

part 43



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

172 Pembroke Road Concord, New Hampshire 03301  
Phone: (603) 271-3556 Fax: (603) 271-3553 E-Mail: nhparks@dred.nh.gov  
Web: www.nhstateparks.org

November 21, 2016

Her Excellency, Governor Margaret Wood Hassan  
and 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, Cannon Mountain Ski Area (Department) to select as **SOLE SOURCE**, a new Prinoth Bison Park Tier 4 Snow Groomer to be used for mountain ski operations financed through an equipment lease agreement with Signature Public Funding Corp. as outlined in Requested Action 2 below, effective upon Governor and Executive Council approval. 100% Agency Income
2. Pursuant to RSA 6:35, further authorize the Department to enter into a Tax Exempt Equipment Lease Financing Agreement with Signature Public Funding Corp. (VC# 276761), Greenwich, CT in the total amount of \$369,009.87 for a 4-year annual lease schedule for the new Prinoth Bison Park Tier 4 Snow Groomer effective upon Governor and Executive Council approval through December 8, 2020, with the option to seek yearly equipment lease financing with SPFC for subsequent equipment lease schedules over the next 4 years following the approval of the first year lease financing agreement with SPFC, subject to Governor and Executive Council approval. 100% Agency Income

Funding is available as follows pending budget approval for Fiscal Years 2018, 2019, 2020 and 2021:

	<u>FY18</u>	<u>FY19</u>	<u>FY20</u>	<u>FY21</u>
03-35-35-351510-37030000 Cannon Mountain	\$92,252.47	\$92,252.47	\$92,252.47	\$92,252.47
022-500257 Rents-Leases Other Than State				

**EXPLANATION**

The Department has utilized an equipment leasing program for the last fifteen years and it has worked very successfully for Cannon Mountain by continually providing a state-of-the-art grooming fleet and a superior on-hill product, and by reducing maintenance costs and capital outlay for outright purchases. Currently, only Prinoth, LLC and Kassbohrer, Inc. sell snow groomers in this part of the country. Cannon's mountain operations team believes that Prinoth grooming vehicles are far superior in performance, and Prinoth's (approximately) 70% market share in the United States supports that claim. In addition, the mechanics at Cannon are factory trained by Prinoth to service their machines and stock original and aftermarket parts to spec the fleet. The Prinoth machines have had excellent service records, and the eastern sales and service team, located in Gilmanton, has provided superior service. For these reasons, your approval of the new Prinoth Bison Park Tier 4 Snow Groomer by sole source selection is respectfully requested.

The Tax Exempt Equipment Lease Financing Agreement (Lease Agreement) with Signature Public Funding Corp. (SPFC) was secured through a request for proposal process. The agreement allows the state to optionally, enter in to a new 4-year term lease agreement each year for the next 4 years for a snow groomer or similar mountain operation maintenance machine following this agreement.

In October 2016, an invitation to submit proposals for Tax Exempt Equipment Lease Financing was posted on the Division of Purchase and Property's website. In addition, the Department forwarded notice of the posting to a list of over 30 financial institutions provided by the office of NH State Treasury. Only one proposal was received on October 19, 2016 and was evaluated based on cost and proposed terms of lease and escrow agreements. After consultation and review of the proposal by the NH State Treasury office, Signature Public Funding Corp. was the selected bidder.

The Attorney General's Office has reviewed and approved the Lease Agreement and related documents as to form, substance, and execution. Secondly, the Department of Administrative Services' has reviewed and approved the Lease Agreement. A copy of Chapter 276:190, Laws of 2015 (HB 2) governing this process is included for your information. Lastly, the NH State Treasury has reviewed and approved the Lease Agreement. A copy of the NH State Treasury Agency Lease Questionnaire approved by State Treasurer William F. Dwyer, a copy of RSA 6:35 governing this process and a Statement of Appropriations showing Cannon Mountain's operating budget line item for equipment leases are all included for your information.

Approval of this Lease agreement and the Escrow agreement does not entail a financial obligation or pledge to the state. The contractual requirement of the state to make lease payments under the lease agreement shall constitute a current operating expense of the state subject to legislative appropriation. The interest component of the lease payments under this agreement will be tax exempt to the lessor.

Respectfully submitted,



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Jeffrey J. Rose  
Commissioner

*For perfect pistes...*



## Description & Pricing

### NEW BISON PARK TIER 4 SNOW GROOMER

#### ENGINE

Caterpillar C9.3  
Fuel tank capacity 27 l (59.4 gal)  
DEF tank capacity (AdBlue®) 27 l (7.1 gal)

#### CABIN

Sliding swivel seat, mechanical suspension, adjustable, 1 emergency seat, 7 in color display, steering levers, PRINOTH joystick, tinted sunroof, heated windows, heated mirrors, hydraulically tillable cabin, AM/FM radio, CD, MP3, WMA, input for USB, iPod/iPad direct control via USB, AUX in, ROPS certified according to EN 15059  
Available Options: Rear view camera, Air conditioning

#### LIGHTING

4 halogen working lights at the front, 2 high/low beam lights, direction and position lights, 2 turning lights, 4 halogen working lights at the back, 2 LED lights on the mirror rails, Full LED

#### ATTACHMENTS

12-way Park blade with quick change system Tiller POSIFLEX with quick change system Tiller side wings  
Hydraulic constant pressure POSIFLEX  
66" Master Climber Steel tracks

#### INCLUDED FUNCTIONS

Hydraulic track tensioning with over tightening protection  
Adjustable down pressure On board diagnostic Multiple operator profiles Rear alarm

**Price: \$352,000.00**

**Freight: \$1,500.00**

#### AVAILABLE OPTIONS

Front alarm  
RESOURCE MANAGEMENT SNOW DEPTH MEASUREMENT  
Rear view camera  
Left drive seat

PRINOTH, LLC  
264 NH Route 106  
Gilmanton, NH03237 USA  
Telephone: 603.267.7840  
Fax: 603.267.7843  
www.prinoth.com prinoth.us@prinoth.com

CHAPTER 276  
HB 2-FN-A-LOCAL – FINAL VERSION  
- Page 55 -

1 111-148, as amended.

2 276:189 Applicability. RSA 21-I:26-a, as inserted by section 188 of this act, shall not apply to  
3 any state employees health insurance plan in effect on the effective date of section 188 of this act.

4 276:190 Agreements to Lease-Purchase Vehicles and Equipment Authorized. For the biennium  
5 ending June 30, 2017, any state agency or department is authorized, with the prior written approval  
6 of the department of administrative services, to enter into agreements to rent, lease, or lease-  
7 purchase vehicles and equipment from any outside vendor or to rent or lease vehicles and equipment  
8 from any other state agency or department.

9 276:191 Allocation of Highway Fund Appropriations. RSA 9:9-b is repealed and reenacted to  
10 read as follows:

11 9:9-b Allocation of Highway Fund Appropriations. In each biennium, highway fund  
12 appropriations, including costs of collections of the department of safety, shall be subject to the  
13 following limitations:

14 I. Department of transportation: Not less than 73 percent of anticipated total gross road toll  
15 and motor vehicle fees and fines for the biennium.

16 II. Department of safety: Not to exceed 26 percent of total anticipated gross road toll and  
17 motor vehicle fees and fines for the biennium.

18 III. All other agencies: Not to exceed 1 percent of total anticipated gross road toll and motor  
19 vehicle fees and fines for the biennium.

20 276:192 Highway Fund; Construction and Reconstruction Aid; Apportionment. Amend RSA  
21 235:23, I to read as follows:

22 I. Apportionment A. In each fiscal year, the commissioner shall allocate an amount not less  
23 than 12[~~%~~] **percent** of the [~~total~~] **gross** road toll revenue and motor vehicle fees collected in the  
24 preceding fiscal year to a local highway aid fund. This fund shall be distributed to each city, town,  
25 and unincorporated place on a formula in which 1/2 of the amount is based on the proportion which  
26 the mileage of regularly maintained class IV and class V highways in each municipality, as of  
27 January 1 of the previous year, bears to the total of such mileage in the state; and 1/2 of the amount  
28 is based on the proportion which the office of energy and planning population estimate of each  
29 municipality bears to the latest estimate of the total population of the state as of July 1 of the year of  
30 the estimate. The aid to be distributed under this paragraph shall be in addition to all other state  
31 and federal aid specifically authorized by statute.

32 276:193 Chartered Public Schools; Funding. Amend RSA 194-B:11, I(b)(1) to read as follows:

33 (b)(1) Except as provided in subparagraph (2), for a chartered public school authorized  
34 by the state board of education pursuant to RSA 194-B:3-a, the state shall pay tuition pursuant to  
35 RSA 198:40-a plus an additional grant of [~~\$2,000~~] **\$2,036** directly to the chartered public school for  
36 each pupil who is a resident of this state in attendance at such chartered public school.

## NH State Treasury Agency Lease Questionnaire

In order to provide a brief overview of the asset and financing arrangement, the Department of Resources and Economic Development (DRED) submits responses to the following items:

1. Has funding for the lease payments under consideration been specifically approved by the state legislature? Please provide a copy of the relevant excerpt from the biennial operating budget containing the line item for the appropriate accounting unit.

**Yes, Cannon Mountain has an approved line item in its operating budget for equipment leases, i.e. 03-35-35-351510-37030000-022-500257 (see attached printout).**

2. Has the financing schedule been submitted to the Deputy State Treasurer for analysis and approval? If so, confirm rate found to be reasonable and that there are sufficient appropriations available to cover the lease payments. If not, what is the time frame for submission?

**Yes, the State Treasurer has confirmed that the 1.80% IRR to the lender is reasonable and that there is sufficient funding available in the Cannon Mountain operating budget.**

3. Have both the Department of Administrative Services (DAS) and the Attorney General's office (AGO) been notified so that they can conduct their reviews of the lease documentation? If so, please provide the contact information for those conducting the review at DAS and AGO. If not, what is the time frame for submission?

**Yes, Jeanine Girgenti, Assistant Attorney General at the AGO, and Michael P. Connor, Deputy Commissioner at DAS, have both reviewed and approved the lease agreement. Attorney Jeanine Girgenti may be contacted at 603-271-1282; and Deputy Commissioner Michael P. Connor may be contacted at 603-271-6899.**

4. If an Escrow Agreement is involved, will it require a State bank account? Who will be the signatory(ies)? Please provide a brief summary of how the account will operate. Has Governor and Executive Council approval to open the State bank account been obtained? (attach appropriate documentation for the escrow agreement, if needed)

**Yes, an Escrow Agreement is required. However, it will be established by the lease company and the state will retain signatory authority on the account.**

5. Does the lease agreement require filing of an IRS form 8038-G or 8038-GC? If so, has the Department provided to the State Treasury all information necessary to complete the required IRS forms, particularly the lease financing contract? Please note that the State Treasury will work with bond counsel to ensure filing of required IRS forms and will provide a copy of the completed and filed form to the Department

**The agency has provided to bond counsel all information necessary to complete IRS Form 8038-G. Bond counsel will provide a signature copy of the Form to State Treasurer, who will sign off upon confirmation of G&C approval and return Form to bond counsel for filing with the IRS.**

Submitted by: Christopher S. Marino  
Position Title/Agency: Administrator of Business Operations  
Phone/Email: 603-271-3727/christopher.marino@dred.nh.gov  
Date: November 3, 2016

Reviewed/Approved:

  
William F. Dwyer  
NH State Treasurer

November 21, 2016  
Date

# TITLE I

## THE STATE AND ITS GOVERNMENT

### CHAPTER 6

#### STATE TREASURER AND STATE ACCOUNTS

#### State Leases

#### Section 6:35

**6:35 State Leases.** – The 10-year limitation does not apply to leases for state facility energy cost reduction projects pursuant to RSA 21-I:19-a through RSA 21-I:19-e, which shall be subject to the term limitation applicable to energy performance contracts, as defined therein. The treasurer may establish financing criteria to be met by any state agency or department before entering into leases for equipment. In no instance shall the term of such lease exceed 10 years. For purposes of this section "leases" shall include lease-purchase, sale and lease back, installment sale, or other similar agreements entered into by various agencies or departments to acquire such equipment from time to time for the agencies or departments; provided that funding for such equipment leases was specifically approved by the legislature in a budget. Payment obligations under any lease entered into under this section shall be subject to annual appropriation and shall not be treated as debt obligations of the state. Nothing in this chapter shall prohibit the treasurer from entering into financing agreements or executing any related documents, including any document creating or confirming any security interest retained by the seller or lessor of the equipment.

