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# New Hampshire Fish and Game Department

11 Hazen Drive, Concord, NH 03301-6500  
 Headquarters: (603) 271-3421  
 Web site: www.WildNH.com

TDD Access: Relay NH 1-800-735-2964  
 FAX (603) 271-1438  
 E-mail: info@wildlife.nh.gov

Glenn Normandeau  
 Executive Director

August 10, 2020

His Excellency, Governor Christopher T. Sununu  
 And the Honorable Council  
 State House  
 Concord, New Hampshire 03301

## REQUESTED ACTION

Pursuant to RSA 4:40, New Hampshire Fish and Game Department is requesting authorization to extend a Lease Agreement currently in place until November 6, 2023 by five years until November 6, 2028, with the Friends of Pulpit Rock Tower, Inc., for 0.438 acres of property in the Town of Rye which includes Pulpit Rock Tower, a WWII observation tower. The purpose of the extension is to continue to allow future maintenance and stewardship, rehabilitation and eventual transfer of the property to the Town of Rye. The original lease agreement was approved by Governor and Council November 6, 2013, Item #83. This is at no-cost to the State.

## EXPLANATION

In November 2013, NH Fish and Game Department (NHFG) and the Friends of Pulpit Rock Tower, Inc., (Friends) entered into a ten-year Lease Agreement for property in the Town of Rye which included the tower (Tower). The Tower was acquired by NHFG at no cost from the federal government in 1978, and as such, can only be transferred in fee to a governmental entity and cannot be transferred privately. The Lease gives the Friends the right and obligation to restore and maintain the Tower and its grounds, to offer public tours of this historic property and to work towards a long-term solution for the property.

The long-term goal of the Friends is to secure the ownership of the Tower with the Town of Rye. At its 2011 Town Meeting, the Town of Rye approved the conveyance of the Tower to the Town through its Heritage Commission, provided a \$130,000 endowment for future maintenance and upkeep is conveyed by the Friends at the time of the transfer. The Town's condition precedent has taken longer than expected due in part to the Friends utilizing its funds to restore and rehabilitate this historic structure to keep it from deteriorating. The Town has recently hired, at the Friend's considerable expense, an engineer to further evaluate the structure and endowment amount considering the restoration work completed by the Friends. The process of evaluation, in addition to raising endowment funds will be, at a best-case scenario, three to five years. This is beyond the current lease term date of November 2023. Therefore, the Friends have requested an extension at this time to insure that future financial commitments and contracts for the restoration work can be honored and completed under an active lease agreement.

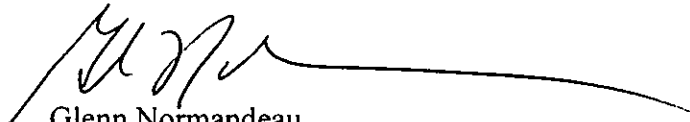
The relationship between the Friends and NHFG has been positive, supportive and a role model for other agencies who work with friends' groups. New Hampshire state government has been supportive of the Friends efforts, twice awarding it Conservation/Heritage (Moose Plate) grants and bestowing upon it

*Conserving New Hampshire's wildlife and their habitats since 1865.*

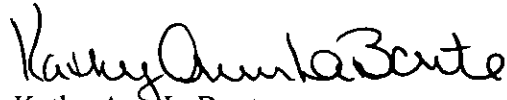
the "2019 Conservation Organization Award of Excellence". This extension is being requested under a supportive Director at NHFG and will allow the Friends to continue their fund-raising efforts while continuing conversations with the Town of Rye.

The Friends main source of revenue is by donation or grant. All monies received by the Friends are used towards the Tower's restoration or for the endowment. This extension will allow the Friends to continue to raise revenue to help meet the endowment, to continue their work as stewards and to assume the property maintenance responsibilities of NHFG. The NHFG officers will still have access to the tower for enforcement monitoring during the Lease term.

