



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
25 Capitol Street – Room 120
Concord, New Hampshire 03301

Am J

LINDA M. HODGDON
Commissioner
(603) 271-3201

JOSEPH B. BOUCHARD
Assistant Commissioner
(603) 271-3204

January 3, 2013

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

REQUESTED ACTION

Pursuant to Chapter 173:1, Laws of 2012, "Transfer of McAuliffe-Shepard Discovery Center to a Private Operator", the Department of Administrative Services (the Lessor) requests approval of the attached ten year facility and grounds lease for the sum of one dollar (\$1.00) annually for a contractual total of ten (\$10.00) dollars, with the McAuliffe-Shepard Discovery Center Corporation (the Lessee), 2 Institute Drive, Concord, New Hampshire 03301. The effective date of the agreement shall commence upon Governor and Executive Council approval and expire then (10) years thereafter.

Funds (\$10.00) shall be deposited into General Fund account # 01-14-14-00000014-402067

EXPLANATION

The enclosed ten (10) year facility and grounds agreement provides the approximate 45,123 square foot "McAuliffe-Shepard Discovery Center" building, grounds, and State owned Equipment, Exhibits, Software and Software Licenses (the Premises) to the Lessee for their use in operating and maintaining the "McAuliffe-Shepard Discovery Center"; the Premises will remain an "Administrative Services" asset and revert to their control upon expiration of the term or any extended term. In accordance with RSA 173:5 12-L:15 III Administrative Services shall provide limited routine building and grounds maintenance services to the Premises (as defined in the agreement) subject to an annual cost limitation set by the General Court, this appropriation shall not exceed \$70,000 for the first year; the scope of services provided thereafter shall be adjusted in response to future appropriations established by the General Court. The Lessee shall be responsible for provision of all building and grounds maintenance not provided by Administrative Services, they shall also be responsible for provision of all janitorial services, operations, repairs, landscaping, utilities, snow plowing and snow removal services for the premises.

The Office of the Attorney General has reviewed and approved the agreement; favorable consideration of this item is requested.

Respectfully submitted,

Linda M. Hodgdon
Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ADMINISTRATIVE SERVICES
MCAULIFFE-SHEPARD DISCOVERY CENTER FACILITY AND GROUNDS LEASE

This agreement (the Agreement) is made this 31 day of 12, 2012, by and between the Lessor, which is the State of New Hampshire, Department of Administrative Services (DAS), 25 Capitol Street, New Hampshire 03301, and the Lessee, which is the McAuliffe-Shepard Discovery Center Corporation, (MSDCC), 2 Institute Drive, Concord, New Hampshire 03301.

INTRODUCTION: Pursuant to the provisions of RSA 12-L and subject to the terms of the Agreement herein DAS hereby grants MSDCC the right to use, renovate, operate and manage the buildings and grounds which together are known as the "McAuliffe-Shepard Discovery Center" located at 2 Institute Drive, referred to as the "Premises" hereafter. The terms, demise and provisions of this Agreement shall be as defined in the following and in the attachments hereto.

1. TERM: Effective and Termination Dates, Approval Contingency: The effective date of this agreement shall commence upon receipt of approval by the Governor and Executive Council or upon January 1, 2013, whichever date is later, and shall terminate ten (10) years thereafter, on or about December 31, 2022.
 - a. Contingency: It is hereby understood and agreed by the parties hereto that this agreement and the commencement of the Term, and any extension of thereof, is conditioned upon its approval by the Governor and Executive Council of the State of NH.
 - b. Renewal: Upon expiration of the Term DAS shall offer MSDCC an option for renewal, the Parties shall negotiate the terms and conditions for such renewal in good faith in accordance with the same terms and conditions in RSA 12-L:15-IV.
 - c. Early Termination: Notwithstanding the foregoing, In the instance of either party failing to make a good faith effort to meet all obligations set forth under RSA 12-L and the Agreement herein, either party may terminate this Agreement early upon providing advance ninety (90) days written notice to the other.
 - d. Early occupation: In the event this agreement has not been approved by Governor and Council on or before January 1, 2013, MSDCC may occupy the Premises and begin operations on January 1, 2013 on a temporary basis until such time as this Agreement has been approved by Governor and Council.

