by the BOS shall be prohibited. Any and all other utility, building services and comfort system needs that may arise shall be addressed with the State.

7. CONDITIONS FOR USE OF PREMISES. BOS's activities at the Park and on the Premises shall be conducted in a prudent, good and safe manner, pursuant to its Annual Operating Plan approved by the State, outlined below. Use of the Premises shall be kept in good condition at the expense of the BOS, including but not limited to matters of environmental and hazardous materials compliance, and housekeeping and sanitation, allowing for normal wear and tear as determined by the State. The BOS shall promptly report any and all damage to the Premises occasioned by storm, accident, or other such events within 24 hours.

BOS shall, at its sole expense, maintain the Premises as is necessary for its operational and programmatic needs. The State shall maintain the grounds of the Park. The State shall not be required or compelled to maintain grounds and areas for the benefit or convenience of the BOS.

BOS shall not alter, modify, nor make any improvements, whether temporary, cosmetic, or permanent, to the Premises without prior written approval from the State. See section entitled, Improvements and Installations, below, for allowable improvements to the Premises.

The State shall not be responsible for BOS's property stored, placed or left on the Premises or the Park at any time.

With prior notification, the State may inspect the Premises to ensure that the Premises are in good working order and acceptable condition, normal wear and tear excepted. BOS shall, at its sole expense, fulfill all reasonable requests of the State to address any deficiencies found.

In the event of an emergency, the State reserves the right to close or divert patrons away from the facility when such action, in the view of the designated representatives of the State, is in the best interest of the health and safety of State Park patrons, and BOS agrees that it shall have no claim against the State. BOS shall not be relieved of its obligation to pay facility use

fees or commission, nor be reimbursed by the State for lost income or revenue in the event of such a closure or diversion.

8. OPERATIONS AND PROGRAMS. The BOS shall submit for State approval within 30 days after the execution of the License, and by April 1st of each following year, an Annual Operating Plan ("AOP"). Generally, the AOP shall outline the services, programs, and activities proposed for the upcoming year, including but not limited to:

8.1. Layout for use of the Premises and any revisions to the layout.

8.2. Daily hours of operation, including:

8.2.1. The marine education center shall operate a minimum of 42 hours per week during the high season of early June through the second week of September.

8.2.2. The marine education center shall be operated as needed and by appointment during the "off season" months of late September through May.

8.3. Fees to be charged, including but not limited to admission, events and functions, special programs and activities. Discounts and complimentary offerings, and donation requests.

8.4. Programs, activities and events, business activities, services, and function space use planned.

8.4.1. Any other details pertinent to the use of the Premises and Park prior to each BOS operating year, including but not limited to dates, hours, number of participants, and type of programs, events, and activities so as to coordinate with the State's operations at the Park and to manage use of the Park and its resources.

8.5. Retail and other items to be sold onsite.

8.6. Proposed signage.

8.7. Advertising, marketing and promotional plans and programs.

The State shall review the AOP and shall, within 30 days, either approve the AOP or request revision and resubmission of the AOP for the purpose of allowing the BOS to address specific comments or objections made by the State, to the satisfaction of the State. The revised AOP shall be due to the State within 30 days following the State's request for revision. The State reserves the right to reject any part of a proposed AOP, but shall provide the basis of its decision in writing.

A State-approved AOP shall be a condition of the BOS operations and use within the Premises and upon the Park for the subject year. The BOS may operate under a previously State-approved AOP, during which an updated AOP is being revised and resubmitted by the BOS, and reviewed and approved by the State.

9. ANNUAL REPORT. An annual report shall be submitted each year, including a full financial report showing the sources of income and revenue, the number of programs, number of participants and number of visitors. The report shall include, but is not limited to:

- 9.1. Actual hours of operation;
- 9.2. Actual rate and fee schedules, including complimentary and discounted tallies, and donations received;
- 9.3. Attendance and visitor records categorized by service, program or event;
- 9.4. Actual income and expenses of operations, and a balance sheet;
- 9.5. Actual marketing, advertising, and promotional activities;
- 9.6. Collaborative activities with sponsors, partners, and other parties;
- 9.7. Emergency, accident or incident reports; and
- 9.8. Any notable achievements or the recognition of individuals or sponsors.