**Source.** 1996, 1:1. 2000, 276:8. 2008, 120:12, eff. Aug. 2, 2008.

Company	0010 General Fund	BUR/DIV	5515 PARKS AND RECREATION	Expended	Revenue	Encumbrances	Transfers	Expd	Avail
Agency	0345 RESOURCES	ACCT DATE	CASIN MONTAIN						
Organization	3703 GAMING MONTAIN		97030006						
Class	APPROPRIATION	EXP REVENUE	EXPENDITURE	REVENUE	ENCUMBRANCE	TRANSFER	EXP	AVAIL	
609 AGENCY INCOME	9.00	6,729,769.00	0.00	2,445,342.10	0.00	0.00	0.00	627,497.15	5,810,964.05
010 PERSONAL SERVICES PERM CLAS	6.00		250,905.48	0.00	0.00	0.00	0.00	0.00	470,664.52
011 PERSONAL SERVICES UNCLASSIF	0.00		30,822.00	0.00	0.00	0.00	0.00	0.00	56,656.00
018 OVERTIME	6.00		17,859.43	0.00	0.00	0.00	0.00	0.00	10,111.57
019 HOLIDAY PAY	0.00		2,129.00	0.00	0.00	0.00	0.00	0.00	12,870.71
020 CURRENT EXPENSES	0.00		99,823.43	0.00	91,319.00	43,044.00	0.00	7,408.40	443,143.57
022 RENTS-LEASES OTHER THAN 57A	0.00		73,479.48	0.00	51,639.40	0.00	0.00	0.00	1,020,917.50
023 HEAT ELECTRICITY WATER	0.00		91,021.82	0.00	0.00	49,220.60	0.00	0.00	944,776.11
024 MAINT OTHER THAN 50110-000	0.00		89,847.32	0.00	59,176.93	0.00	0.00	61,125.10	152,100.95
026 ORGANIZATIONAL FEES	0.00		42,177.54	0.00	0.00	0.00	0.00	0.00	1,2562.45
029 INTA-AGENCY TRANSFERS	0.00		12,034.03	0.00	0.00	0.00	0.00	0.00	197,521.97
030 EQUIPMENT NEW REPLACEMENT	0.00		26,152.28	0.00	10,907.00	0.00	0.00	2,375.60	111,115.72
039 TELECOMMUNICATIONS	0.00		14,510.96	0.00	0.00	0.00	0.00	0.00	9,467.04
040 ADDITIONAL PRIME BENEFITS	0.00		16,550.45	0.00	0.00	0.00	0.00	0.00	33,449.55
044 DEBT SERVICE OTHER AGENCIES	0.00		48,140.76	0.00	0.00	0.00	0.00	0.00	11,959.24
047 OMI FORCES MAINT 50110-000	0.00		16,561.10	0.00	35,537.16	0.00	0.00	0.00	17,563.24

Loan Amortization @ 1.74%

date	funding	payment	interest	principal	balance
12/8/2016	353,500.00				353,500.00
12/8/2017		92,252.47	6,150.90	86,101.57	267,398.43
12/8/2018		92,252.47	4,652.73	87,599.73	179,798.70
12/8/2019		92,252.47	3,128.50	89,123.97	90,674.73
12/8/2020		92,252.47	1,577.74	90,674.73	-
	353,500.00	369,009.87	15,509.87	353,500.00	

12/8/2016	353,000.00
12/8/2017	(92,252.47)
12/8/2018	(92,252.47)
12/8/2019	(92,252.47)
12/8/2020	(92,252.47)

**1.80% IRR**

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**INDEX TO LEGAL DOCUMENTS**  
**NON-BANK-QUALIFIED, APPROPRIATION-BASED**  
**TAX-EXEMPT MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT**

**DATED DECEMBER 8, 2016 BY AND BETWEEN**

**SIGNATURE PUBLIC FUNDING CORP.**

**And**

**STATE OF NH – DEPARTMENT OF RESOURCES & ECONOMIC DEVELOPMENT**

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Lease Documents:

- Tab 1: Master Equipment Lease-Purchase Agreement;
- Tab 2: Exhibit A - Equipment Schedule;
- Tab 3: Exhibit B - Acceptance Certificate;
- Tab 4: Exhibit C-1 - Insurance Coverage Request;
- Tab 5: Exhibit C-2 - Self-Insurance Rider (if applicable);  
Exhibit C-3 - Questionnaire for Self Insurance (If applicable);
- Tab 6: Exhibit D - Essential Use Certificate;
- Tab 7: Exhibit E - Incumbency Certificate;
- Tab 8: Exhibit F - Form of Opinion of Lessee's Counsel;
- Tab 9: Exhibit G – Reserved;
- Tab 10: Exhibit H - Tax Certificate;
- Tab 11: Exhibit I - Escrow Agreement;
- Tab 12: Exhibit J: - Form of Sample Resolution of Lessee;
- Tab 13: UCC-1 - Financing Statement with attached Schedule A;
- Tab 14: Form 8038-G;
- Tab 15: Closing Memorandum/Payment Proceeds Direction; and
- Tab 16: Vendor Invoices, Purchase Agreement,

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**SIGNATURE  
PUBLIC FUNDING**

**SIGNATURE PUBLIC FUNDING CORP.**

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**MASTER LEASE AGREEMENT NO. \_\_\_\_\_**

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This **MASTER LEASE AGREEMENT** (the "Agreement"), dated as of December 8, 2016 is made and entered into by and between **SIGNATURE PUBLIC FUNDING CORP.**, a New York corporation, as lessor (the "Lessor"), and **STATE OF NH – DEPARTMENT OF RESOURCES & ECONOMIC DEVELOPMENT (STATE OF NH – DRED)**, an agency of the State of NH, which is a political subdivision as defined under the Code, as lessee ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE I. DEFINITIONS AND EXHIBITS**

**Section 1.1. Definitions.** The following terms have the meanings specified below.

"Acceptance Certificate" means each Acceptance Certificate delivered by Lessee as part of an Equipment Schedule certifying as to the delivery, installation and acceptance of Equipment.

"Agreement" means this Master Lease Agreement and all Equipment Schedules hereto.

"Agreement Date" means the date first written above.

"Code" means the Internal Revenue Code of 1986, as amended, together with Treasury Regulations promulgated from time to time thereunder.

"Default Rate" means the lesser of 12% per annum, or the maximum rated permitted by law.

"Equipment" means all items of property described in Equipment Schedules and subject to this Agreement.

"Equipment Group" means each group of Equipment listed in a single Equipment Schedule.

"Equipment Schedule" means each sequentially numbered schedule executed by Lessor and Lessee with respect to Equipment Group.

"Escrow Account" means the equipment acquisition account, if any, established by Lessor and Lessee with the Escrow Agent pursuant to the Escrow Agreement.

"Escrow Agent" means the escrow agent and, if applicable, any successor escrow agent identified under the Escrow Agreement for any applicable Lease hereunder.

"Escrow Agreement" means the Escrow Fund and Account Control Agreement, substantially in the form of Exhibit I hereto, or another mutually agreeable form of escrow agreement to be executed by Lessor, Lessee and the Escrow Agent upon the first funding of an Equipment Schedule using the procedure described in Section 2.4.

"Events of Default" means those events described in Section 12.1.

"Fiscal Year" means each 12-month fiscal period of Lessee.

"Funding Date" means, with respect to each Lease, the date Lessor makes payment to the Vendor(s) named in the related Equipment Schedule or reimburses Lessee for the purchase price of the related Equipment Group or, if the procedure described in Section 2.4 is utilized, the date Lessor deposits funds equal to such purchase price into the Escrow Account.

"Interest" means the portion of a Rental Payment designated as and comprising interest as provided in a Payment Schedule.

"Lease" means, with respect to each Equipment Group, this Agreement and the Equipment Schedule relating thereto, which together shall constitute a separate contract between Lessor and Lessee relating to such Equipment Group.

"Lease Date" means, with respect to each Lease, the date so designated in the related Equipment Schedule.

"Lease Term" means, with respect to each Equipment Group, the period during which the related Lease is in effect as specified in Section 3.1.

"Net Proceeds" means any insurance proceeds or condemnation awards paid with respect to any Equipment remaining

after payment therefrom of all expenses incurred in the collection thereof.

"Non-Appropriation" means the failure of Lessee, Lessee's governing body, or, if applicable, the governmental entity from which Lessee obtains its operating and/or capital funds to appropriate money for any Fiscal Year sufficient for the continued payment and/or performance by Lessee of all of Lessee's obligations under this Agreement, as evidenced by the passage of an ordinance or resolution prohibiting Lessee from performing its obligations under this Agreement with respect to any Equipment and/or budget, and from using properly appropriated and/or legally available funds to pay any Rental Payments due under this Agreement during any Fiscal Year.

"Payment Date" means each date upon which a Rental Payment is due and payable as provided in a Payment Schedule.

"Payment Schedule" means the schedule of Rental Payments attached to an Equipment Schedule.

"Principal" means the portion of any Rental Payment designated as and comprising principal as provided in a Payment Schedule.

"Prepayment Price" means the amount so designated and set forth opposite a Payment Date in a Payment Schedule indicating the amount for which Lessee may purchase the related Equipment Group as of such Payment Date after making the Rental Payment due on such Payment Date.

"Rental Payment" means each payment due from Lessee to Lessor on a Payment Date.

"Specifications" means the bid specifications and/or purchase order pursuant to which Lessee has ordered any Equipment from a Vendor.

"State" means the state or commonwealth in which Lessee is situated.

"Vendor" means each of the manufacturers or vendors from which Lessee has ordered or with which Lessee has contracted for the manufacture, delivery and/or installation of the Equipment.

#### **Section 1.2. Exhibits.**

<u>Exhibit A:</u>	Equipment Schedule including Payment Schedule.
<u>Exhibit B:</u>	Acceptance Certificate.
<u>Exhibit C-1:</u>	Confirmation of Outside Insurance.
<u>Exhibit C-2:</u>	Self-Insurance Rider and Lessor Consent (if applicable).
<u>Exhibit C-3:</u>	Questionnaire for Self Insurance (If applicable),
<u>Exhibit D:</u>	Essential Use Certificate (unless waived).
<u>Exhibit E:</u>	Incumbency Certificate.
<u>Exhibit F:</u>	Form of Opinion of Counsel to Lessee.
<u>Exhibit G:</u>	Bank-Qualified Designation (if applicable).
<u>Exhibit H:</u>	Tax and Arbitrage Certificate.
<u>Exhibit I:</u>	Escrow Fund and Account Control Agreement (together with Disbursement request Form).
<u>Exhibit J:</u>	Form of Resolution of the Governing Body of Lessee relating to each Lease.

## **ARTICLE II. LEASE OF EQUIPMENT**

**Section 2.1. Acquisition of Equipment.** Prior to the addition of any Equipment Group, Lessee shall provide Lessor with a description of the equipment proposed to be subject to a Lease hereunder, including the cost and vendor of such equipment, the expected delivery date and the desired lease terms for such equipment, and such other information as the Lessor may require. If Lessor, in its sole discretion, determines the proposed equipment may be subject to a Lease hereunder, Lessor shall furnish to Lessee a proposed Equipment Schedule relating to the Equipment Group for execution by Lessee and then Lessor. By execution hereof, Lessor has made no commitment to lease any equipment to Lessee.

**Section 2.2. Disbursement.** Lessor shall have no obligation to make any disbursement to a Vendor or reimburse Lessee for any payment made to a Vendor for an Equipment Group (or, if the escrow procedure described in Section 2.4 hereof is utilized, consent to a disbursement by the Escrow Agent) until five (5) business days after Lessor has received all of the following in form and substance satisfactory to Lessor: (a) a completed Equipment Schedule executed by Lessee; (b) an Acceptance Certificate in the form included with Exhibit B hereto; (c) a resolution or evidence of other official action taken by or on behalf of the Lessee to authorize the acquisition of the Equipment Group on the terms provided in such Equipment Schedule; (d) a Tax Agreement and Arbitrage Certificate in the form of Exhibit H (as applicable) attached hereto; (e) evidence of insurance with respect to the Equipment Group in compliance with Article VII of this Agreement; (f) Vendor invoice(s) and/or bill(s) of sale relating to the Equipment Group, and if such invoices have been paid by Lessee, evidence of payment thereof and evidence of official intent to reimburse such payment as required by the Code;

(g) financing statements naming Lessee as debtor and/or the original certificate of title or manufacturer's certificate of origin and title application, if any, for any Equipment which is part of such Equipment Group and is subject to certificate of title laws; (h) a completed and executed Form 8038-G or 8038-GC, as applicable, or evidence of filing thereof with the Secretary of Treasury; (i) an opinion of counsel to the Lessee substantially in the form of Exhibit F hereto, and (j) any other documents or items reasonably required by Lessor.

**Section 2.3. Lease; Possession and Use.** Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon the terms and conditions set forth herein. Lessee shall have quiet use and enjoyment of and peaceably have and hold each Equipment Group during the related Lease Term, except as expressly set forth in this Agreement.

**Section 2.4. Escrow Procedure.** If Lessor and Lessee agree that the cost of an Equipment Group is to be paid from an Escrow Account: (a) Lessor and Lessee shall execute an Escrow Agreement substantially in the form of Exhibit I or such other form as may be mutually agreeable by the parties thereto; (b) Lessor and Lessee shall execute an Equipment Schedule relating to such Equipment Group; and (c) Lessor shall deposit an amount equal to the cost of the Equipment Group into the Escrow Account. All amounts deposited by Lessor into the Escrow Account shall constitute a loan from Lessor to Lessee secured by proceeds in such Escrow Account and, when such funds are used to acquire the Equipment, shall be repaid by the Rental Payments due under the related Lease.

### **ARTICLE III. TERM**

**Section 3.1. Term.** This Agreement shall be in effect from the Agreement Date until the earliest of (a) termination under Section 3.2 or (b) termination under Section 12.2; provided, however, no Equipment Schedules shall be executed after any Non-Appropriation or Event of Default. Each Lease with respect to an Equipment Group shall be in effect for a Lease Term commencing upon the Lease Date and ending as provided in Section 3.4.