2. DEMISE: The Demise of Premises shall be defined as follows:
 - a. "McAuliffe-Shepard Discovery Center": (the "Premises") The demise of the Premises shall be defined as the buildings and grounds known as the "McAuliff-Shepard Discovery Center", located at 2 Institute Drive, Concord NH, which is comprised of approximately 45,123 gross square feet of space including the planetarium and 3.58 acres of grounds, including the parking lot. See floor plans and site plan attached herein as "Attachment A" for depiction of the demised Premises.
 - b. Equipment, Exhibits, Software, Software Licenses located in or on Premises:

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- i. The parties agree MSDCC shall be allowed to use all equipment, software and software licenses owned by DAS located in or on the Premises. For the purposes of this agreement "equipment" shall be defined as furniture or other equipment or items having a dollar value of over \$250 and a life expectancy of over one year. A complete inventory (referred to herein as the "Inventory") of all such inventory on the Premises at the commencement of the term has been compiled and is attached herein as "Attachment B, DAS Inventory".
 1. MSDCC shall provide an annual report updating the "Attachment B DAS Inventory" not less than thirty (30) days prior to the close of each State of New Hampshire Fiscal Year.
- ii. MSDCC shall have sole logistic and financial responsibility to arrange continued or future use of any equipment, exhibits, or software which are not owned by DAS.
- iii. MSDCC shall have sole logistic and financial responsibility to return or install any exhibits or equipment provided by non-DAS parties, this responsibility shall include the cost of any labor, demolition or building repair necessary to accommodate the exhibit or equipment.

3. Parking Areas, Sidewalks and Roadways:

- a. MSDCC shall have the right to exclusive control and use of all parking spaces located on the Premises in the demised parking lot, such use and control shall include but not be limited to the provision and installation of signs, marking of parking areas and traffic lanes, and maintenance of all areas.
- b. Shared Use of "Concord's Community College (NHTI) Campus": (the "Campus") MSDCC shall have the right to use in common with others entitled thereto the NHTI roadways, walkways, grounds and shared-use parking areas that are a part of the Campus adjoining the Premises.
- c. MSDCC shall cooperate with and negotiate with NHTI in matters pertaining to Campus roadways, signage, access and other related matters which affect the Premises.

4. USE OF PREMISES: Subject to the provisions herein DAS grants MSDCC the right to exclusive use of the Premises during the Term for the purpose of operating the McAuliffe-Shepard discovery center and related business, educational, training, entertainment and/or fund raising events. The use and operation of the Premises shall be at the sole expense, responsibility and supervision of MSDCC except for DAS provision of certain limited items which shall be as defined in Paragraph 7 "DAS Provision of Limited Maintenance" herein.

- a. Sublease: For purposes of this Agreement, "Sublease" shall mean the rental of any portion of the Premises to another entity or person for a term of Thirty (30) days or longer. MSDCC shall have the right to sublease or grant use of the Premises to its café contractor, State of New Hampshire agencies and United States Federal agencies without prior written notice to or consent by DAS. In the event MSDCC wishes to sublease or grant use of the Premises to entities or persons other than such agencies the proposed action shall be subject to

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receipt of prior written consent from DAS, who shall not unreasonably deny such requests.