The BOS shall abide by the conditions of all applicable State laws and regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all records relating to the License.

The BOS shall maintain books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all revenue and income associated with the License. The BOS shall retain all such records for three (3) years after the end of the final year of the License.

10. MEETINGS. The parties shall meet at least once annually before the start of the BOS's summer season, to discuss mutual operational and programmatic issues. Subsequent meetings shall be held when deemed necessary by the State or the BOS at a place and time to be mutually agreed upon for the purpose of discussing operational issues, official requests to the State, and other pertinent business which may arise.
11. STAFF, VOLUNTEERS, AND SUPERVISION OF MINORS AND GUESTS. BOS shall ensure that its staff and volunteers are properly trained, certified and licensed, as is required for its operation and programs; and shall comply with all requirements and best practices for the proper supervision and safety of minors and its guests. **BOS shall be solely responsible and liable for its staff, volunteers, subcontractors, operations, programs, and all other associated activities conducted on the Premises and within the Park.**
12. SIGNS, PROMOTIONS, AND ADVERTISING. All signs, promotions and advertising matters shall be in good taste and acceptable to the State, whose decision will in all cases be final. All advertising shall acknowledge the "State of New Hampshire, NH Division of Parks and Recreation" as a supporter of the BOS. The State reserves the right to prohibit any such materials or promotions, including but not limited to sidewalk and frontage signage so as to ensure safe flow of pedestrian traffic and the visual aesthetics of the Park.
13. SUPPORT FOR STATE ACTIONS. The BOS hereby acknowledges that the Park is managed by the State for a broad range of public purposes and the BOS hereby agrees to support the State's management of the Park in good faith and also agrees that the rights and privileges granted herein shall not be used as a basis to oppose the State's sovereign

privileges, management and corresponding actions taken by the State in the interests of the Park and the state park system.

14. PROHIBITED ACTIVITIES. No other commercial activities or operations shall occur upon the Premises or at the Park, except as is specifically granted to the BOS herein or by separate Special Use Permit from the State.
15. SPECIAL USE PERMITS. Special Use Permits are required to grant the BOS permission to hold special events at or reserve additional facilities or areas of the Park not specifically granted to the BOS herein, or by a State-approved AOP. The BOS shall apply for a Special Use Permit from the State's Events and Facilities Manager in accordance with the applicable administrative rules and park permitting policies, and all customary permitting and associated fees shall apply.
16. IMPROVEMENTS AND INSTALLATIONS. The BOS may, with the expressed written permission of the State, undertake temporary improvements or installations within the Premises that shall have no adverse or permanent impact to the Premises or original structure.

Permanent and structural improvements shall be prohibited, except that the BOS shall have the permission to install, in consultation with the State, one ground fault outlet to service the touch tank, at its sole expense including any required permits and the hire of a licensed electrician.

- 16.1. *Schematic drawings and plans.* The BOS shall provide the State with schematic drawings and plans for any proposed temporary improvements and installations within the Premises. The State shall review such drawings and plan, and may request alterations to proposed improvements and installations so as to protect the State's real property interests.
- 16.2. *Cost of projects.* The BOS shall bear the cost of all such improvements and installations using its own equipment, tools, and materials, or subcontracting such work; and shall ensure that such work is done in a good and workmanlike manner and in compliance with all applicable laws, regulations, and building codes.
- 16.3. *Sections 6(F) and 106 Regulatory Reviews.* The State agrees to facilitate the necessary review process under Section 6(f) of the Land and Water Conservation Fund program and Section 106 of the National Historic Preservation Act, if applicable. BOS agrees to hire and finance an archeologist, biologist, and any other consultant, if required for compliance with Sections 6(f) and 106. BOS agrees that no work will begin until all applicable regulatory approvals have been obtained by the State.
- 16.4. *Title to Improvements and Installations.* Any and all improvements and installations fixed within or upon the Premises by the BOS shall remain the property of the BOS for the duration of this License. Any and all improvements and installations fixed within or upon the Premises by the BOS shall vest, free and clear and without cost, to the State upon termination of this License, unless the State, at its sole discretion, requires such improvements and/or installations be removed by the BOS. Should the State require such improvements and/or installations to be removed by the BOS, the BOS shall, at its expense, remove such improvements and installations within 30 days of

the request or as arranged by mutual agreement, and shall restore the Premises to its original condition prior to the execution of this License, reasonable wear and tear excepted. The decision of the DRED Commissioner relative to whether an improvement or installation built or installed by the BOS is deemed fixed or permanent or temporary shall be final and conclusive to this matter.