Respectfully submitted,



Glenn Normandeau  
Executive Director



Kathy Ann LaBonte  
Chief, Business Division

# EXTENSION TO LEASE AGREEMENT

STATE OF NEW HAMPSHIRE

Pulpit Rock Observation Tower

This EXTENSION to the LEASE AGREEMENT is entered into this 23<sup>rd</sup> day of June, 2020 between the New Hampshire Fish and Game Department, acting by and through its Executive Director, and having a mailing address of 11 Hazen Drive, Concord NH 03301 (herein "STATE") and The Friends of Pulpit Rock Tower, Inc. a non-profit corporation registered in the State of New Hampshire with a business address of 26 Neptune Drive, Rye, NH 03870 (herein "FRIENDS"):

**WHEREAS**, the FRIENDS and the STATE entered into this Lease Agreement, having an effective date of **November 6, 2013**, and a Term of ten (10) years ending on November 6, 2023 for real property in the Town of Rye known as Pulpit Rock Tower, located at 9 Davis Road, Rye, New Hampshire, also known as Tax Map 20.2, Lot 50 (herein "Tower");

**WHEREAS**, Section 4 (C) and (D) of the Lease Agreement allows for the agreement to be extended upon mutually agreeable terms between the FRIENDS and STATE.

**NOW THEREFORE**, the FRIENDS and STATE, subject to approval by the Governor and Executive Council, hereby mutually agree to extend the Term of the Lease Agreement, set forth in Section 4 (A) thereto, by five (5) years, to end on **November 6, 2028**.


This Extension to Lease Agreement may be executed in two (2) counterparts, of which shall constitute but one (1) agreement. This Extension to Lease Agreement shall become effective upon approval by the Governor and Executive Council.

Except where expressly modified above, the Lease Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed this 23<sup>rd</sup> day of June, 2020.

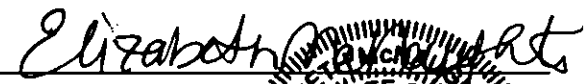
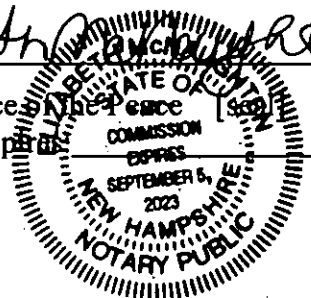
**STATE OF NEW HAMPSHIRE**

The State of New Hampshire, acting through its Fish and Game Department on this day 23<sup>rd</sup> of June 2020.

  
Glenn Normandeau, Executive Director

State of New Hampshire  
County of Merrimack

Personally appeared on this 23<sup>rd</sup> day of June 2020, Glenn Normandeau, who acknowledges himself to be the Executive Director for the New Hampshire Fish and Game Department, and as such is duly authorized to execute the foregoing instrument for the purposes therein contained, by signing his name on behalf of the State of New Hampshire.

  
Notary Public/Justice of the Peace  
My Commission Expires SEPTEMBER 6, 2023  


**FRIENDS OF PULPIT ROCK TOWER INC.**

The Friends of Pulpit Rock Tower on this 19<sup>th</sup> day of June, 2020.



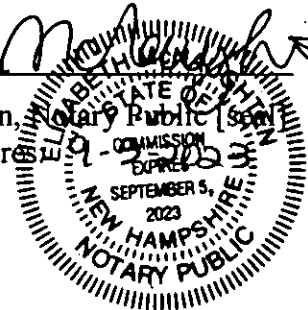
Patricia M. Weathersby, President  
Friends of Pulpit Rock Tower, Inc.

State of New Hampshire  
County of Rockingham

Personally appeared on this 19<sup>th</sup> day of June, 2020, Patricia M Weathersby, who acknowledged herself to be the President of the Friends of Pulpit Rock Tower, Inc., of Rye and that she is duly authorized to execute the foregoing instrument for the purposes therein contained.



Elizabeth McNaughten,  
My Commission Expires



**ORIGINAL APPROVALS:**

Approved by the Council on Resources and Development: May30, 2013

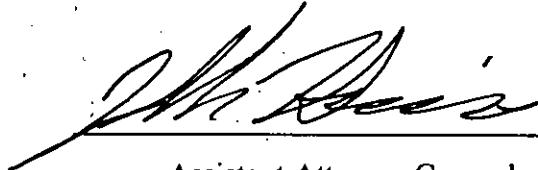
Approved by the Long Range Capital Planning and Utilization Committee: September 24, 2013

Approved by the Governor and Executive Council: November 6, 2013, Item #83

Extension of Lease Agreement Approved by the Governor and Executive Council: \_\_\_\_\_

**APPROVALS:**

Approved by the Department of Justice as to form, substance, and execution on this 13<sup>th</sup> day of August, 2020;

  
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 FRIENDS OF PULPIT ROCK TOWER, INC. is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on June 09, 2008. 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: 597839

Certificate Number: 0004975891



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 7th day of August A.D. 2020.