- b. Hourly Rental: For purposes of this Agreement, "Hourly Rental" shall mean the rental of any portion of the Premises to an entity or person for a term of less than thirty (30) days. MSDCC shall have the right to schedule and enter into hourly rental or/ or use agreements for the Premises or portions of the Premises throughout the term, with no prior written notice to or consent required by DAS.
5. RENT: MSDCC shall pay DAS the sum of one dollar (\$1.00) upon inception of the Term and one dollar (\$1.00) each January for the duration of this contract; this sum of ten dollars (\$10.00) shall be the total rental payment due for the Term.
 6. MSDCC MAINTENANCE AND REPAIR: MSDCC agrees to maintain the Premises in good repair and in accordance with all applicable regulations, ordinance or codes; it shall protect, repair and maintain the Premises in good order and condition at their sole expense, any cost or expense to DAS shall be limited to those set forth in Paragraph 7 herein. MSDCC shall perform maintenance, and repair with due diligence with no oversight by DAS required or provided, however DAS reserves the right to inspect and require performance to industry standards for quality. MSDCC Maintenance and repair to the Premise shall include but not be limited to the following:
 - a. Maintenance and repair of all utility entrances and services into the building, defined as:
 - i. Electrical service from the main entrance pole into the Premises
 - ii. Natural gas service to the building shut off
 - iii. Water and Sewer services extending from the building out to the intersection at the main connections.
 - b. Drainage Inlets and Catch Basins in the parking lots and parking swale areas.
 - c. Parking Lots , Access Roads, Stairways, Access Ramps, Curb Cuts and Sidewalks
 - i. Winter services: snow plowing, provision of sand and salt, and limited snow removal for all parking lots, parking structures, road ways and Discovery Center sidewalks.
 - ii. Seasonal sweeping of sand/salt deposits
 - iii. Parking lot Maintenance and Repair: including but not limited to sealing and maintaining the parking lot, providing and maintaining painted lines, providing and maintaining all signs, and providing and maintaining all sewers and drains
 - d. Landscaping Services: All lawn mowing, mulching, pruning, leaf collection and removal, and general landscape maintenance services.
 - e. Provision and maintenance of all Building Security
 - f. Provision of all Janitorial, recycling and waste disposal services
 - g. Provision of all Winter Maintenance of buildings, including removal of snow and ice from all roofs as needed, and all entrances, service areas, and sidewalks
 - h. Scheduled and incidental interior maintenance of lighting elements such as ballast, switches and lamps
 - i. Timely response to all building and security alarms with appropriate remediation action taken immediately thereafter; DAS shall be notified within the hour of all critical alarms.

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- j. Maintenance of all Fixtures, Software and Equipment including but not limited to:
 - i. Maintenance and repair of any specialized equipment such as the planetarium projection system, and specialized lighting, etc.
 - ii. Repair to any existing equipment or furnishings including the theater seating
 - iii. Maintenance of any software and/or software licenses
 - k. Major Capital Improvements that MSDCC identifies as desirable and that MSDCC chooses to fund: such as proposed renovation, major modifications, expansions or additions
 - l. Emergency Response
 - m. Utilities & Energy Management
 - n. Pest Control
 - o. Environmental Compliance and Pollution Prevention
7. DAS PROVISION OF LIMITED MAINTENANCE: Notwithstanding MSDCC obligation to provide Maintenance as specified herein, DAS shall provide certain routine building and grounds maintenance and repair services which are intended to include but not be limited to the listing of services herein, such provision shall however be subject to the total annual cost limitation (the "cost limitation") appropriated by the General Court of the State of New Hampshire in conformance with ~~RSA 12:14 III~~ ^{RSA 12:15 III}. The "cost limitation" for the first year of the Agreement shall be \$70,000, DAS shall make adjustment to the scope of maintenance and repair services annually thereafter in response to the annual "cost limitation" established by the General Court. The scope of services DAS intends to provide during the first year of the Agreement is:
- a. Provision of HVAC maintenance and repairs, and provision of HVAC Controls; maintenance shall also include regularly scheduled replacement of mechanical system air filters, belts and the emptying of condensate pans
 - b. Provision of annual boiler cleaning and maintenance;
 - c. Provision of required boiler inspection per the requirements of the Department of Labor
 - d. Provision of Elevator maintenance and inspection
 - e. Provision of all alarm monitoring and Testing maintenance
 - f. Provision of testing and repairs for: Fire Suppression systems, Sprinkler Systems, and Fire Masterbox Testing
 - g. Provision of water back flow test per requirements of the City of Concord
 - h. Provision of miscellaneous building and equipment services and repairs subject to the confines of authorized funding
8. BUDGETING: On or about July 1st of each year DAS shall provide MSDCC with disclosure of the anticipated or established annual "Cost Limitation" appropriated by the General

RSA 12:15 III
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Date: 1/23/13

Court for the fiscal year, and accordingly any anticipated reductions or additions to the scope of "Limited Maintenance" (as outlined in paragraph 7 above) DAS intends to provide for the year.