**Section 3.2. Termination by Lessee.** In the sole event of Non-Appropriation, this Agreement and each Lease hereunder shall terminate, in whole, but not in part, as to all Equipment effective upon the last day of the Fiscal Year for which funds were appropriated, in the manner and subject to the terms specified in this Article. Lessee may affect such termination by giving Lessor a written notice of termination and by paying to Lessor any Rental Payments and other amounts which are due and have not been paid at or before the end of its then current Fiscal Year. Lessee shall endeavor to give notice of such termination not less than ninety (90) days prior to the end of the Fiscal Year for which appropriations were made, and shall notify Lessor of any anticipated termination. In the event of termination of this Agreement as provided in this Section, Lessee shall comply with the instructions received from Lessor in accordance with Section 12.3. Lessor agrees that it shall not deliberately cause an event of Non-Appropriation so as to permit Lessee to terminate this Agreement or any Lease hereunder in order to acquire any other equipment or obtain funds directly or indirectly to perform essentially the same application for the Equipment is intended.

**Section 3.3. Effect of Termination.** Upon termination of this Agreement as provided in Section 3.2, Lessee shall not be responsible for the payment of any additional Rental Payments coming due in succeeding Fiscal Years, but if Lessee has not complied with the instructions received from Lessor in accordance with Section 12.3, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments that would thereafter have come due if this Agreement had not been terminated and which are attributable to the number of days after which Lessee fails to comply with Lessor's instructions and for any other loss suffered by Lessor as a result of Lessee's failure to take such actions as required.

**Section 3.4. Termination of Lease Term.** The Lease Term with respect to any Lease will terminate upon the occurrence of the first of the following events: (a) the termination of this Agreement by Lessee in accordance with Section 3.2; (b) the payment of the Prepayment Price by Lessee pursuant to Article V; (c) an Event of Default by Lessee and Lessor's election to terminate such Lease pursuant to Article XII; or (d) the payment by Lessee of all Rental Payments and all other amounts authorized or required to be paid by Lessee pursuant to such Lease.

### **ARTICLE IV. RENTAL PAYMENTS**

**Section 4.1. Rental Payments.** The Lessee agrees to pay the Rental Payments due as specified in the Payment Schedule set forth on any Equipment Schedule hereto, the form of which is attached as Exhibit A. A portion of each Rental Payment is paid as interest as specified in the Payment Schedule of each lease, and the first Rental Payment will include Interest accruing from the Funding Date. Lessor is authorized to insert the due date of the first Rental Payment in the Payment Schedule. All Rental Payments shall be paid to Lessor, or to such assignee(s) Lessor has assigned as stipulated in Article XI, at such places as Lessor or such assignee(s) may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor.

**Section 4.2. Current Expense.** The obligations of Lessee, including its obligation to pay the Rental Payments due in any Fiscal Year of a Lease Term, shall constitute a current expense of Lessee for such Fiscal Year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State. Nothing herein shall constitute a

pledge by Lessee of any taxes or other moneys (other than moneys lawfully appropriated from time to time by or for the benefit of Lessee for this Agreement and the Net Proceeds of the Equipment) to the payment of any Rental Payment or other amount coming due hereunder.

**Section 4.3. Unconditional Rental Payments.** Notwithstanding Lessee's right to terminate as provided in Section 3.2, Lessee's obligation to make Rental Payments shall be absolute and unconditional. Also, any other payments required hereunder shall be absolute and unconditional. Lessee shall make these payments when due and shall not withhold any of these payments pending final resolution of any disputes. The Lessee shall not assert any right of set-off or counterclaim against its obligation to make these payments. Lessee's obligation to make Rental Payments or other payments shall not be abated through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment. The Lessee shall be obligated to continue to make payments required of it by this Agreement if title to, or temporary use of, the Equipment or any part thereof shall be taken under exercise of the power of eminent domain.

#### **ARTICLE V. OPTION TO PREPAY**

**Section 5.1. Option to Prepay.** Lessee shall have the option to prepay its obligations under any Lease in whole but not in part on any Payment Date on or after the Prepayment Option Commencement Date for the then applicable Prepayment Price (which may include a prepayment fee) as set forth in the related Payment Schedule, provided there has been no Non-Appropriation or Event of Default.

**Section 5.2. Exercise of Option.** Lessee shall give notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under the related Lease (including the Rental Payment due on the Payment Date on which the option shall be effective) and the applicable Prepayment Price set forth in the related Payment Schedule. In the event that all such amounts are not received by Lessor on such Payment Date, such notice by Lessee of exercise of its option to prepay shall be void and the related Lease shall continue in full force and effect.

**Section 5.3. Release of Lessor's Interest.** Upon receipt of the Prepayment Price in good funds with respect to any Equipment Group, the Lease with respect to such Equipment Group shall terminate and Lessee shall become entitled to such Equipment Group AS IS, WHERE IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE, except that such Equipment Group shall not be subject to any lien or encumbrance created by or arising through Lessor.

#### **ARTICLE VI. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 6.1. Representations and Warranties of Lessee.** Lessee represents and warrants as of the Agreement Date and as of each Lease Date as follows:

- (a) Lessee is na agency of the State, which is a political subdivision within the meaning of Section 103(c) of the Code, duly organized and existing under the Constitution and laws of the State, and is authorized under the Constitution and laws of the State to enter into this Agreement, each Lease and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Agreement and each Lease.
- (b) The execution and delivery of this Agreement and each Lease have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement, each Lease and the acquisition and financing of the Equipment by Lessee.
- (c) This Agreement and each Lease have been duly executed and delivered by and constitutes the valid and binding obligation of Lessee, enforceable against Lessee in accordance with their respective terms.
- (d) The execution, delivery and performance of this Agreement and each Lease by Lessee shall not (i) violate any State or federal law or local law or ordinance (including, without limitation, any public bidding, open meeting, notice, and procurement requirements), or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound.
- (e) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any Lease or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or any Lease.
- (f) Lessee will furnish Lessor (i) within [180] days after the end of each Fiscal Year of Lessee, a copy of its audited financial statements for such Fiscal Year, which audited financial statements shall include a balance sheet, a statement of revenues, expenses and changes in fund balances for budget and actual, a statement of cash flows, notes, schedules and any attachments to the financial statements; (ii) no later than 10 days prior to the end of each Fiscal

Year (commencing with the current Fiscal Year), a copy of Lessee's current budget or other proof of appropriation for the ensuing Fiscal Year; (iii) promptly after Lessor's written request, a copy of any interim updates or modifications to Lessee's adopted budget and such other information relating to Lessee's ability to continue the Lease Term of each Lease for such Fiscal Year as may be reasonably requested by Lessor; and (iv) promptly, but not later than 30 days after such information is available, after Lessor's written request, such other financial statements and information as Lessor may reasonably request, including, without limitation, any information relating to the measurement and verification of proposed or guaranteed energy savings. The financial statements described in clause (f)(i) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns. Assuming that the foregoing information is readily publicly available in an on-line format, the Lessee will have been deemed to be in compliance with this provision.

(g) Lessee or Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the current Fiscal Year, and such moneys will be applied in payment of all Rental Payments due and payable during such current Fiscal Year.

(h) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the applicable Lease Term. Lessee presently intends to continue each Lease hereunder for its entire Lease Term and to pay all Rental Payments relating thereto.

**Section 6.2. Covenants of Lessee.** Lessee agrees that so long as any Rental Payments or other amounts due under this Agreement remain unpaid:

(a) Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or regulation or in a manner contrary to that contemplated by this Agreement. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. Lessee shall not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition would change or impair the originally intended functions, value or use of such Equipment.

(b) Lessee shall provide Lessor access at all reasonable times to examine and inspect the Equipment and provide Lessor with such access to the Equipment as may be reasonably necessary to perform maintenance on the Equipment in the event of failure by Lessee to perform its obligations hereunder.

(c) Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other claim with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such actions as may be necessary duly to discharge or remove any such claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such claim.

(d) The person or entity in charge of preparing Lessee's budget will include in the budget request for each Fiscal Year the Rental Payments to become due during such Fiscal Year, and will use all reasonable and lawful means available to secure the appropriation of money for such Fiscal Year sufficient to pay all Rental Payments coming due therein. Lessor acknowledges that appropriation for Rental Payments is a governmental function which Lessee cannot contractually commit itself in advance to perform. Lessee acknowledges that this Agreement does not constitute such a commitment. However, Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the applicable Lease Terms.

(e) Lessee shall assure that its obligation to pay Rental Payments is not directly or indirectly secured by any interest in property, other than the Equipment, and that the Rental Payments will not be directly or indirectly secured by or derived from any payments of any type or any fund other than Lessee's general purpose fund.

(f) Upon Lessor's request, Lessee shall provide Lessor with current financial statements, budgets, and proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Lessee to continue this Agreement and each Lease as may be reasonably requested by Lessor.

(g) Lessee shall promptly and duly execute and deliver to Lessor such further documents, instruments and assurances and take such further action as Lessor may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder.

**Section 6.3. Tax Related Representations, Warranties and Covenants.**

(a) *Incorporation of Tax Agreement and Arbitrage Certificate.* As of each Lease Date and with respect to each Lease, Lessee makes each of the representations, warranties and covenants contained in the Tax Agreement and Arbitrage Certificate delivered with respect to such Lease. By this reference each such Tax Agreement and Arbitrage Certificate is incorporated in and made a part of this Agreement.

(b) *Event of Taxability.* If Lessor either (i) receives notice, in any form, from the Internal Revenue Service or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor, that Lessor may not exclude any Interest paid under any Lease from its Federal gross income (each an "Event of Taxability"), the Lessee shall pay to

Lessor upon demand (x) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the Interest due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by such Lease through the date of such event and (y) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor.

## **ARTICLE VII. INSURANCE AND RISK OF LOSS**

**Section 7.1. Liability and Property Insurance.** Lessee shall, at its own expense, procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor and/or assigns from liability in all events, with a coverage of not less than \$1,000,000 per occurrence and either \$3,000,000 aggregate for non-titled Equipment or \$5,000,000/ aggregate for titled Equipment unless specified differently in the related Equipment Schedule, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price of each Equipment Group.

**Section 7.2. Workers' Compensation Insurance.** If required by State law, Lessee shall carry workers' compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

### **Section 7.3. Insurance Requirements.**

(a) *Insurance Policies.* All insurance policies required by this Article shall be taken out and maintained with insurance companies acceptable to Lessor and shall contain a provision that thirty (30) days prior to any change in the coverage the insurer must provide written notice to the insured parties. No insurance shall be subject to any co-insurance clause. Each insurance policy shall name Lessor and/or its assigns as an additional insured party and loss payee regardless of any breach of warranty or other act or omission of Lessee and shall include a lender's loss payable endorsement for the benefit of Lessor and/or its assigns. Prior to the delivery of Equipment, Lessee shall deposit with Lessor evidence satisfactory to Lessor of such insurance and, prior to the expiration thereof, shall provide Lessor evidence of all renewals or replacements thereof.

(b) *Self Insurance.* With Lessor's prior consent, Lessee may self-insure the Equipment by means of an adequate insurance fund set aside and maintained for that purpose which must be fully described in a letter delivered to Lessor in form acceptable to Lessor.

(c) *Evidence of Insurance.* Lessee shall deliver to Lessor upon acceptance of any Equipment evidence of insurance which complies with this Article VII with respect to such Equipment to the satisfaction of Lessor, including, without limitation, the confirmation of insurance in the form of Exhibit C-1 attached hereto together with Certificates of Insurance, when available, or the Questionnaire for Self-Insurance Rider and Lessor Consent in the form of Exhibit C-2 attached hereto, as applicable.

(d) *Payment and Performance Bond.* If requested by Lessor, which will be solely in circumstances where the Equipment will not be fully delivered and accepted at the time of funding yet partial payment therefor has been or will be made by Lessor or from an Escrow Account, a payment and performance or other type of surety bond and dual obligee rider ("Bond") is required in form and substance and with such insurer as may be required by Lessor, and Lessee will keep such Bond in effect (or require the Vendor to keep such Bond in effect) and provide Lessor with a evidence of such Bond (and any applicable renewals thereof) at all times until the final Acceptance Certificate is delivered to the Lessor. No disbursements from the Escrow Account will be permitted without evidence of such Bond having been delivered to the Lessor.

**Section 7.4. Risk of Loss.** To the extent permitted by applicable laws of the State, as between Lessor and Lessee, Lessee assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance relating to any Lease hereunder, for loss or damage to any Equipment and for injury to or death of any person or damage to any property. Whether or not covered by insurance, Lessee hereby assumes responsibility for and agrees to release Lessor from all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses imposed on, incurred by or asserted against Lessor that relate to or arise out of this Agreement, including but not limited to, (a) the selection, manufacture, purchase, acceptance or rejection of Equipment or the ownership of the Equipment, (b) the delivery, lease, possession, maintenance, use, condition, return or operation of the Equipment, (c) the condition of the Equipment sold or otherwise disposed of after possession by Lessee, (d) the conduct of Lessee, its officers, employees and agents, (e) a breach of Lessee of any of its covenants or obligations hereunder, (f) any claim, loss, cost or expense involving alleged damage to the environment relating to the Equipment, including, but not limited to investigation, removal, cleanup and remedial costs, and (g) any strict liability under the laws or judicial decisions of any state or the United States. This provision shall survive the termination of this Agreement. Nothing in this Section 7.4 shall be deemed to obligate Lessee to spend any monies with regards to the matters set forth herein that are not properly appropriated, designated for such purposes (e.g.

insurance proceeds, warranty payments, self-insurance, reserve or sinking funds, etc.) and/or otherwise legally available. Nothing herein shall be deemed to (a) create an unconstitutional or illegal obligation on the part of the Lessee and (b) be a waiver of any constitutional or statutory waivers, rights, immunities, or privileges. Any provision or requirement of the Agreement which is determined or to be illegal, invalid, or unconstitutional shall be stricken solely to the extent of such invalidity with the remainder of the provisions of the Agreement to be in full force and effect.