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

William M. Gardner  
Secretary of State



Friends of Pulpit Rock Tower, Inc.  
26 Neptune Drive  
Rye, NH 03870  
(603) 957-1430  
[friendsofpulpitrocktower@hotmail.com](mailto:friendsofpulpitrocktower@hotmail.com)

CERTIFICATE OF VOTE

I, Raymond Panek, Secretary of Friends of Pulpit Rock Tower, Inc. do hereby certify that:

1. I am the duly elected Secretary of Friends of Pulpit Rock Tower, Inc.
2. The following are true copies of resolutions duly adopted at a meeting of the Board of Directors of Friends of Pulpit Rock Tower, Inc. duly held on May 6, 2020:

RESOLVED that this organization enter into a lease extension contract with the State of New Hampshire, acting through its Fish and Game Department.

RESOLVED that the President is hereby authorized on behalf of this Organization to enter into this contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions or modifications thereto, as he may deem necessary or desirable to effect the purpose of these resolutions.

3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of August 7, 20120.

4. Patricia Weathersby is the duly appointed President of the Organization.

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of Friends of Pulpit Rock Tower, Inc. this 11 th day of AUGUST 2020.

  
Raymond Panek, Secretary





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
8/11/2020

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

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

<b>PRODUCER</b> People's United Insurance Agency, Inc. 1555 Lafayette Road Portsmouth, NH 03801	<b>CONTACT NAME:</b> Laurie McIntire, ACSR	
	<b>PHONE (A/C, No, Ext):</b> (603) 427-7529 413	<b>FAX (A/C, No):</b> (844) 254-7671
<b>E-MAIL ADDRESS:</b> Laurie.McIntire@peoples.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> U.S. Liability Ins. Co. - USLI		<b>25895</b>
<b>INSURER B:</b>		
<b>INSURER C:</b>		
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**INSURED**

The Friends of Pulpit Rock Tower Inc  
 26 Neptune Drive  
 Rye, NH 03870

**COVERAGES**                                  **CERTIFICATE NUMBER:**                                  **REVISION NUMBER:**

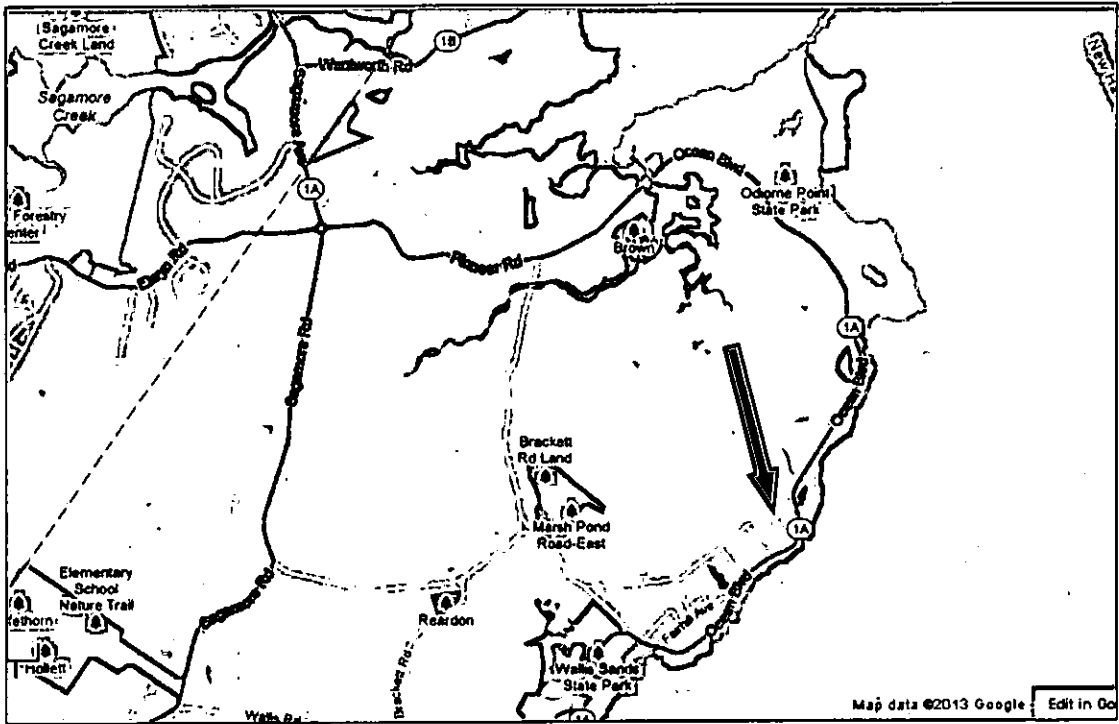
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:		NPP2569869A	10/16/2019	10/16/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPPOP AGG \$ 2,000,000 \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>  State of New Hampshire Department of Fish & Game 11 Hazen Drive Concord, NH 03301	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b> <i>People's United Insurance Agency, Inc.</i>

**PULPIT ROCK TOWER**  
9 Davis Road, Rye NH



View of Pulpit Rock Tower traveling South on US Route 1A.