9. ANNUAL MEETINGS: DAS and MSDCC agree to meet at least annually on or about July 1st of each year to discuss mutual concerns and any operational or budget issues that may require cooperation, coordination or other joint efforts.
10. CONDITION OF PREMISES: MSDCC has inspected and knows the condition of the Premises and accepts them in "as is" condition, the obligation on the part of DAS to provide maintenance, repairs or inspections shall be limited to the provisions of Section 7 herein.
11. IMPROVEMENTS/UPGRADES TO THE PREMISES: The parties expressly agree MSDCC shall have the right to make improvements, repairs and alternations to Premises:
 - a. MSDCC shall be responsible, at their sole expense, for the provision, performance, management and completion of all such work.
 - b. Any and all required fees, permits, testing or certificates shall be the sole responsibility of MSDCC at their sole expense.
 - c. Prior to inception of any proposed building or site work MSDCC shall obtain review and written receipt of approval from DAS, who shall not unreasonably withhold approval. DAS shall require advance review and approval of drawings and specifications depicting all proposed work, this review shall be provided when drawings and/or specifications are at 30% and 100% completion phases. DAS reserves the right to require any revisions to drawings and/or specifications which may be necessary for obtaining their final approval.
 - d. Upgrades and improvements to existing exhibits, equipment and software shall not require prior authorization from DAS.
12. UTILITIES: MSDCC shall be solely responsible for maintaining all utilities to the Premises, including but not limited to water and sewer, electrical services, heating and air conditioning, data and telephone services; it shall also be responsible for establishing, maintaining and making direct payment to the providers of all utility services to the Premises throughout the Term. MSDCC shall coordinate in advance with DAS any provision and installation of microwave transmitters and/or such other alternative back-up communication/transmission systems, excepting the HAM radio system, broadband internet and wireless internet already in use; such coordination will be for the sole purpose of assuring any frequencies created by any microwave transmitters and/or such other alternative back-up communication/transmission systems do not conflict or interfere with any existing frequencies on the Campus.
13. OWNERSHIP OF FIXTURES, EQUIPMENT, SOFTWARE AND PREMISES: Together with the buildings, grounds and fixtures comprising the "Premises" DAS shall retain ownership of all equipment, listed in the "Inventory" attached herein, together with any DAS software and software licenses
 - a. MSDCC shall surrender to DAS any upgrades or improvements provided to the buildings, grounds or fixtures at the end of the Term.

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12.31.12

- b. Any upgrades or improvements provided by MSDCC during the Term to "DAS Equipment Inventory" items - with the exception of items that comprise all or part of a gallery exhibit – inclusive of software and software licenses, shall remain the property of DAS, reverting to DAS control at the end of the Term.
 - c. Any upgrades or improvements provided by MSDCC during the Term to gallery exhibits or gallery exhibit components included in "DAS Equipment Inventory" shall remain with MSDCC unless the improvements and upgrades cannot be removed without damage to the original gallery exhibit or gallery exhibit component, in which case the upgrades or improvements shall become the property of DAS, reverting to DAS control at the end of the Term.
14. REPAIR OR LOSS OF PROPERTY: MSDCC shall, at their own expense, promptly repair or replace to the satisfaction of DAS, any and all "Inventory" property and any or all areas of the demised buildings or site damaged or destroyed by MSDCC or its guests or visitors incident to its exercise of the privileges granted in this Agreement. Alternatively, if required by DAS, MSDCC shall pay to restore the Premises to its original or latent condition.
15. CONFORMANCE WITH LAWS AND RULES: MSDCC shall at all times during the existence of this Agreement, promptly observe and comply with the provisions of all applicable federal, state and local laws, rules, regulations, and standards, and in particular those provisions concerning the protection and enhancement of environmental quality, pollution control and abatement, safe drinking water, life safety systems, Americans with Disabilities Act, Energy Code conformance, and solid and hazardous waste. Should MSDCC discover any violations, it shall immediately undertake remedy and also report the matter to DAS. MSDCC shall, at their own expense, be responsible for any costs incurred as a result of their violation of the aforementioned federal, state and local laws, rules and regulations and standards.
16. RIGHT OF INSPECTION: DAS, its officers, agents, employees, and contractors shall have the right to inspect the Premises; however DAS shall endeavor to provide MSDCC with at least forty eight (48) hours notice prior to such inspection. MSDCC shall cooperate with and facilitate any inspection of the Premises required by DAS, providing them with access to all areas. DAS will endeavor to schedule and/or carry out such inspections with minimal impact on Discovery Center visitors and/or program participants.
17. LIABILITY:
- a. DAS shall not be responsible for damage to property or any injuries to persons which may arise from or be attributed, or incident to the exercise of the privileges granted under this Agreement, including the condition or state of repair of the Premises and its use, programs and occupancy of MSDCC, or from damage to their property, or damage to the property, or injuries to the persons of MSDCC or any officers, employees, servants, agents, contractors, or others who may be at the Premises at their invitation or the invitation of any one of them arising from activities at the Premises.