**Section 7.5. Destruction of Equipment.** Lessee shall provide a complete written report to Lessor immediately upon any loss, theft, damage or destruction of any Equipment and of any accident involving any Equipment. Lessor may inspect the Equipment at any time and from time to time during regular business hours. If all or any part of the Equipment is stolen, lost, destroyed or damaged beyond repair or taken by an exercise of eminent domain ("Damaged Equipment"), Lessee shall within thirty (30) days after such event either: (a) replace the same at Lessee's sole expense with equipment having substantially similar Specifications and of equal or greater value to the Damaged Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's approval, whereupon such replacement equipment shall be substituted in the applicable Lease and the other related documents by appropriate endorsement or amendment; or (b) pay the applicable Prepayment Price of the Damaged Equipment determined as set forth in the related Equipment Schedule. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If, within forty-five (45) days of the loss occurrence, (a) Lessee fails to notify Lessor; (b) Lessee and Lessor fail to execute an amendment to the applicable Equipment Schedule to delete the Damaged Equipment and add the replacement equipment or (c) Lessee has failed to pay the applicable Prepayment Price, then Lessor may, at its sole discretion, declare the applicable Prepayment Price of the Damaged Equipment, to be immediately due and payable from the Net Proceeds and any other legally available or proper appropriated funds. The Net Proceeds of insurance with respect to the Damaged Equipment shall be made available by Lessor to be applied to discharge Lessee's obligation under this Section.

#### **ARTICLE VIII. OTHER OBLIGATIONS OF LESSEE**

**Section 8.1. Maintenance of Equipment.** Lessee shall notify Lessor in writing prior to moving the Equipment to another address and shall otherwise keep the Equipment at the address specified in the related Equipment Schedule. Lessee shall, at its own expense, maintain the Equipment in proper working order and shall make all necessary repairs and replacements to keep the Equipment in such condition including compliance with State and federal laws. Any and all replacement parts must be free of encumbrances and liens. All such replacement parts and accessories shall be deemed to be incorporated immediately into and to constitute an integral portion of the Equipment and as such, shall be subject to the terms of this Agreement.

**Section 8.2. Taxes.** Lessee shall pay all taxes and other charges which are assessed or levied against the Equipment, the Rental Payments or any part thereof, or which become due during the Lease Term, whether assessed against Lessee or Lessor, except as expressly limited by this Section. Lessee shall pay all utilities and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body that may be secured by a lien on the Equipment. Lessee shall not be required to pay any federal, state or local income, succession, transfer, franchise, profit, excess profit, capital stock, gross receipts, corporate, or other similar tax payable by Lessor, its successors or assigns, unless such tax is made as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

**Section 8.3. Advances.** If Lessee shall fail to perform any of its obligations under this Article, Lessor may take such action to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the Default Rate from the date of the advance to the date of repayment.

#### **ARTICLE IX. TITLE**

**Section 9.1. Title.** Except as may be modified on any Schedule hereto or solely if and to the extent as required by any laws of the State, during the Lease Term, ownership and legal title of all Equipment and all replacements, substitutions, repairs and modification shall be in Lessee and Lessee shall take all action necessary to vest such ownership and title in Lessee. Lessor does not own the Equipment and by this Agreement and each Lease is merely financing the acquisition of such equipment for Lessee. Lessor has not been in the chain of title of the Equipment, does not operate, control or have possession of the Equipment and has no control over the Lessee or the Lessee's operation, use, storage or maintenance of the Equipment.

**Section 9.2. Security Interest.** Lessee hereby grants to Lessor a continuing, first priority security interest in and to the Equipment, all repairs, replacements, substitutions and modifications thereto and all proceeds thereof (including without limitation any Net Proceeds, warranty payments and guaranteed energy or other savings payments) and in the Escrow Account (if any) in order to secure Lessee's payment of all Rental Payments and the performance of all other obligations. Lessee hereby authorizes Lessor to prepare and file such financing statements and other such documents to establish and maintain Lessor's valid first priority lien and perfected security interest. Lessee will join with Lessor in executing such documents and will perform such acts as Lessor may request to establish and maintain Lessor's valid first priority lien and

perfected security interest. If requested by Lessor, Lessee shall obtain a landlord and/or mortgagee's consent and waiver with respect to the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment, and maintain such markings during the Lease Term, to clearly disclose Lessor's security interest in the Equipment. Upon termination of a Lease through exercise of Lessee's option to prepay pursuant to Article V or through payment by Lessee of all Rental Payments and other amounts due with respect to an Equipment Group, Lessor's security interest in such Equipment Group shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may reasonably request (at the sole cost and expense) to evidence the termination of Lessor's security interest in such Equipment Group.

**Section 9.3. Modification of Equipment.** Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment.

**Section 9.4. Personal Property.** Except as permitted by Lessor in writing in connection to any Equipment Schedules, the Equipment is and shall at all times be and remain personal property and not fixtures.

## **ARTICLE X. WARRANTIES**

**Section 10.1. Selection of Equipment.** Each Vendor and all of the Equipment have been selected by Lessee. Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by Lessee, the acceptance by any Vendor or its sales representative of any order submitted, or any delay or failure by such Vendor or its sales representative to manufacture, deliver or install any Equipment for use by Lessee.

**Section 10.2. Vendor's Warranties.** Lessor hereby assigns to Lessee for and during the related Lease Term, all of its interest, if any, in all Vendor's warranties, guarantees and patent indemnity protection, express or implied issued on or applicable to an Equipment Group, and Lessee may obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense. Lessor has no obligation to enforce any Vendor's warranties or obligations on behalf of itself or Lessee.

**Section 10.3. Disclaimer of Warranties.** LESSEE ACKNOWLEDGES THAT THE EQUIPMENT IS OF A SIZE, DESIGN, CAPACITY, AND MANUFACTURE SELECTED BY LESSEE. LESSEE ACKNOWLEDGES THAT IT SELECTED THE EQUIPMENT WITHOUT ASSISTANCE OF LESSOR, ITS AGENTS OR EMPLOYEES. LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT, AND DOES NOT INSPECT THE EQUIPMENT BEFORE DELIVERY TO LESSEE. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, MERCHANT-ABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EQUIPMENT OR LESSEE'S USE OF THE EQUIPMENT.

## **ARTICLE XI. ASSIGNMENT AND SUBLEASING**

**Section 11.1. Assignment by Lessor.** Lessor, with Lessee's consent, which shall not be unreasonably withheld or delayed, may assign and reassign all of Lessor's right, title and/or interest in and to this Agreement or any Lease, including, but not limited to, the Rental Payments and other amounts payable by Lessee and Lessor's interest in the Equipment, in whole or in part to one or more assignees or subassignee(s) by Lessor at any time. No such assignment shall be effective as against Lessee unless and until written notice of the assignment is provided to Lessee. When presented with a notice of assignment, Lessee will acknowledge in writing receipt of such notice for the benefit of Lessor and any assignee. Lessee shall keep a complete and accurate record of all such assignments.

**Section 11.2. Assignment and Subleasing by Lessee.** Neither this Agreement nor any Lease or any Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

## **ARTICLE XII. EVENTS OF DEFAULT AND REMEDIES**

**Section 12.1. Events of Default Defined.** The occurrence of any of the following events shall constitute an Event of Default under this Agreement and each Lease:

- (a) Lessee's failure to pay, within ten (10) days following the due date thereof, any Rental Payment or other amount required to be paid to Lessor (other than by reason of Non-Appropriation).
- (b) Lessee's failure to maintain insurance as required by Article VII.
- (c) With the exception of the above clauses (a) & (b), Lessee's failure to perform or abide by any condition, agreement or covenant for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of time prior to its expiration.
- (d) Lessor's determination that any representation or warranty made by Lessee in this Agreement was untrue in any material respect upon execution of this Agreement or any Equipment Schedule.

- (e) The occurrence of an Event of Taxability and Lessee's failure to comply with the provisions of Section 6.3(b).
- (f) The filing of a petition in bankruptcy by or against Lessee, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental functions or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of any adjustment of indebtedness of Lessee, or the dissolution or liquidation of Lessee.

**Section 12.2. Remedies on Default.** Upon the occurrence of any Event of Default, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies:

(a) Lessor, with or without terminating this Agreement or any Lease, may declare all Rental Payments immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable, together with interest at the Default Rate, but solely from properly appropriated, legally available, or other funds designated for such purposes (e.g. insurance proceeds, warranty payments, self-insurance, reserve or sinking funds, etc.).

(b) Lessor, with or without terminating this Agreement or any Lease, may repossess any or all of the Equipment by giving Lessee written notice to deliver such Equipment in the manner provided in Section 12.3; or in the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where such Equipment is kept and take possession of such Equipment and charge Lessee for all actual and reasonable accrued costs incurred, including reasonable attorneys' fees. Lessee hereby expressly waives any damages occasioned by such repossession except those resulting from Lessor's gross negligence or willful misconduct. If the Equipment or any portion has been destroyed, Lessee shall pay the applicable Prepayment Price of the destroyed Equipment as set forth in the related Payment Schedule, but solely from properly appropriated, legally available, or other funds designated for such purposes (e.g. insurance proceeds, warranty payments, self-insurance, reserve or sinking funds, etc.). Regardless of the fact that Lessor has taken possession of the Equipment, Lessee shall continue to be responsible for the Rental Payments due during the Fiscal Year.

(c) If Lessor terminates this Agreement and/or any Lease and, in its discretion, takes possession and disposes of any or all of the Equipment, Lessor shall apply the proceeds of any such disposition to pay the following items in the following order: (i) all reasonable and actual costs (including, but not limited to, attorneys' fees) incurred in securing possession of the Equipment; (ii) all reasonable and actual expenses incurred in completing the disposition; (iii) any sales or transfer taxes; (iv) the applicable Prepayment Prices of the Equipment Groups; (v) the balance of any Rental Payments owed by Lessee during the Fiscal Year then in effect; and (vi) interest on any of the foregoing at the Default Rate. Any disposition proceeds remaining after the requirements of Clauses (i), (ii), (iii), (iv), (v) and (vi) have been met shall be paid to Lessee.

(d) Lessor may take any other remedy available, at law or in equity, with respect to such Event of Default, including those sounding in mandamus, specific performance/enforcement, or otherwise requiring Lessee to perform any of its obligations or to pay any moneys due and payable to Lessor, and Lessee shall pay the actual reasonable attorneys' fees and other costs and expenses incurred by Lessor in enforcing any remedy permitted and exercise hereunder together with interest at the Default Rate.

(e) Each of the foregoing remedies is cumulative and may be enforced separately or concurrently. All monetary damages and/or payment remedies set forth in this Section 12, shall be payable solely from properly appropriated, legally available, or other funds designated for such purposes (e.g. insurance proceeds, warranty payments, self-insurance, reserve or sinking funds, etc.). In no event shall the rights and remedies herein constitute a debt, illegal or unconstitutional undertaking of the Lessee or its governing body.

**Section 12.3. Return of Equipment: Release of Lessee's Interest.** Upon termination of any Lease prior to the payment of all related Rental Payments or the applicable Prepayment Price (whether as result of Non-Appropriation or Event of Default), Lessee shall, within ten (10) days after such termination, at its own expense: (a) perform any testing and repairs required to place the related Equipment in the condition required by Article VIII; (b) if deinstallation, disassembly or crating is required, cause such Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to Lessor; and (c) return such Equipment to a location specified by Lessor, freight and insurance prepaid by Lessee. If Lessee refuses to return such Equipment in the manner designated, Lessor may repossess the Equipment without demand or notice and without court order or legal process and charge Lessee the costs of such repossession. Upon termination of this Agreement in accordance with Article III or Article XII hereof, at the election of Lessor and upon Lessor's written notice to Lessee, full and unencumbered legal title and ownership of the Equipment shall pass to Lessor. Lessee shall have no further interest therein. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of legal title and ownership to Lessor and termination of Lessee's interest in the Equipment.

**Section 12.4 Late Charge.** Lessor shall have the right to require late payment charge for each Rental or any other amount due hereunder which is not paid within 10 days of the date when due equal to the lesser of 5% of each late payment or the legal maximum. For any Rent Payment and other amount not paid within 30 days of the due date, Lessor shall have the right to resume interest thereof at the Default Rate which shall accrue from the due date. This Section is

only applicable to the extent it does not affect the validity of this Agreement.

### **ARTICLE XIII. MISCELLANEOUS PROVISIONS**

**Section 13.1. Notices.** All written notices to be given under this Agreement shall be given by mail to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail in registered or certified form, with postage fully prepaid, or, if given by other means, when delivered at the address specified in this Section 13.1.

**Section 13.2. Binding Effect.** This Agreement and each Lease hereunder shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns. Specifically, as used herein the term "Lessor" means any person or entity to which Lessor has assigned its right to receive Rental Payments under any Lease.

**Section 13.3. Severability.** In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 13.4. Entire Agreement; Amendments.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Agreement may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee.