17. RISK OF LOSS, DAMAGE, OR DESTRUCTION. All property of every kind within the Premises and the Park shall be at the sole risk of the BOS and the State shall not be liable to the BOS or any other person for any injury, loss, damage, or inconvenience occasioned by any cause whatsoever to said property, including, but not limited to, any loss of income for any function, program or contract that may not take place for whatever reason due to an emergency or unforeseeable situation, or due to interruptions or loss of utilities.
 - 17.1. The BOS shall, within 24-hours, report to the State through its field contact listed below or to the State onsite supervisor if the field contact is not readily available; and restore or repair any and all damages or shall reimburse the State for any and all restoration and repair of State-owned real and personal property that is performed by the State, resulting from the BOS's use, or its subcontractors or any and all affiliates, of such property.
 - 17.2. In the event that the facilities, or any part thereof during said term, be destroyed or damaged by fire, flood, storm, war, or other casualty so that the same shall be thereby rendered unfit for the purposes of the BOS, the BOS may terminate this License at its option. In any event, the State shall not be obligated to rebuild or replace any facility, wholly or substantially destroyed by fire, flood, storm, war or other casualty. The State shall not be liable to the BOS for any loss, damage, or inconvenience occasioned by any cause whatsoever to the BOS's property, revenues, operations, activities or programs.
18. COMPLIANCE WITH LAWS AND REGULATIONS. The BOS shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the BOS, including but not limited to RSA 674:54, II governmental land uses. The BOS shall also comply with the policies and regulations of the Department of Resources and Economic Development, and all reasonable requests of the Division Director and his/her agents. The BOS shall procure at its expense all necessary licenses and permits required in connection with the operations described herein.
19. CONDITIONAL OBLIGATION OF THE STATE: Notwithstanding anything in this License to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this License immediately upon giving the BOS notice of such termination. The State shall not be required to transfer funds from any other account to the account identified for this License in the event funds in that account are reduced or unavailable.
20. INDEMNIFICATION AND SOVEREIGN IMMUNITY.

20.1. To the full extent permitted by law, the BOS agrees to hold harmless and indemnify the State, its officers, employees and agents against any and all loss, damage, liability, expense, suits, demands and claims, including, but not limited to, cases of injury to third parties or their property, resulting from and arising out of:

20.1.1. Any improper act, improper failure to act, or negligence of the BOS, its servants, agents or invitees occurring on the Premises or the Park in conjunction with the BOS's activities under this License;

20.1.2. Anything owned or controlled by the BOS, its servants, agents, or invitees and used on the Premises or the Park in connection with the BOS's activities under this License; or

20.1.3. Any nuisance made by the BOS, its servants, agents, or invitees on the Premises or the Park in connection with the BOS's activities under this License.

20.2. 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 License.

21. INSURANCE.

21.1. *General Liability Insurance.* It is agreed that during the term of this License, the BOS at its sole cost and expense and for mutual benefit of BOS and the State shall carry and maintain comprehensive general liability insurance in the aggregate amount of Two Million Dollars (\$2,000,000) for injuries to persons and damage to property. The BOS shall provide the State with a certificate of insurance naming the NH Department of Resources and Economic Development as an "Additional Insured" at time of signing this License.

21.2. *Workers Compensation Insurance.* To the extent the BOS is subject to the requirements of NH RSA chapter 281-A, BOS shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this License. BOS shall furnish the State proof of Workers' Compensation in the manner described in NH RSA chapter 281-A, and any applicable renewal(s) thereof. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for the BOS, or any subcontractor or employee of the BOS, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the BOS under this License.