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- b. MSDCC agrees to assume all risk of loss or damage to the Premises and injury or death to persons by reason of the exercise of the privileges granted herein, and will settle and pay any claims arising out of the use and occupancy of the Premises.
 - c. In the event of damage unrelated to MSDCC's occupation and management of the premises, e.g. damage due to hurricanes or flooding, DAS will assume the same risk of loss or damage as it would to any other building owned by the State of NH and under its care,
18. SURRENDER OF PREMISES: In the event that the Term, or any renewal or amendment thereof, shall have expired or terminated, MSDCC shall peacefully quit and deliver up the Premises to DAS in good order and broom clean condition, reasonable wear, tear, and obsolescence excepted, and shall surrender any Improvements, alterations or upgrades made by MSDCC to the building or site to DAS. MSDCC shall also surrender all "Inventory" items (as defined herein) together with any improvements to the "inventory" that it cannot remove without damage to the original item, or does not wish to remove. MSDCC shall remove all of its furnishings and personal property, if it fails or neglects to remove such items within 30 days, then at the option of DAS, such property shall either become property of the DAS without compensation therefore, or then it shall be removed with the cost of removal and storage billed to MSDCC.
19. DISPUTE RESOLUTION: Any dispute between the MSDCC and DAS as to the terms or operation of this AGREEMENT shall be submitted on behalf of DAS to the Director of the Division of Plant and Property Management and on behalf of MSDCC to the authorized signatory of the Agreement herein for resolution by consensus. If they are unable to reach consensus within thirty (30) days then the issue shall be submitted to the Commissioner of DAS and the full MSDCC Board of Directors for joint resolution, whose collaborative decision shall be final. This AGREEMENT does not abrogate any of the rights and immunities of the State as to third parties.
20. No notice, order, direction, determination, requirement consent and/or approval under this Agreement shall be of any effect unless it is in writing. All notices to be given pursuant to this Agreement shall be addressed, if to DAS:

State of New Hampshire
Department of Administrative Services
25 Capitol Street, Rm 106
Concord, NH 03301
Attn: Michael Connor, Director, Division of Plant & Property Mgt.

and if to the MSDCC:

McAuliffe-Shepard Discovery Center Corporation
2 Institute Drive,
Concord, NH 03301
Attn: Jeanne T. Gerulskis, Executive Director

Initials: YJM
Date: 12/26/02

21. This Agreement, which may be executed in a number of counterparts, each of which shall have been deemed an original, but which shall constitute one and the same instrument, is construed according to the laws of New Hampshire, is binding upon, inures to the benefit of, and shall be enforceable by the parties hereto and their respective successors and assigns, and may be canceled, modified or amended only by a written instrument executed and approved by the parties hereto.
22. This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

Initials: SPH
Date: 11.24.12

IN WITNESS WHEREOF; the parties hereto have set their hands as of the day and year first written above.