**Section 13.5. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or Clauses hereof.

**Section 13.6. Further Assurances and Corrective Instruments.** Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Agreement. Lessee hereby authorizes Lessor to file any financing statement or supplements thereto as may be reasonably required for correcting any inadequate description of the Equipment hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Agreement

**Section 13.7. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 13.8. Usury.** It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein or in any Equipment Schedule, in no event shall this Agreement or any Lease hereunder require the payment or permit the collection of Interest or any amount in the nature of Interest or fees in excess of the maximum amount permitted by applicable law. Any such excess Interest or fees shall first be applied to reduce Principal, and when no Principal remains, refunded to Lessee. In determining whether the Interest paid or payable exceeds the highest lawful rate, the total amount of Interest shall be spread through the applicable Lease Term so that the Interest is uniform through such term.

**Section 13.9. Lessee's Performance.** A failure or delay of Lessor to enforce any of the provisions of this Agreement or any Lease shall in no way be construed to be a waiver of such provision.

**Section 13.10.** Reserved.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

**EXECUTION PAGE OF MASTER LEASE AGREEMENT**

**LEASE NUMBER \_\_\_\_\_**

**IN WITNESS WHEREOF**, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

**STATE OF NH – DRED**  
Lessee



**SIGNATURE PUBLIC FUNDING CORP.**  
Lessor

By:   
Name: Jeffrey Rose  
Title: Commissioner  
Date: 11/23/16

Address: 172 Pembroke Rd  
Concord NH 03301

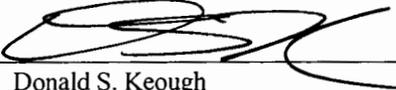
Telephone: 603-271-2411  
Facsimile: 603-271-2629

Invoices:

Mail please [30] days prior to: Due date of payment

E-mail please [30] days prior to: Due date of payment

Address: 172 Pembroke Rd Concord NH 03301

By:   
Name: Donald S. Keough  
Title: Senior Managing Director  
Date: \_\_\_\_\_

Address: 600 Washington Avenue, Suite 305  
Towson, MD 21204

Telephone: 410-704-0027  
Facsimile: 646-927-4005

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. You acknowledge and agree to cooperate with any information that may be requested by us in order to comply with the United States Patriot Act, OFAC and/or BSA regulations. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Counterpart No. 1 of ~~two~~ 4 manually executed and serially numbered counterparts. To the extent that this Master Agreement constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.



8. **FISCAL YEAR:** Lessee's current Fiscal Year extends from July 1, 2016.

9. Lessee hereby represents, warrants, and covenants that (i) its representations, warranties, and covenants set forth in the Master Equipment Lease-Purchase Agreement (particularly Paragraph 7 thereof) are true and correct as though made on the date of execution of this Equipment Schedule, and (ii) sufficient funds have been appropriated by Lessee for the payment of all Rental Payments due under this Lease during Lessee's current Fiscal Year. Funds for making Rental Payments are expected to come from the General Fund of the Lessee.

10. **ESSENTIAL USE:** The Equipment will be used by the following governmental agency department for the specific purpose of: performing snow grooming operations on Cannon Mountain Ski Area. The Equipment is essential for the functioning of the Lessee and is immediately needed by the Lessee, and such need is neither temporary, nor expected to diminish during the Lease Term. The Equipment will not be used by the Lessee for a period in excess of the Lease Term.

*[Signature Pages to Follow.]*

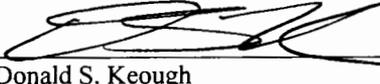
**IN WITNESS WHEREOF, LESSOR AND LESSEE HAVE EXECUTED THIS EQUIPMENT SCHEDULE  
AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE**

STATE OF NH – DRED,  
as Lessee

(CN)

SIGNATURE PUBLIC FUNDING CORP.,  
as Lessor

By:   
Name: Jeffrey Rose  
Title: Commissioner

By:   
Name: Donald S. Keough  
Title: Senior Managing Director

Counterpart No. 1 of 4 manually executed and serially numbered counterparts. To the extent that this Equipment Schedule constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

**EXHIBIT B**

**ACCEPTANCE CERTIFICATE**

The undersigned, as Lessee under Schedule No. 001 dated as of December 8, 2016 (the "Schedule") to that certain Master Equipment Lease-Purchase Agreement dated as of December 8, 2016 (the "Master," and together with the Schedule, the "Lease"), acknowledges receipt in good condition those certain units of the Equipment described in the Lease and more specifically listed on Annex I hereto as of the Acceptance Date set forth below. Capitalized terms used herein without definition shall be given their meaning in the Lease.

I. The units of Equipment listed on Annex I hereto represent a portion of the Equipment listed on the Schedule and to be acquired under the Lease. By its execution hereto, the Lessee represents and warrants that: (1) the Equipment listed on Annex I hereto has been delivered, installed and accepted on the date hereof; and (2) it has conducted such inspection and/or testing of the Equipment listed on Annex I hereto as it deems necessary and appropriate and hereby acknowledges that it unconditionally and irrevocably accepts the Equipment listed in Annex I hereto for all purposes. Lessee confirms that it will commence or continue to make Rental Payments in accordance with the terms of the Lease. Copies of invoices, proof of payment (if applicable), reimbursement resolutions (if applicable), and purchase orders and/or agreement have been attached with Annex I hereto. As applicable, the following documents are attached hereto and made a part hereof: (a) Original Invoice(s) and (b) Copies of Certificate(s) of Ownership, MSOs, or Certificates of Title, designating Lessor as first position lienholder, and (c) any other evidence of filing or documents attached hereto

2. Lessee hereby certifies and represents to Lessor as follows: (i) the representations and warranties in the Lease are true and correct as of the Acceptance Date; (ii) the Equipment is covered by insurance in the types and amounts required by the Lease; (iii) no Event of Default or Non-Appropriation, as those terms are defined in the Lease, and no event that with the giving of notice or lapse of time or both, would become an Event of Default or a Non-Appropriation, has occurred and is continuing on the date hereof; and (iv) sufficient funds have been appropriated by Lessee for the payment of all Rental Payments due under the Lease during Lessee's current Fiscal Year.

3. Lessee hereby authorizes and directs Lessor to fund the acquisition cost of the Equipment by paying, or directing the payment by the Escrow Agent (if applicable) of, the invoice prices to the Vendor(s), in each case as set forth above, or by reimbursing Lessee in the event such invoice prices have been previously paid by Lessee.

IF REQUEST IS FINAL REQUEST, CHECK HERE . 4. **Final Acceptance Certificate.** The undersigned hereby certifies that the items of Equipment described above, together with the items of Equipment described in and accepted by Certificates of Acceptance and Disbursement Requests previously filed by Lessee with Lessor constitute all of the Equipment subject to the Lease. Lessee certifies that upon payment in accordance with paragraph 3 above, or direction to the Escrow Agent (if applicable) to make payment, Lessor shall have fully and satisfactorily performed all of its covenants and obligations under the Lease.

Accepted and certified this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. ("Acceptance Date")

STATE OF NH - DRED, as Lessee



By: \_\_\_\_\_



Name: Jeffrey Rose

Title: Commissioner

ANNEX I TO ACCEPTANCE CERTIFICATE

<b>Payee</b>	<b>Vendor/ Manufacturer</b>	<b>Invoice or PO No.</b>	<b>VIN or MSN</b>	<b>Equipment Description</b>	<b>Location</b>	<b>Cost</b>

**EXHIBIT C-1**

**INSURANCE CERTIFICATION**

In connection with Equipment Schedule 001 dated December 8, 2016 to that certain Master Equipment Lease-Purchase Agreement dated December 8, 2016, STATE OF NH - DRED, as lessee (the "Lessee") certifies that it has instructed the insurance agent named below (please fill in name, address, and telephone number):

Name of Agent: State of New Hampshire  
Contact Person: Jason Dexter  
Address: 25 Capital St. Concord, NH 03301  
Phone: 603-271-3180  
E-mail: \_\_\_\_\_  
to issue: \_\_\_\_\_

*Liability Insurance.* Lessee is self-insured with respect to Liability Coverage. Please refer to Exhibit C-2 and its attachment for self-insurance information.

*Casualty Insurance.* Lessee is required to maintain all risk extended coverage, malicious mischief and vandalism insurance for the Equipment described in the above-referenced Equipment Schedule in an amount not less than the greater of \$363,590.00 or the full replacement cost of the Equipment. Such insurance shall be endorsed to name Signature Public Funding Corp., a wholly-owned subsidiary of Signature Bank, and its successors and assigns as loss payees with respect to such Equipment.

The required insurance should also be endorsed to give Signature Public Funding Corp. at least 30 days prior written notice of the effective date of any material alteration or cancellation of coverage, and an endorsement confirming that the interest of Signature Public Funding Corp. shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee.

Proof of insurance coverage will be provided to Signature Public Funding Corp. prior to and/or commensurate with the December 8, 2016. Proof of coverage will be mailed to: Signature Public Funding Corp., Attn: Tonia Lee at 600 Washington Avenue, Suite 305, Towson, MD 21204 or sent via e-mail to [tlee@signatureny.com](mailto:tlee@signatureny.com).

Very truly yours,

STATE OF NH – DRED, as Lessee 

By:   
Name: Jeffrey Rose  
Title: Commissioner

**EXHIBIT C-2**

**SELF-INSURANCE RIDER AND LESSOR CONSENT**

Signature Public Funding Corp.  
600 Washington Avenue, Suite 305  
Towson, Maryland 21204

December 8, 2016

Re: Schedule No. 001 dated December 8, 2016 to that certain Master Equipment Lease-Purchase Agreement dated December 8, 2016 (collectively, the "Lease")

In connection with the above-referenced Lease, STATE OF NH - DRED, as lessee (the "Lessee") certifies that it participates in an actuarially sound self-insurance program for property damage and public liability risks. The Self-Insurance Questionnaire attached hereto is true and correct, and no Event of Default or Non-Appropriation, as such terms are defined in the Lease, has occurred and is continuing.

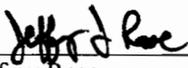
The following is attached (check all that apply):

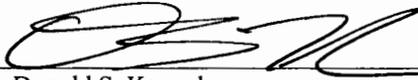
- Letter from risk manager describing self-insurance program
- Other evidence of Lessee's participation in self-insurance program

Signature Public Funding Corp., as lessor (the "Lessor") agrees that the self-insurance program as described by Lessee in this Certificate and the attached Questionnaire and related documents is acceptable in lieu of the coverage for property damage and public liability risks required under the Lease, including §13 of the Master.

STATE OF NH – DRED   
as Lessee

SIGNATURE PUBLIC FUNDING CORP.,  
as Lessor

By:   
Name: Jeffrey Rose  
Title: Commissioner

By:   
Name: Donald S. Keough  
Title: Senior Managing Director

**EXHIBIT C-3**

**QUESTIONNAIRE FOR SELF-INSURANCE TO  
SELF-INSURANCE RIDER AND LESSOR CONSENT**

To and part of that Self-Insurance Rider and Lessor Consent to Equipment Schedule No. 001 dated as of December 8, 2016 to that certain the Master Lease Agreement dated December 8, 2016 (collectively, the "Lease"). Attached hereto are copies of a self-insurance insurance letter with respect to the liability coverage maintained by Lessee.

## EXHIBIT D

### ESSENTIAL USE CERTIFICATE

December 8, 2016

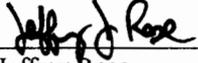
Signature Public Funding Corp.  
600 Washington Avenue, Suite 305  
Towson, Maryland 21204

Re: Equipment Schedule No. 001 dated December 8, 2016 to that certain  
Master Equipment Lease-Purchase Agreement dated December 8, 2016

I, Jeffrey Rose, appointed, or designated representative of and Commissioner of the STATE OF NH – DRED, as lessee (the “*Lessee*”), is qualified to answer the questions set forth below regarding the Equipment to be acquired by Lessee in connection with the above-referenced Lease Agreement:

1. What is the specific use of the Equipment? The Prinoth Bison X is a (ski area specific) grooming vehicle designed with extra capability toward specialty grooming and shaping in the event that it'd be used for both grooming and terrain park shaping.
2. What increased capabilities will the Equipment provide? Please see answer #1. This highly advanced grooming vehicle will be used for both standard slope grooming and terrain park / features construction.
3. Why is the Equipment essential to your ability to deliver governmental services? Cannon Mountain Aerial Tramway & Ski Area is the State's primary business (revenue generating) asset within Franconia Notch State Park, which supports the entire New Hampshire State Park System. Top notch grooming of our terrain and slopes is critical to our financial success.
4. Does the Equipment replace existing equipment?  
(If so, please explain why you are replacing the existing equipment) This 2016 Prinoth Bison X replaces a 2012 Prinoth Bison X in our grooming fleet. Each of our 4 grooming vehicles is leased for a 4-year period (4 winter seasons). That keeps our maintenance costs low and the residual value high for resale by the lessor, and leasing has proven far more cost effective than outright ownership to us. From the fifth year of ownership and beyond, for example, the cost of ownership (maintenance) has been shown to jump significantly, while the residual value to the owner has been shown to plummet.
5. Why did you choose this specific Equipment? The Prinoth Bison X is the premier specialty grooming vehicle on the market from North America's leading manufacturer of snow grooming equipment. Prinoth's eastern USA sales and service headquarters is located in Gilmanton, NH (within an hour's drive), and all machines are manufactured in nearby Granby, QC. Prinoth's service and tech support is fantastic, and they hold approximately a 65-70% market share in the eastern USA. Their machines perform very well on Cannon's more challenging terrain. In addition, our entire fleet is Prinoth, our groomers are familiar with Prinoth, our mechanics are factory trained by Prinoth, and our entire parts stock is either Prinoth OEM or Prinoth compatible.
6. For how many years do you expect to utilize the Equipment? Each of our four (4) grooming fleet vehicles (including this one) is leased for four (4) winter seasons / 41 months in total. Each year one vehicle comes off of lease and is replaced with a new one that's four years more technologically advanced (higher capability and better fuel economy).