21.3. *Standard Form.* All insurance shall be in the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by the State. Each policy shall also extend to the State of New Hampshire as additionally insured. The BOS shall deposit with the State certificates of such insurance. Failure to comply may cause a delay in opening for business on schedule and shall be considered a material breach of this License.

22. SUBLETTING AND ASSIGNMENT. The BOS shall not assign this License or sublet the Premises, in whole or in part.
23. RELATION TO THE STATE. It is the intent of the parties hereto that the BOS shall be legally considered as an independent contractor and that neither the BOS 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 BOS 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.
24. FINAL AUTHORITY. The BOS shall comply with all reasonable requests made by the State. The decision of the DRED Commissioner relative to the proper performance of the conditions of this License shall be final and conclusive as to each matter not covered in the License and questions that may arise in connection with the privileges granted, and also as to each matter which is not clearly covered herein.
25. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any event of default on the part of the BOS shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the BOS.
26. EVENT OF DEFAULT/REMEDIES.
- 26.1. Any one or more of the following acts or omissions of the BOS shall constitute an event of default hereunder ("Event of Default"):
- 26.1.1. failure to perform the services satisfactorily or on schedule;
- 26.1.2. failure to submit any report required hereunder; and/or
- 26.1.3. failure to perform any other covenant, term or condition of this License.
- 26.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
- 26.2.1. Give the BOS a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this License, effective thirty (30) days after giving the BOS notice of termination;
- 26.2.2. Set off against any other obligations the State may owe to the BOS any damages the State suffers by reason of any Event of Default; and/or
- 26.2.3. Treat the License as breached and pursue any of its remedies at law or in equity, or both.
27. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and the License shall not be construed to confer any such benefit.

28. HEADINGS. The headings throughout the License are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of the License.
29. VENUE AND JURISDICTION. Any action on the License may only be brought in the State of New Hampshire in accordance with the dispute resolution procedures of the License set forth herein.
30. CHOICE OF LAW. This License is to be construed according to the Laws of the State of New Hampshire.
31. ENTIRE AGREEMENT. This License, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire License and understanding between the parties, and supersedes all prior agreements and understandings relating hereto. If any provision of this License is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provision hereof.
- This License represents the full agreement of the parties with respect to the use of the facilities and supersedes the Proposal submitted by the BOS and any representations that may be implied in accepting that proposal and selecting BOS as the successful occupant.
32. AMENDMENT. This License may be amended, but shall not be extended, only by an instrument in writing signed by both parties hereto.
33. TERMINATION.
- 33.1. This License shall be subject to cancellation by the BOS, regardless of grounds therefore, by giving the State sixty (60) days written notice of cancellation. The State shall provide BOS written receipt of BOS's decision to terminate the License. The BOS shall surrender the Premises, as stipulated below.
- 33.2. This License shall be subject to cancellation by the State, in the event of the failure of the BOS to perform, keep and observe any of the conditions of the License and the failure of the BOS to correct the default or breach within a time specified by the Department Commissioner, by giving the BOS thirty (30) days written notice of cancellation.
34. SURRENDER OF THE PREMISES. In the event that the Term shall have expired or terminated, the BOS shall peacefully quit and deliver up the Premises to the State in as good order and condition, reasonable wear, tear, and obsolescence and unavoidable casualties excepted, as it was in at the beginning of the term of this License, and shall surrender all improvements, alterations, or additions made by the BOS which cannot be removed without causing damage to the Premises. The BOS shall remove all of its improvements and installations that can be removed without causing damage to the Premises, and all of its personal property, surrendering the Premises to the State in broom clean condition. The surrender of the Premises shall occur no later than the date of expiration or termination of the License, unless by some other date agreed to in writing by the parties.

35. FIELD CONTACTS. In matters pertaining to field operations, the following persons shall represent their respective agencies:

STATE

Jude David, Events & Facilities Manager
P: 603-227-8715
E: Jude.David@dred.state.nh.us

Blue Ocean Society for Marine Conserv.