LESSOR: The State of New Hampshire, Department of Administrative Services

Authorized by: Linda M. Hodgdon *LMH 1/23/13*
Linda M. Hodgdon, Commissioner

LESSEE: The McAuliffe-Shepard Discovery Center Corporation

Authorized by: *[Signature]*
Signature
Print: JAMES R. WILKINSON *JRW 1-23-13*
Chair, Board of Directors
McAuliffe-Shepard Discovery Center Corporation

Joyce Phinney
JOYCE PHINNEY, Notary Public
My Commission Expires February 2, 2016

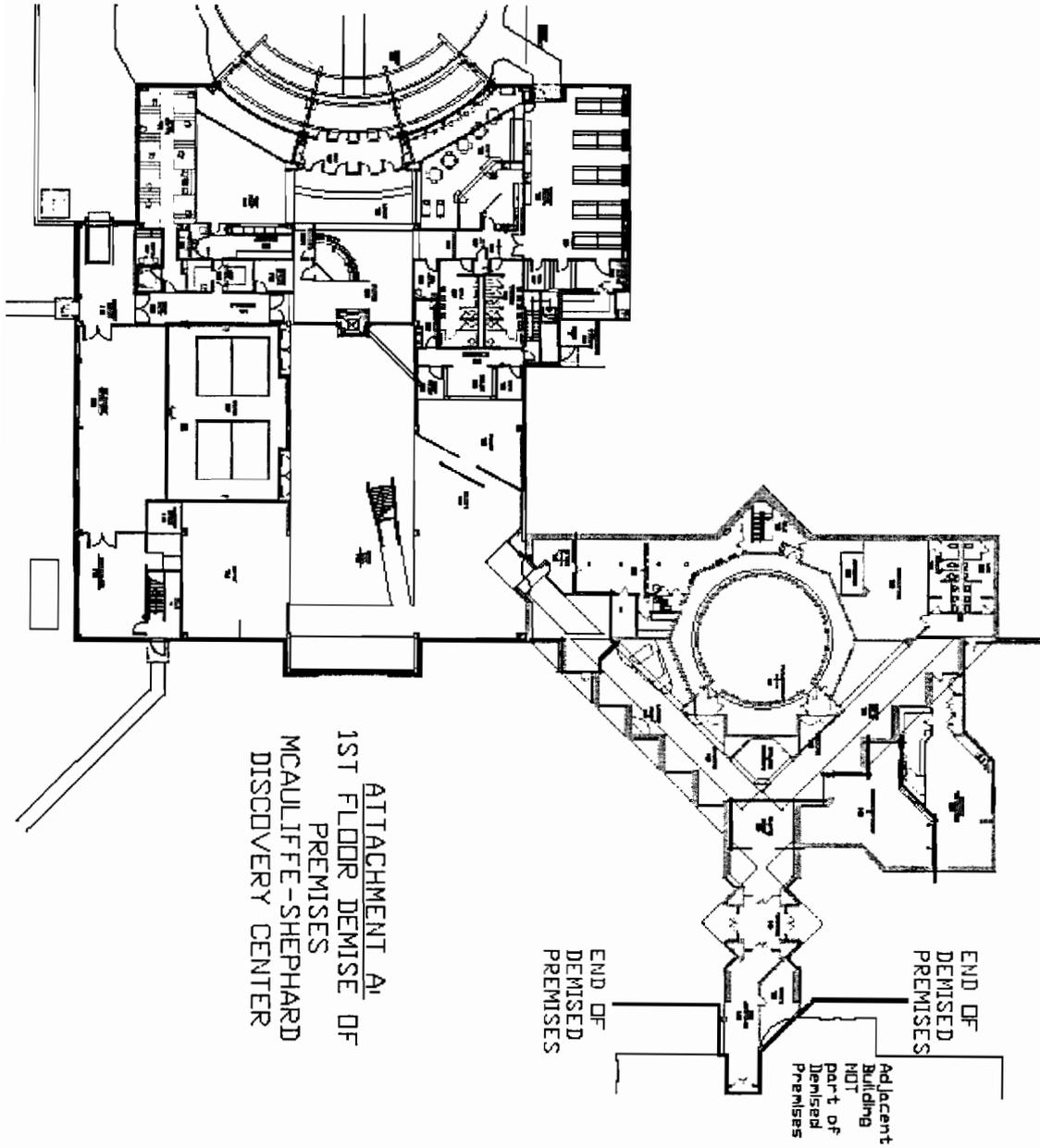
Approval by New Hampshire Attorney General as to form, substance and execution:

By: *[Signature]*, Assistant Attorney General, on 1-17-13

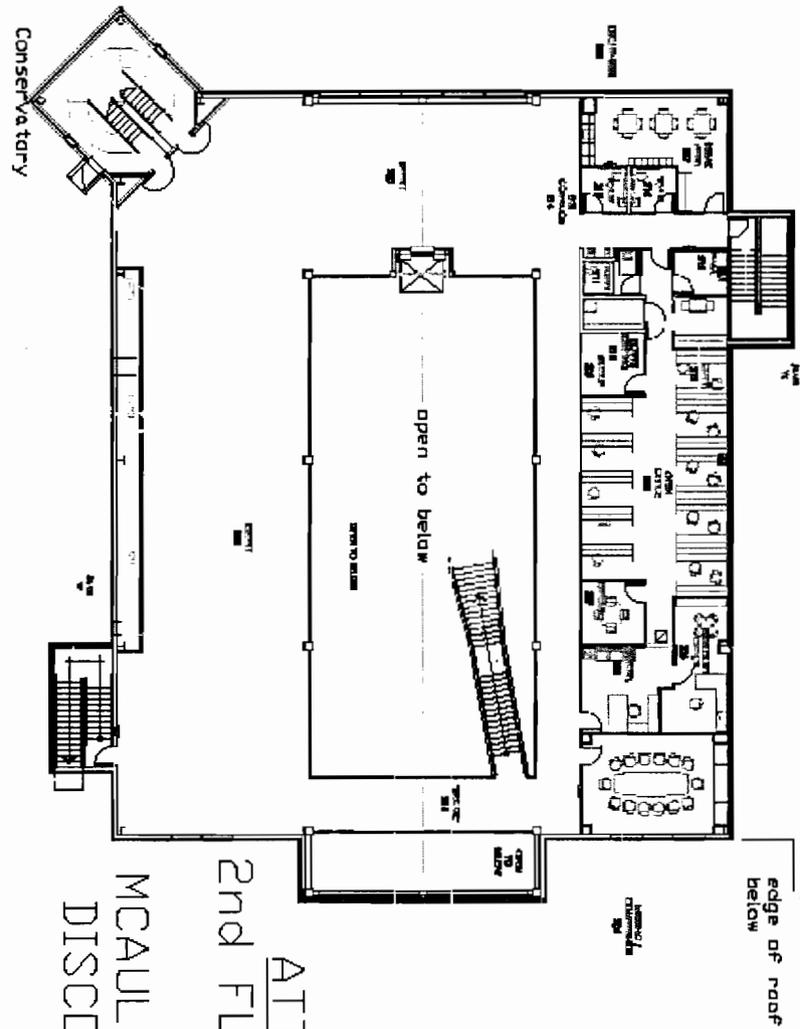
Approval by the New Hampshire Governor and Executive Council:

By: _____, on _____

Initials: *JRW*
Date: 12.31.12



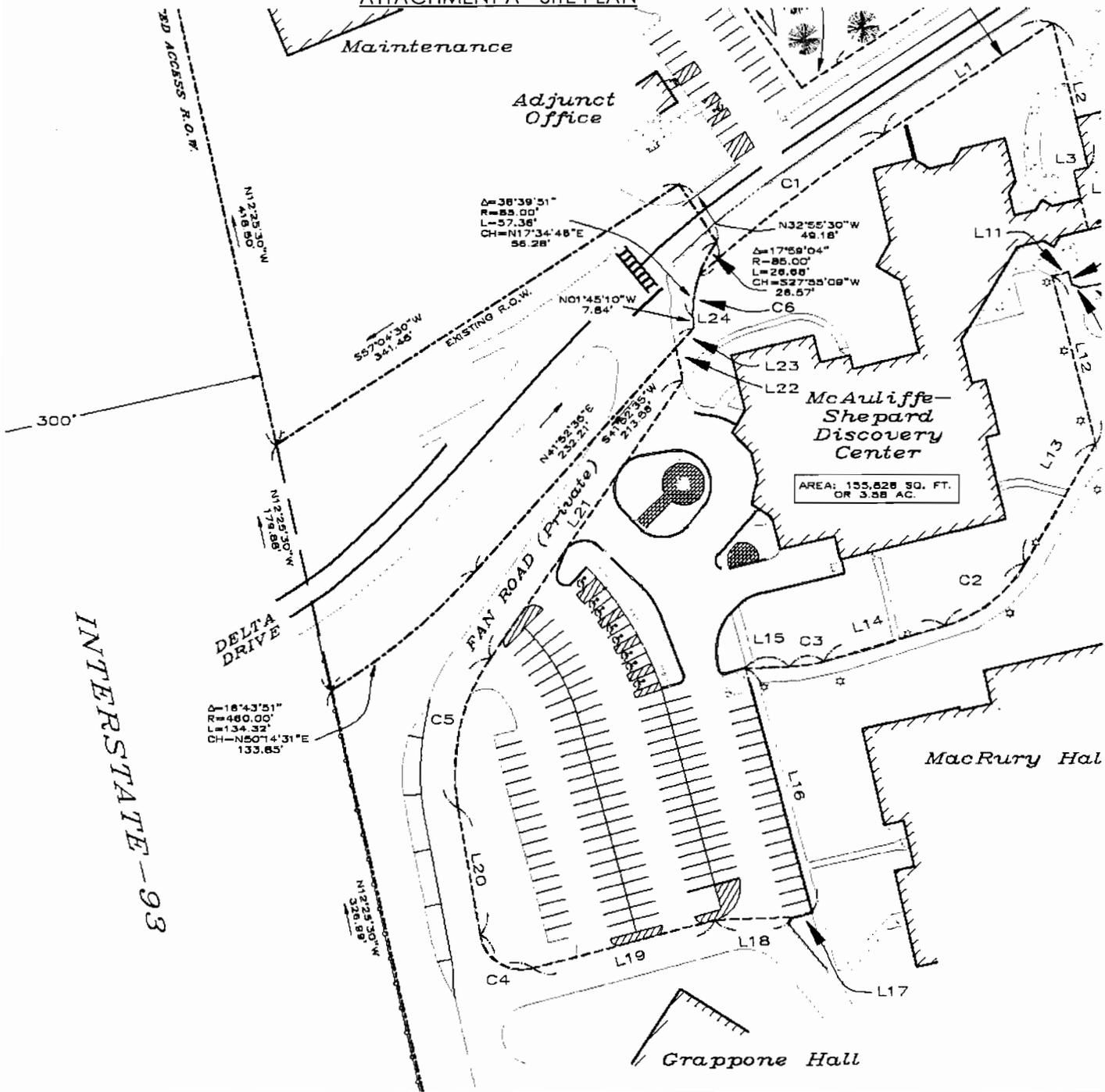
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Date: 12.21.12



ATTACHMENT A:
2nd FLOOR DEMISE OF
PREMISES
MCAULIFFE-SHEPHARD
DISCOVERY CENTER

Initials: YRM
Date: 12.31.12

ATTACHMENT A - SITE PLAN



Initials: JKM
Date: 12.5.12

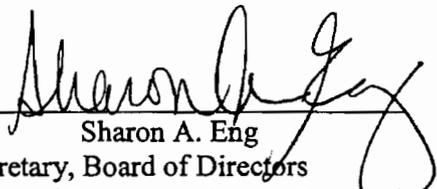
Corporate Resolution

I, Sharon Eng, hereby certify that I am duly elected Secretary of the McAuliffe-Shepard Discovery Center Corporation. I hereby certify the following is a true copy of a vote taken at a meeting of the Board of Directors/shareholders, duly called and held on November 20, 2012, at which a quorum of the Directors/shareholders were present and voting.

VOTED: That Dr. James R. MacKay, Chair of the Board is duly authorized to enter into a contract on behalf of McAuliffe-Shepard Discovery Center Corporation with the Department of Administrative Services, State of New Hampshire and further is authorized to execute any documents which may in his/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 January 2, 2012. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person listed above currently occupies the position indicated and that they have full authority to bind the corporation to the specific contract indicated.

DATED: January 2, 2012

ATTEST: 
Sharon A. Eng
Secretary, Board of Directors
McAuliffe Shepard Discovery Center Corporation