STATE OF NH - DRED, as Lessee 

By:   
Name: Jeffrey Rose  
Title: Commissioner

**EXHIBIT E**

**INCUMBENCY CERTIFICATE**

I, Jeffrey Rose, do hereby certify that I am the Commissioner of the STATE OF NH-DRED, which is an agency duly established and validly existing as a political subdivision of the State under the Constitution and laws of the State, and that I have custody of the records of such entity.

I hereby certify that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the State holding the offices set forth opposite their respective names. I further certify that:

- (i) The signatures set opposite their respective names and titles are their true and authentic signatures, and
- (ii) Such officers have the authority on behalf of such entity to:
  - a. Enter into that certain Equipment Schedule No. 001 dated December 8, 2016 to that certain Master Equipment Lease-Purchase Agreement dated December 8, 2016 (collectively, the "*Lease Agreement*"), between the STATE OF NH, DRED and Signature Public Funding Corp., as lessor, and
  - b. Execute Certificates of Acceptance, Disbursement Request Forms, and all other certificates documents, and agreements relating to the Lease Agreement

NAME	TITLE	SIGNATURE
Jeffrey Rose	Commissioner	_____
		_____

IN WITNESS WHEREOF, I have duly executed this Certificate on behalf of the SATE OF NH-DRED.

December 8, 2016

\_\_\_\_\_  
Jeffrey Rose, Commissioner

## EXHIBIT F

### OPINION OF LESSEE'S COUNSEL

December 8, 2016

Signature Public Funding Corp.  
600 Washington Avenue, Suite 305  
Towson, Maryland 21204

Re: Equipment Schedule No. 001 dated December 8, 2016 to that certain  
Master Equipment Lease-Purchase Agreement dated December 8, 2016

Ladies and Gentlemen:

As counsel to the State of New Hampshire, Department of Resources and Economic Development (the "*Lessee*"), I have examined the Master Equipment Lease-Purchase Agreement dated December 8, 2016 and Equipment Schedule No. 001 thereto dated December 8, 2016 (collectively, the "*Lease Agreement*"), between the Lessee and Signature Public Funding Corp., as lessor ("*Lessor*"), the Disbursement Request Form and Certificate of Acceptance (collectively, the "*Transaction Documents*"), and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement and various certificates delivered in connection therewith. Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. The Lessee is a State Department, which is a body corporate & politic duly established and validly existing as a political subdivision of the State of NH under the Constitution and laws of the State of NH with full power and authority to enter into the Transaction Documents.

2. The Transaction Documents have each been duly authorized, executed, and delivered by the Lessee and are in full compliance with all local, state and federal laws. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally. The execution of the Transaction Documents and the appropriation of monies due under the Lease Agreement will not result in the violation of any constitutional, statutory or limitation relating to the manner, form or amount of indebtedness which may be incurred by the Lessee.

3. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the governing body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee or on the Equipment (as such term is defined in the Lease Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound.

Agreement. This opinion may be relied upon by purchasers and assignees of Lessor's interests in the Lease

Respectfully submitted,

---

State of New Hampshire Attorney General

**EXHIBIT G**  
**BANK-QUALIFIED DESIGNATION**  
**RESERVED**

## EXHIBIT H

### TAX & ARBITRAGE CERTIFICATE

Dated: December 8, 2016

The following certificate is delivered in connection with the execution and delivery of Equipment Schedule No. 001 dated December 8, 2016 to that certain Master Equipment Lease-Purchase Agreement dated December 8, 2016 (collectively, the "Lease Agreement"), entered into between the STATE OF NH-DRED (the "Lessee") and Signature Public Funding Corp. (the "Lessor"). Capitalized terms used herein have the meanings defined in the Lease Agreement.

#### **Section 1. In General.**

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the "Equipment") to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Equipment Schedule executed under the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply \$353,500.00 (the "Principal Amount") toward the acquisition of the Equipment and closing costs, and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the resolution or other official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule.

1.4 Lessee will timely file for each payment schedule issued under the Lease a Form 8038-G (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC) relating to such Lease with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code").

#### **Section 2. Non-Arbitrage Certifications.**

2.1. The Rental Payments due under the Financing Documents will be made with monies retained in Lessee's general operating fund (or an account or subaccount therein). No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefor.

2.2. There have been and will be issued no obligations by or on behalf of Lessee that would be deemed to be (i) issued or sold within fifteen (15) days before or after the date of issuance of the Financing Documents, (ii) issued or sold pursuant to a common plan of financing with the Financing Documents and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.

2.3. Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.

2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.

2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

**Section 3. Disbursement of Funds; Reimbursement to Lessee.**

3.1 It is contemplated that the entire Principal Amount will be used to pay the acquisition cost of Equipment to the Vendors or manufacturers thereof or for any financial advisory or closing costs, provided that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2 below are satisfied.

3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following conditions have been satisfied:

(a) Lessee adopted a resolution or otherwise declared its official intent in accordance with Treasury Regulation § 1.150-2 (the "Declaration of Official Intent"), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to the Vendor not earlier than sixty (60) days before Lessee adopted the Declaration of Official Intent;

(b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18) months after the items of Equipment to which such payment relates were placed in service;

(c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and

(d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

**Section 4. Use and Investment of Funds; Temporary Period.**

4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee's control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate. No portion of the Principal Amount will be used to acquire investments that do not carry out the governmental purpose of the Financing Documents and that have a substantially guaranteed yield of four (4) years or more.

4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited under the Escrow Agreement to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by December 8, 2016.

(b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless (i) the entire Principal Amount is expended on the Equipment by the date that is the six-month anniversary of the Financing Documents or (ii) the Principal Amount is expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within six months from the date of issuance of the Financing Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within 12 months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents.

(c) Lessee hereby covenants that (i) Lessee is a governmental unit with general tax powers; (ii) the Lease is not a "private activity bond" under Section 141 of the Code; and (iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee.

**Section 5. Escrow Account.**

Intentionally omitted for Schedule 01.

**Section 6. No Private Use; No Consumer Loan.**

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than 10% of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or

indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

6.2 In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the "Excess Private Use Portion") will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph

6.3, "Private Business Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

6.4. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

**Section 7. No Federal Guarantee.**

7.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

7.2. No portion of the Principal Amount or interest earned thereon shall be (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would cause the financing under the Financing Documents to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**Section 8. Miscellaneous.**

8.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code unless Lessor or its assignee agrees to act as Lessee's agent for such purpose.

8.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of five (5) years after payment in full under the Financing Documents.

8.3. To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

8.4. The Lessee confirms and acknowledges that its true and correct tax identification number is: **02-6000618** and full, true and correct legal name is "STATE OF NH - DRED." Lessee confirms that it is located in County of Merrimack, State of NH.

8.5 The Lessee has adopted, by resolution, separate written procedures regarding ongoing compliance with federal tax requirements necessary to keep, ensure and maintain the interest portions of the Rental Payments under the Financing Documents as excluded from Lessor's gross income for federal income tax purposes, and will, on an annual basis, conduct an audit of the Financing Documents to ensure compliance with such procedures.

**IN WITNESS WHEREOF**, this Tax & Arbitrage Certificate has been executed on behalf of Lessee as of December 8, 2016.

STATE OF NH - DRED 

By:   
Name: Jeffrey Rose  
Title: Commissioner

**EXHIBIT I:**

**ESCROW FUND AND ESCROW AGREEMENT**

**RESOLUTION/EVIDENCE OF AUTHORITY**

TO BE PROVIDED BY THE LESSEE, PURSUANT TO ITS STATUTORY APPROVAL PROCESS

**CLOSING MEMORANDUM**

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**\$353,500.00 LEASE OF SNOW GROOMER  
PURSUANT TO SCHEDULE NO. 001 DATED DECEMBER 8, 2016 TO THAT CERTAIN  
MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT DATED DECEMBER 8, 2016  
BETWEEN STATE OF NH-DRED, AS LESSEE, AND  
SIGNATURE PUBLIC FUNDING CORP., AS LESSOR**

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**Pre-Closing:** All documents will be executed and two (2) blue ink originals will be overnighted to Signature Public Funding Corp., Attn: Ms. Tonia Lee, 600 Washington Avenue, Suite 305, Towson, Maryland 21204, for delivery no later than 9:00 am on the morning of December 8, 2016 and held in trust until such time as the wires and original documents are released by the Parties.

**Closing:** By wire transfer and pending receipt of original, executed Lease Documents, on the morning of December 8, 2016, Lessor is authorized by Lessee to wire the following Total Lease Proceeds as defined below, pursuant to the Wire Instructions as follows:

Bank Name: Intesa Sanpaolo Spa  
ABA No: 026005319  
Account No: 146070810001  
Account Name: Prinoth LLC  
Attn: Julie Carrier  
Amount of Wire: \$ 353,500  
Reference: \_\_\_\_\_

TOTAL DISBURSEMENT: \$ 353,500

and each of the Parties will confirm by e-mail receipt of funds and then the release of all original documents held in trust, when such funds and/or documents are in the possession of each of the Parties. Lessor is further authorized by the Lessee to retain the Legal/Doc Fees after the Total Equipment Cost has been wired.

STATE OF NH DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT



By:   
Name: Jeffrey Rose  
Title: Commissioner

## ESCROW DEPOSIT AGREEMENT

This **ESCROW DEPOSIT AGREEMENT** (this “**Agreement**”) dated as of this 8th day of December 2016 by and among Signature Public Funding Corp. “**Lessor**”), a New York corporation, having an address at 600 Washington Avenue, Suite 305, Towson, Maryland 21204, **STATE OF NH – DRED** (“**Lessee**”), an agency of the State of New Hampshire, having an office at 172 Pembroke Rd Concord, NH 03301 and **SIGNATURE BANK** (the “**Escrow Agent**”), a New York state-chartered commercial bank and having an office at Signature Bank, 75 Holly Hill Lane, Greenwich, CT 06830.

### WITNESSETH:

WHEREAS, Lessee and Lessor have entered into that certain Equipment Schedule No. 001 dated as of December 8, 2016 to that certain Master Equipment Lease-Purchase Agreement dated as of December 8, 2016 (together with all other documents, certificates, exhibits and related documentation therewith, collectively, the “**Lease**”); and

WHEREAS, the Lessor has made a loan to Lessee in the form of “**Lease Proceeds**,” which are to be used to pay various costs associated with the Lease and to acquire certain items of Equipment (as such term is defined in the Lease); and

WHEREAS, Lessor and Lessee have agreed that all or a portion of the Lease Proceeds shall be held in escrow upon certain terms and conditions; and

WHEREAS, Lessor and Lessee appoint the Escrow Agent as escrow agent of such escrow subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Escrow Agent accepts such appointment as escrow agent subject to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE, IT IS AGREED** as follows:

1. Delivery of Escrow Funds.

(a) Upon execution of the Lease and delivery of all documents and completion of all conditions precedent in the Lease, the Lessor will deliver, or shall cause to be delivered, to the Escrow Agent checks, internal transfers or wire transfers equal to the Initial Deposit Amount (as set forth on Schedule A hereto) and made payable to “**Signature Bank as Escrow Agent**” for the benefit of Lessor and Lessee to be held in an account at Signature Bank entitled “**STATE OF NH - DRED Lease Schedule 001, Signature Bank, as Escrow Agent**” having ABA No. 026013576, Account No. [to be established upon approval] (the “**Escrow Account**”).

(b) The Initial Deposit Amount that consists of good and indefeasible collected funds that are deposited into the Escrow Account is referred to as the “**Escrow Funds**”.

(c) The Escrow Agent shall have no duty or responsibility to enforce the collection or demand payment of these checks or any other funds delivered to Escrow Agent for deposit into the Escrow Account. If, for any reason, these checks or any other funds deposited into the Escrow Account shall be returned unpaid to the Escrow Agent, the sole duty of the Escrow Agent shall be to advise Lessor and Lessee promptly thereof and return check in the manner directed in writing by Lessor and Lessee.

2. Release of Escrow Funds. (a) The Escrow Funds shall be paid by the Escrow Agent in accordance with the instructions, in form and substance satisfactory to the Escrow Agent, received from Lessor and Lessee, in all cases subject to Lessor approval and subject to delivery of those items set forth in Section 2(b) herein, or in accordance with Lessor's instructions delivered pursuant to Section 6 herein, or in absence of such instructions in accordance with the order of a court of competent jurisdiction. The Escrow Agent shall not be required to pay any uncollected funds or any funds that are not available for withdrawal. The Escrow Agent may act in reliance upon any instructions, court orders, notices, certifications, demands, consents, authorizations, receipts, powers of attorney or other writings delivered to it without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. The Escrow Agent may act in reliance upon any signature believed by it to be genuine, and may assume that such person has been properly authorized to do so.