Jennifer L. Kennedy, Exec. Director
P: 603-431-0260
E: jen@blueoceansociety.org

IN WITNESS WHEREOF, the parties hereto have set their hands the date herein named.

BLUE OCEAN SOCIETY FOR MARINE CONSERVATION

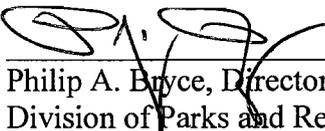
Witness

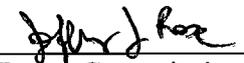
Date

 6/3/13
Jennifer L. Kennedy, Executive Director Date
Duly Authorized

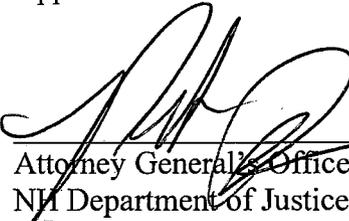
**STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT**

Concur:

 6-4-13
Philip A. Bryce, Director Date
Division of Parks and Recreation

 6/4/13
Jeffrey J. Rose, Commissioner Date
Dept. Resources and Economic Develop.

Approved as to form and substance,

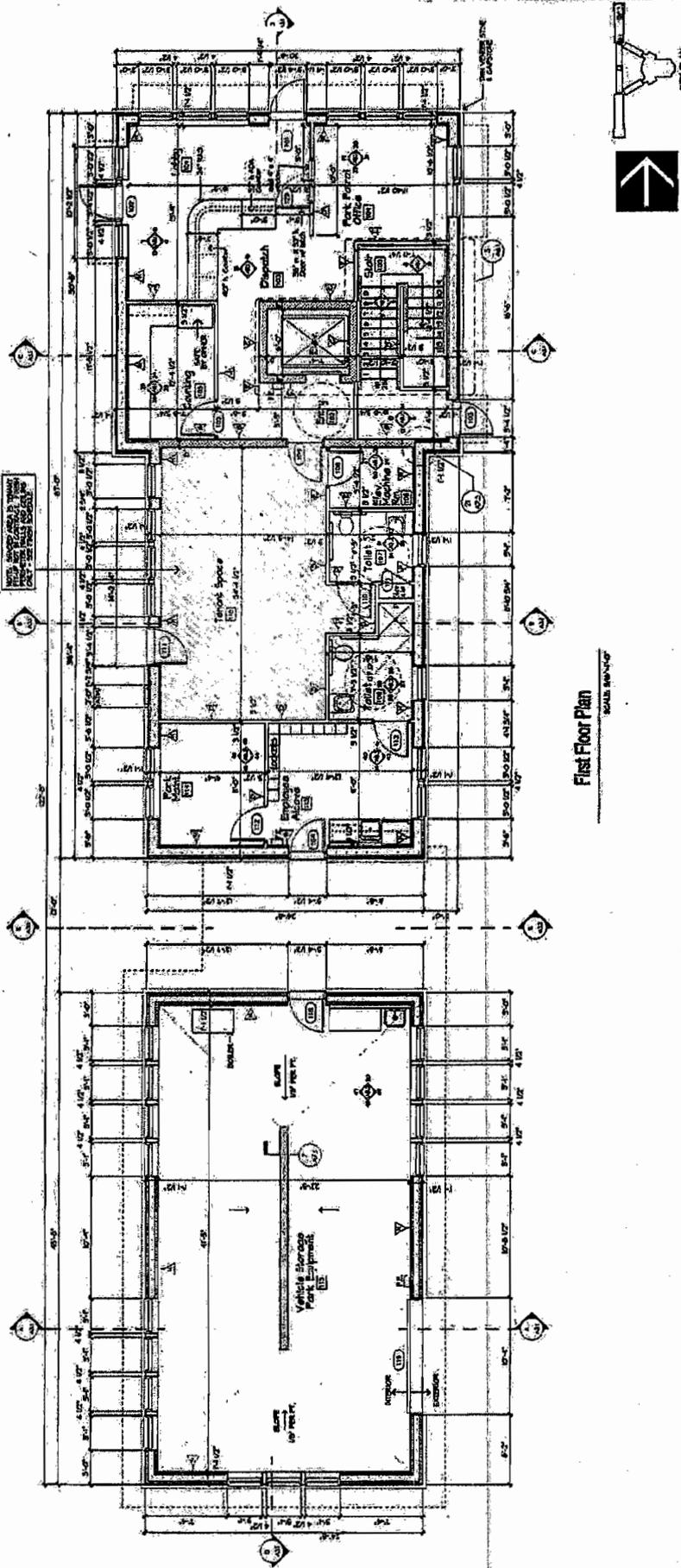
 6/5/13
Attorney General's Office Date
NH Department of Justice