(b) Upon receipt of a Payment Request Form (in substantially the form as set forth on Schedule B hereto) executed by Lessor and Lessee, an amount equal to the Acquisition Cost as shown therein shall be paid directly by Escrow Agent to the person or entity entitled to payment as specified therein. Although the Payment Request Form may have schedules, invoices and other supporting document attached to it, Lessor will send to Escrow Agent only the page or pages showing the signatures of Lessor and Lessee, the Acquisition Cost and related payment information, without such schedules, invoices or other supporting documentation. Escrow Agent may act and rely upon the signed Payment Request Form without the need to review or verify any such schedules, invoices or other supporting documentation.

3. Acceptance by Escrow Agent. The Escrow Agent hereby accepts and agrees to perform its obligations hereunder, provided that:

(a) The names and true signatures of each individual authorized to act singly on behalf of Lessor and Lessee are stated in Schedule A. The Escrow Agent may act in reliance upon any signature believed by it to be genuine, and may assume that any person who has been designated in Schedule A to give any written instructions, notice or receipt, or make any statements in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent shall have no duty to make inquiry as to the genuineness, accuracy or validity of any statements or instructions or any signatures on statements or instructions. The names and true signatures of each individual authorized to act singly on behalf of Lessor and Lessee are stated in Schedule A, which is attached hereto and made a part hereof. The Lessee and Lessor may each remove or add one or more of its authorized signers stated on Schedule A by notifying the Escrow Agent of such change in accordance with this Agreement, which notice shall include the true signature for any new authorized signatories.

(b) The Escrow Agent may act relative hereto in reliance upon advice of counsel in reference to any matter connected herewith. The Escrow Agent shall not be liable for any mistake of fact or error of judgment or law, or for any acts or omissions of any kind, unless caused by its willful misconduct or gross negligence.

(c) Lessor and Lessee, jointly and severally, agree to release the Escrow Agent from and against any and all claims, losses, costs, liabilities, damages, suits, demands, judgments or expenses, including, but not limited to, attorney's fees, costs and disbursements, (collectively "Claims") claimed against or incurred by Escrow Agent arising out of or related, directly or indirectly, to the Escrow Agreement and the Escrow Agent's performance hereunder or in connection herewith, except to the extent such Claims arise from Escrow Agent's willful misconduct or gross negligence as adjudicated by a court of competent jurisdiction.

(d) In the event of any disagreement between or among Lessor and Lessee, or between any of them and any other person, resulting in adverse claims or demands being made to Escrow Agent in connection with the Escrow Account, or in the event that the Escrow Agent, in good faith, be in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue so to refrain from acting until (i) the rights of all parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. The Escrow Agent shall have the option, after thirty (30) days' notice to Lessor and Lessee of its intention to do so, to file an action in interpleader requiring the parties to answer and litigate any claims and rights among themselves. The rights of the Escrow Agent under this section are cumulative of all other rights which it may have by law or otherwise.

(e) In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder, the Escrow Agent shall be entitled to (i) refrain from taking any action other than to keep safely the Escrow Funds until it shall be directed otherwise by a court of competent jurisdiction, or (ii) deliver the Escrow Funds to a court of competent jurisdiction.

(f) The Escrow Agent shall have no duty, responsibility or obligation to interpret or enforce the terms of any agreement other than Escrow Agent's obligations hereunder, and the Escrow Agent shall not be required to make a request that any monies be delivered to the Escrow Account, it being agreed that the sole duties and responsibilities of the Escrow Agent shall be to the extent not prohibited by applicable law (i) to accept checks or other instruments for the payment of money delivered to the Escrow Agent for the Escrow Account and deposit said checks or instruments into the Escrow Account, and (ii) disburse or refrain from disbursing the Escrow Funds as stated herein, provided that the checks or instruments received by the Escrow Agent have been collected and are available for withdrawal.

4. Escrow Account Statements and Information. The Escrow Agent agrees to send to the Lessee and/or the Lessor a copy of the Escrow Account periodic statement, upon request in accordance with the Escrow Agent's regular practices for providing account statements to its non-escrow clients and to also provide the Lessee and/or Lessor, or their designee, upon request other deposit account information, including Account balances, by telephone or by computer communication, to the extent practicable. The Lessee and Lessor agree to complete and sign all forms or agreements required by the Escrow Agent for that purpose. The Lessee and Lessor each consents to the Escrow Agent's release of such Account information to any of the individuals designated by Lessee or Lessor, which designation has been signed in accordance with Section 3(a) by any of the persons in Schedule A. Further, the Lessee and Lessor have an option to receive e-mail notification of incoming and outgoing wire transfers. If this e-mail notification service is requested and subsequently approved by the Escrow Agent, the Lessee and Lessor agrees to provide a valid e-mail address and other information necessary to set-up this service and sign all forms and agreements required for such service. The Lessee and Lessor each consents to the Escrow Agent's release of wire transfer information to the designated e-mail address(es). The Escrow Agent's liability for failure to comply with this section shall not exceed the cost of providing such information.

5. Resignation and Termination of the Escrow Agent. The Escrow Agent may resign at any time by giving thirty (30) days' prior written notice of such resignation to Lessor and Lessee. Upon providing such notice, the Escrow Agent shall have no further obligation hereunder except to hold the Escrow Funds that it has received as of the date on which it provided the notice of resignation as depository. In such event, the Escrow Agent shall not take any action until Lessor and Lessee jointly designate a banking corporation, trust company, attorney or other person as successor escrow agent. Upon receipt of such written instructions signed by Lessor and Lessee, the Escrow Agent shall promptly deliver the Escrow Funds, net of any outstanding charges, to such successor escrow agent and shall thereafter have no further obligations hereunder. If such instructions are not received within thirty (30) days following the effective date of such resignation, then the Escrow Agent may deposit the Escrow Funds and any other amounts held by it pursuant to this Agreement with a clerk of a court of competent jurisdiction pending the appointment of a successor escrow agent. In either case provided for in this section, the Escrow Agent shall be relieved of all further obligations and released from all liability thereafter arising with respect to the Escrow Funds.

6. Termination. (a) *Voluntary Termination by Mutual Agreement of Lessee and Lessor.* Lessor and Lessee may terminate the appointment of the Escrow Agent hereunder upon a joint written notice to Escrow Agent specifying the date upon which such termination shall take effect. In the event of such termination, Lessor and Lessee shall, within thirty (30) days of such notice, jointly appoint a successor escrow agent and the Escrow Agent shall, upon receipt of written instructions signed by both Lessor and Lessee, turn over to such successor escrow agent all of the Escrow Funds; provided, however, that if Lessor and Lessee fail to appoint a successor escrow agent within such thirty (30)-day period, such termination notice shall be null and void and the Escrow Agent shall continue to be bound by all of the provisions hereof. Upon receipt of the Escrow Funds, the successor escrow agent shall become the Escrow Agent hereunder and shall be bound by all of the provisions hereof and the Escrow Agent shall be relieved of all

further obligations and released from all liability thereafter arising with respect to the Escrow Funds.

(b) *Involuntary Termination.* The Escrow Account shall be terminated on the "Termination Date," which shall be the earliest of (i) the final distribution of amounts in the Escrow Account, (ii) the "Anticipated Closing Date" (as such term is defined on Schedule A hereto), or (iii) unilateral written notice given by Lessor of the occurrence of a default, Event of Default (as such term is defined in the Lease), Non-Appropriation (as such term is defined in the Lease) or any other termination of the Lease which results in Lessor being paid less than the Prepayment Price (as such term is defined in the Lease).

(c) *Transfers Following Involuntary Termination.* Unless all of the Escrow Funds deposited by Lessor in the Escrow Account have been previously disbursed pursuant to Section 2 herein, on the Termination Date, Escrow Agent shall pay upon written direction from Lessor all remaining moneys in the Escrow Account to Lessor or its assignee for application to the Prepayment Price, including any fees, interest or premium included in the definition thereof as found in the related Lease. If any the Prepayment Price does not contain any premium or penalty and this Agreement and the Escrow Account is terminated pursuant to Section 6(b)(iii) herein, then any amounts paid pursuant to this Section 6(c) shall be subject to a prepayment fee equal to three percent (3%) of such amount. Lessor shall apply amounts received under this Section 6 first to unpaid fees, late charges and collection costs, if any, which have accrued or been incurred under the Lease, then to overdue Principal and Interest on the Lease and then, in the sole discretion of Lessor, either (i) to the Prepayment Price due under the Lease in the inverse order of all respective principal maturities, or (ii) proportionately to each Principal payment thereafter due under the Lease. In the event that Lessor elects to apply any such amounts in accordance with clause (i) of the preceding sentence, Lessee shall continue to make Rental Payments as scheduled in the applicable Payment Schedule. In the event that Lessor elects to apply such amounts in accordance with clause (ii) of this Section 6(c), Lessor shall provide Lessee with a revised Payment Schedule which shall reflect the revised Principal balance and reduced Rental Payments due under the Lease. Capitalized terms used in this Section 6, but not defined herein, shall have the meanings given to such terms in the Lease. Escrow Agent shall have no responsibility to see to the appropriate application of any moneys returned under this Section 6.

7. Investment. (a) If the non-interest bearing account option is selected in Schedule A hereto, all Escrow Funds received by the Escrow Agent shall be held only in non-interest bearing bank accounts at Escrow Agent.

(b) If the interest-bearing account option is selected in Schedule A hereto, the Escrow Fund shall be invested in Signature Bank's Monogram Insured Money Market Deposit Account for Business. Lessee agrees and represents to the Escrow Agent that any interest or other income earned on the Escrow Account shall for the purposes of reporting such income to the appropriate taxing authorities be deemed to be earned by the Lessee.

(c) The following provisions are applicable regardless of whether an interest-bearing or non-interest bearing account is elected. The Lessee represents that it is a US person as that term is defined by IRS. The Lessee agrees to provide the Escrow Agent with a certified tax identification number by signing and returning a Form W-9 to the Escrow Agent upon execution of this Escrow Agreement. The Lessee understands that, in the event the Lessee's tax identification number is incorrect or is not certified to the Escrow Agent, the Internal Revenue Code, as amended from time to time, may require withholding of a portion of any interest or

other income earned on the Escrow Funds. The Lessee agrees to assume any and all obligations imposed, now or hereafter, by the applicable tax law and/or applicable taxing authorities, with respect to any interest or other income earned on the Escrow Funds and to release the Escrow Agent from any liability or obligation on account of taxes, assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be assessed or asserted against the Escrow Agent in connection with or relating to any payment made or other activities performed under the terms of this Agreement, including without limitation any liability for the withholding or deduction of (or the failure to withhold or deduct) the same, and any liability for the failure to obtain proper certifications or to report properly to governmental authorities in connection with this Agreement, including costs and expenses (including reasonable legal fees and expenses) interest and penalties, in each such case to the extent applicable to, or arising in respect of, the interest earned on the Escrow Account, unless such liability is caused by the Escrow Agent's gross negligence or willful misconduct. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Agreement.

8. Security Interest. The Escrow Agent and Lessee acknowledge and agree that the Escrow Account, the Escrow Funds, and all investments, cash, securities, and proceeds thereof are being irrevocably held by Escrow Agent for the benefit of the Lessee and Lessor subject to disbursement or return solely as set forth herein. In limitation of the foregoing, Lessee hereby grants to Lessor a first priority perfected security interest in the Escrow Account and Escrow Funds, and all cash, securities, investments and proceeds thereof that may, from time to time, be held in the Escrow Account. If the Escrow Account, or any part thereof, is converted to investments as set forth in this Agreement, such investments shall be made in the name of Escrow Agent and held for the benefit of Lessor and Lessee subject to the express terms and conditions of this Agreement. Notwithstanding the grant and conveyance of a lien and security interest in favor of the Lessor and solely with respect to Claims, Fees or other actual and out-of-pocket costs that have not been previously reimbursed, Escrow Agent is hereby granted a security interest in and a lien upon the Escrow Account and Escrow Funds, which security interest and lien shall be prior to all other security interests, liens or claims against the Escrow Account, Escrow Funds, or any part thereof.. The Escrow Account and Escrow Funds shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either Lessor or Lessee or Escrow Agent (other than Lessor's and Escrow Agent's respective security interests granted hereunder).

9. Compensation. The Escrow Agent shall be entitled, for the duties to be performed by it hereunder, to a one-time "Set-Up Fee," if any, as set forth on Schedule A hereto, which fee shall be paid by Lessor upon the signing of this Agreement. In addition, Lessor and Lessee shall be obligated to reimburse Escrow Agent for all fees, costs and expenses incurred or that becomes due in connection with this Agreement or the Escrow Account (collectively, and together with the Set-Up Fee, "Fees"). Neither the modification, cancellation, termination or rescission of this Agreement nor the resignation or termination of the Escrow Agent shall affect the right of the Escrow Agent to retain the amount of any fee which has been paid, or to be reimbursed or paid any amount which has been incurred or becomes due, prior to the effective date of any such modification, cancellation, termination, resignation or rescission. To the extent the Escrow Agent has incurred any such expenses, or any such fee becomes due, prior to or commensurate with the Termination Date, the Escrow Agent shall advise the Lessor and Lessor shall direct all

such amounts to be paid directly to Escrow Agent prior to any distribution of funds set forth in Section 6 herein

10. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

11. Notices. All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if sent by hand-delivery, by facsimile followed by first-class mail, by nationally recognized overnight courier service or by prepaid registered or certified mail, return receipt requested, to the addresses set forth below.

If to Lessor:

Signature Public Funding Corp.  
600 Washington Avenue, Suite 305  
Towson, Maryland 21204  
Attention: Tonia Lee  
E-mail Address: TLee@signatureNY.com  
Fax No: (646) 927-4005

If to Lessee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

If to Escrow Agent:

Signature Bank  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_, Group Director and Senior Vice President  
Fax No.: \_\_\_\_\_

10. General.

(a) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Hampshire. No provisions of this Agreement shall be deemed to constitute a waiver of the Sovereign Immunity of the State of New Hampshire. .

(b) This Agreement sets forth the entire agreement and understanding of the parties in respect to the matters contained herein and supersedes all prior agreements, arrangements and understandings relating thereto.

(c) All of the terms and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties hereto, as well as their respective successors and assigns.

(d) This Agreement may be amended, modified, superseded or canceled, and any of the terms or conditions hereof may be waived, only by a written instrument executed by each party hereto or, in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver of any party of any condition, or of the breach of any term contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term of this Agreement. No party may assign any rights, duties or obligations hereunder unless all other parties have given their prior written consent.

(e) If any provision included in this Agreement proves to be invalid or unenforceable, it shall not affect the validity of the remaining provisions.

(f) This Agreement and any modification or amendment of this Agreement may be executed in several counterparts or by separate instruments and all of such counterparts and instruments shall constitute one agreement, binding on all of the parties hereto.

11. Form of Signature. The parties hereto agree to accept a facsimile or e-mail transmission copy of their respective actual signatures as evidence of their actual signatures to this Agreement and any modification or amendment of this Agreement; *provided, however*, that each party who produces a facsimile or e-mail signature agrees, by the express terms hereof, to place, promptly after transmission of his or her signature by fax, a true and correct original copy of his or her signature in first class mail, postage pre-paid, to the address of the Escrow Agent.

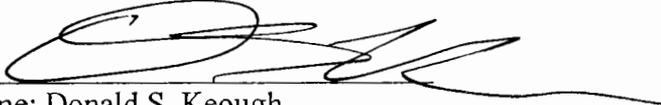
12. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the parties and their respective successors and permitted assigns, and no other person has any right, benefit, priority or interest under or because of the existence of this Agreement.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date first set forth above.

STATE OF NH - DRED <sup>(SM)</sup>

By:   
Name:  
Title:

**SIGNATURE PUBLIC FUNDING CORP.**

By:   
Name: Donald S. Keough  
Title: Senior Managing Director

**SIGNATURE BANK, as Escrow Agent**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



**Schedule B: Payment Request Form No. [ ]**

**SIGNATURE BANK**, as Escrow Agent under an Escrow Agreement dated as of December 8, 2016 (the "Escrow Agreement") by and among the Escrow Agent, **SIGNATURE PUBLIC FUNDING CORP.**, as Lessor, and **STATE OF NH - DRED**, as Lessee, is hereby requested to pay, from the Escrow Account, to the person or entity designated below as payee, that amount set forth opposite each such name, in payment of the Acquisition Costs of the Equipment designated opposite such payee's name and described on the attached page(s). The terms capitalized in this Payment Request Form but not defined herein shall have the meanings assigned to them in the Escrow Agreement.

Payee

Amount

Equipment

The Lessee hereby certifies that:

1. Attached hereto is a duplicate original or certified copy of the following documents relating to the order, delivery and acceptance of the Equipment described in this Payment Request Form: (a) a manufacturer's or dealer's invoice; and (b) Lessee's Acceptance Certificate relating to the Equipment in substantially the form as attached as Exhibit B to the Lease.
2. The representations and warranties contained in the Lease are true and correct as of the date hereof.
3. No Non-Appropriation or Event of Default, as each such term is defined in the Lease, or event which with the giving of notice or passage of time or both would constitute an Event of Default, has occurred.

Dated: \_\_\_\_\_, 20\_\_.

**STATE OF NH - DRED**  
Lessee

**SIGNATURE PUBLIC FUNDING CORP.**  
Lessor

By \_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# Memorandum

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**To:** Jeffrey J. Rose, Commissioner  
DRED – Division of Forests and Lands

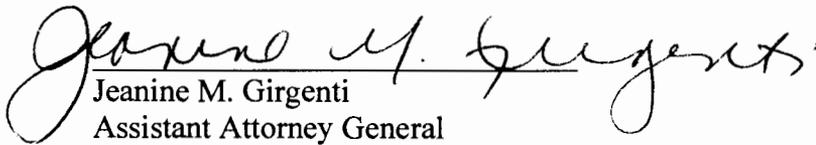
**From:** Jeanine M. Girgenti, Asst. Attorney General  
DOJ – Bureau of Civil Law

**Subject:** *Approval of Lease Financing Contract for Signature Public Funding Corp*

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I have reviewed the attached Lease Finance Contract and Escrow Agreement between Signature Public Funding Corp and the Department of Resources and Economic Development,

Consequently, I approve the attached agreements as to form, substance, and execution.

  
Jeanine M. Girgenti  
Assistant Attorney General

# 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 SIGNATURE PUBLIC FUNDING CORP. is a New York Profit Corporation registered to transact business in New Hampshire on June 10, 2015. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 727451



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 21st day of October A.D. 2016.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State



**Vicki V. Quiram**  
Commissioner  
(603) 271-3201

# STATE OF NEW HAMPSHIRE

Department of Administrative Services  
**RISK MANAGEMENT UNIT**  
State House Annex – Room 412  
25 Capitol St.  
Concord NH 03301

**Catherine A. Keane**  
Director  
(603) 271-3180

November 1, 2016

RE: The State of New Hampshire's Self-Insurance Program and Automobile Liability Insurance Coverage

To Whom it May Concern:

The purpose of this letter is to describe the State of New Hampshire's self-insurance program and fleet liability insurance coverage. This letter may be presented to individuals requesting information about the State's general liability self-insurance program, workers' compensation self-insurance program, or automobile liability insurance coverage.

### **General Liability Self-Insurance Program**

The State of New Hampshire (State) does not maintain liability insurance coverage for the general operations of its agencies. Instead, the State has elected to self-insure for general liability exposures. Any liability or costs incurred by the State arising from loss or damage to a third-party would be handled as a general obligation of the State. Per RSA 541-B:14, I, all claims arising out of any single incident against any agency for damages in tort actions is limited to an award not to exceed \$475,000 per claimant and \$3,750,000 per any single incident.

### **Automobile Liability Insurance Coverage**

The State maintains automobile liability coverage through Chubb Insurance. The policy provides liability limits for bodily injury coverage of \$250,000 per person/\$500,000 per accident and property damage coverage of \$100,000 per accident.

### **Workers' Compensation Self-Insurance Program**

All State employees are covered under the State's self-funded workers' compensation program. The State's third party administrator for workers' compensation claims is Cross Insurance TPA, Inc., with contract effective dates of July 1, 2015 through July 1, 2020.

Please do not hesitate to contact me if you have any questions concerning this letter.

By:

Name: Jason Dexter

Title: Risk Manager

The Governor and Council hereby certify that the attached resolution was adopted at their meeting on December 7, 2016.

\_\_\_\_\_  
Governor

\_\_\_\_\_  
Councilor

\_\_\_\_\_  
Councilor

\_\_\_\_\_  
Councilor

\_\_\_\_\_  
Councilor

\_\_\_\_\_  
Councilor

A true copy

Attest:

\_\_\_\_\_  
Secretary of State

Resolved: that the Department of Resource and Economic Development and the Office of the State Treasurer are hereby authorized:

(1) to enter into a contract with Signature Public Funding Corp. for the lease purchase of a new Bison Park Tier 4 Snow Groomer for use at Cannon Mountain Ski Area, for a cost of \$353,000 plus interest. The contract will be effective upon Governor and Executive Council approval; and

(2) to enter into a Master Lease Agreement, and Equipment Schedule No. 1 thereto, dated as of December 8, 2016 between the State and Signature Public Funding Corp. (the "Lease Agreement"), and an Escrow Agreement dated as of December 8, 2016 by and among the State, Signature Public Funding Corp. and Signature Bank, as escrow agent (the "Escrow Agreement"), to provide financing for the contract authorized in paragraph (1) above, such documents to be substantially in the forms presented to this meeting with such changes as the State Treasurer deems appropriate; and that the State Treasurer or Chief Deputy Treasurer is hereby authorized to execute and deliver all other documents and instruments necessary or convenient in connection with the Lease Agreement and the Escrow Agreement. The Lease Agreement and Escrow Agreement shall be effective upon Governor and Executive Council approval and execution and delivery by the State Treasurer.

## Marino, Christopher

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**From:** Girgenti, Jeanine <Jeanine.Girgenti@doj.nh.gov>  
**Sent:** Tuesday, November 22, 2016 11:12 AM  
**To:** Marino, Christopher; 'mharblin@signatureny.com'; 'DKeough@signatureNY.com'  
**Cc:** Conforti, John; McDonough, Brenda; Miller, Rachel  
**Subject:** RE: Comments on Lease and EscrowHRIS Agreement [ED-01.FID3433935]  
**Attachments:** DRED Cannon Groomer Lease Escrow Deposit Agreement - Signature Bank Form - JMG Edits - 11.22.16.doc

Hello all,

I think we are close to the finish line!

As to the lease, we can sign the incumbency certificate and counsel opinion but only after we receive authority to do so from G&C on 12/8. Is this acceptable? We simply do not have authority to sign these documents at this time.

As to the escrow agreement, we cannot agree to the NY governing law provision. NH is a sovereign state and only the legislature can waive sovereign immunity. Is Signature Bank authorized to do business in NH?

Also, some edits to the escrow agreement are attached to this email. I removed Lessee from paragraph 9 and made edits to 10(a). I think the numbering needs to be adjusted.

Lastly, DRED is not a body corporate and politic. It is an agency of the State of New Hampshire and the documents (lease and escrow) should be changed to reflect this.

Let me know what you think.

Jeanine

**From:** Marino, Christopher [mailto:Christopher.Marino@dred.nh.gov]  
**Sent:** Tuesday, November 22, 2016 7:21 AM  
**To:** Girgenti, Jeanine  
**Cc:** Conforti, John; McDonough, Brenda  
**Subject:** FW: Comments on Lease and EscrowHRIS Agreement [ED-01.FID3433935]

Jeanine, This was the last update Don had sent to us for final consideration. Thanks.

**From:** Keough, Donald [mailto:DKeough@signatureNY.com]  
**Sent:** Monday, November 21, 2016 4:13 PM  
**To:** Marino, Christopher  
**Cc:** Furnari, Michael; Lee, Tonia  
**Subject:** RE: Comments on Lease and EscrowHRIS Agreement [ED-01.FID3433935]

Here are redlines.

On the Escrow Agreement-- I cannot remove the NY governing law. This is a NY chartered bank, so they have to comply with NY with respect to the investment, holding of funds, etc. This will open such a short period and I have never seen an actual legal action arise from one of these escrow accounts that I think that they can probably live with everything

else I have changed. Again, please note that instead of wholesale deletions, I deleted the exact same language in the escrow that was problematic to the AG, and I think that this should work.

On the Lease—Most of what you want is fine. I also heard of some issues with the Incumbency Cert. I just need someone to attest that Jeffrey's signature is his actual signature, so I deleted all the language about having the authority to bind because (in theory) that will be covered by the resolution and approval of Governor/Executive Committee.

Hopefully, this works for you guys. If it does, then we'll clean these up and get signed versions over to you today electronically and via Fed Ex if you need our originals for tomorrow. If you do need originals, please let us know how many—we need 1 and I am assuming that you need 1 as well, so that is 2 total, but if you need more, please let us know.

Don

**From:** Marino, Christopher [<mailto:Christopher.Marino@dred.nh.gov>]  
**Sent:** Monday, November 21, 2016 3:34 PM  
**To:** Keough, Donald  
**Subject:** FW: Comments on Lease and EscrowHRIS Agreement [ED-01.FID3433935]

**Attention:** This message was sent by an external sender. Do not open attachments or click on links from unknown senders or unexpected emails. Sender: [Christopher.Marino@dred.nh.gov](mailto:Christopher.Marino@dred.nh.gov)

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Don, here are our updates....

**From:** McDonough, Brenda [<mailto:Brenda.McDonough@lockelord.com>]  
**Sent:** Monday, November 21, 2016 3:20 PM  
**To:** Marino, Christopher  
**Cc:** Miller, Rachel; Girgenti, Jeanine ([Jeanine.Girgenti@doj.nh.gov](mailto:Jeanine.Girgenti@doj.nh.gov))  
**Subject:** FW: Comments on Lease and EscrowHRIS Agreement [ED-01.FID3433935]

See below - I have not heard back from Jeanine yet, but these are the comments from our call. I will circulate a draft resolution for your review. Do you have the copy of the cover letter to the Governor and Council?

**From:** McDonough, Brenda  
**Sent:** Monday, November 21, 2016 1:59 PM  
**To:** Girgenti, Jeanine ([Jeanine.Girgenti@doj.nh.gov](mailto:Jeanine.Girgenti@doj.nh.gov))  
**Subject:** Comments on Lease and Escrow Agreement [ED-01.FID3433935]

Hi Jeanine – Here is what I have from our discussion. Let me know what changes you have! Thanks –Brenda

**Brenda M. McDonough**  
**Locke Lord LLP**  
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