Governor and Executive Council Approval: Date _____ Item # _____

PAB/ttl.060313

License : BLUE OCEAN SOCIETY
ATTACHMENT A: FLOOR PLAN

OCEAN BOULEVARD (ROUTE 1A)



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 BLUE OCEAN SOCIETY FOR MARINE CONSERVATION, INC. is a New Hampshire nonprofit corporation formed February 6, 2002. 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 15th day of May A.D. 2013

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

William M. Gardner
Secretary of State



Blue Ocean Society for Marine Conservation
Celebrating Ten Years of Leadership
Marine Mammal Conservation

100 Water Street
Portsmouth, NH 03801

603.881.0240
www.blueoceansociety.org

Blue Ocean Society for Marine Conservation

CERTIFICATE OF VOTE/AUTHORITY

I, Dianna Schulte, hereby certify that I am the duly elected President of Blue Ocean Society for Marine Conservation, Inc.

I hereby certify the following is a true copy of a vote taken at a special meeting of the Board of Directors of the Corporation, duly called and held on May 8, 2013 at 6:00 PM at the office of the Corporation in Portsmouth, NH, at which a quorum of the Board was present and voting.

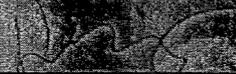
VOTED:

THAT JENNIFER KENNEDY, EXECUTIVE DIRECTOR, OF SAID CORPORATION, IS HEREBY DULY AUTHORIZED AND EMPOWERED TO EXECUTE ALL DOCUMENTS NECESSARY TO ENTER INTO AN AGREEMENT WITH THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT, FOR RETAIL SPACE IN NORTH PAVILION SEA SHELL COMPLEX AND FURTHER AUTHORIZING HER TO EXECUTE ANY DOCUMENTS WHICH MAY IN HER JUDGMENT BE DESIRABLE OR NECESSARY TO EFFECT THE PURPOSE OF THIS VOTE.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of 5/8/13.

A true copy attests:

Date: 5/21/13


Dianna Schulte, President



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/3/2013

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).

PRODUCER Bean Insurance Agency LLC 151 Winnacunnet Road P.O. Box 660 Hampton NH 03843-0660	CONTACT NAME: Robert Bean PHONE (A/C No, Ext): (603) 926-3830 E-MAIL ADDRESS: bob@beaninsurance.com		FAX (A/C No): (603) 926-0283
	INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Casualty Ins Co		NAIC # 29424
INSURED Blue Ocean Society For Marine Conservation 143 Pleasant Street Portsmouth NH 03801	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** 2013 **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			04SBAPQ3455	5/6/2013	5/6/2014	EACH OCCURRENCE \$ 1,000,000			
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000			
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000			
	GEN'L AGGREGATE LIMIT APPLIES PER:									PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC									GENERAL AGGREGATE \$ 2,000,000
										PRODUCTS - COMP/OP AGG \$ 2,000,000
										\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$			
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$			
	<input type="checkbox"/> ALLOWED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$			
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$			
							\$			
	UMBRELLA LIAB						EACH OCCURRENCE \$			
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR					AGGREGATE \$			
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/> CLAIMS-MADE					\$			
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS			
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A				OTHER			
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$			
							E.L. DISEASE - EA EMPLOYEE \$			
							E.L. DISEASE - POLICY LIMIT \$			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
State of New Hampshire, Division of Parks and Recreation needs is listed as Additional Insured

CERTIFICATE HOLDER (603) 271-3553 State of NH Division of Parks & Recs PO Box 1856 172 Pembroke Rd Concord, NH 03302	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Robert Bean