# New Hampshire Fish and Game Department

Governor & Council Approved

Date: 11-6-13

Item #: 83

HEADQUARTERS: 11 Hazen Drive, Concord, NH 03301-6500  
(603) 271-3421  
FAX (603) 271-1438

www.WildNH.com  
e-mail: info@wildlife.nh.gov  
TDD Access: Relay NH 1-800-735-2964

October 15, 2013

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

## REQUESTED ACTION

Pursuant to RSA 4:40, New Hampshire Fish and Game Department is requesting authorization to enter into a Lease Agreement, at no cost, with the Friends of Pulpit Rock Tower, Inc., for 0.438 acres of property in the Town of Rye which includes Pulpit Rock Tower, a WWII observation tower. The purpose of the lease is to allow future maintenance and stewardship, rehabilitation and eventual transfer of the property to the Town of Rye.

## EXPLANATION

The property, along with the tower to be leased is 0.438 acres visible from US Route 1A in Rye and nestled among a tight residential neighborhood. NHFG acquired the property on April 5, 1978 at no cost from the federal government and is considered an historic monument. The purpose of the acquisition was for law enforcement monitoring of the NH seacoast for illegal fin, shellfish and lobstering activities.

For several years the tower was used by the officers for its intended purpose. However, during the mid 1980s the tower was vandalized and fell into disrepair. It was a target for graffiti, scavengers and copper thieves. The windows and doors were broken which allowed the tower to be inhabited by pigeons contaminating every floor with guano. It was considered abandoned by locals.

For years, NHFG was in serious violation of federal law and the covenants under which the tower was acquired in 1978.

The illegal activities at the property were noticed, and were a concern to the neighbors. In response, the neighborhood formed the Friends of Pulpit Rock Tower (Friends) and approached NHFG in late 2007 to find a better solution to the property's use and tower's future. Working with Friends, and under pressure from the federal government to come into compliance, the tower was cleaned and sterilized from the guano, and secured from vandalism and wildlife by NHFG. Additional work by the Friends was accomplished through a NHFG Special Use Permit (SUP). This included brush clearing, painting,

### REGION 1

629B Main Street  
Lancaster, NH 03584-3612  
(603) 788-3164  
FAX (603) 788-4823  
email: reg1@wildlife.nh.gov

### REGION 2

PO Box 417  
New Hampton, NH 03256  
(603) 744-5470  
FAX (603) 744-6302  
email: reg2@wildlife.nh.gov

### REGION 3

225 Main Street  
Durham, NH 03824-4732  
(603) 868-1095  
FAX (603) 868-3305  
email: reg3@wildlife.nh.gov

### REGION 4

15 Ash Brook Court  
Keene, NH 03431  
(603) 352-9669  
FAX (603) 352-8798  
email: reg4@wildlife.nh.gov

graffiti removal, railing installation, clearing of debris and garbage pickup. The tower and grounds remain secure today through the oversight of the Friends. At this time, the Friends objective was to make the tower safe for the public to enter.

Under the SUP and with the guidance from NHFG, the NH Department of Historic Resources and the Attorney General's office, the Friends developed a Stewardship Plan and Rehabilitation Program at their own cost.

As a result, the tower can now be opened to the public on special Tower Tour days, designed after lighthouse tours. The Friends have hosted six successful Tower Tours resulting in increased public awareness and support through donations, new memberships and volunteers. The group has currently 150 members and growing and is a 501(c)(3) corporation in good standing with the State of New Hampshire.

Over time, NHFG has developed a relationship with the Friends, and the group has demonstrated commitment and dedication to the Tower's preservation. The Friends have increased cooperation and support of the local community through education, "hands on" experience and awareness. Their vision for the tower is far more than what NHFG is capable of as its owner. The proposed work through the Lease, stewardship plan and rehabilitation program is beyond anything NHFG could accomplish.

In their endeavors to restore and preserve the tower the Friends have been recognized and awarded for their accomplishments on a State and National level. This includes but is not limit to nomination of the tower to the National Register of Historic Places and it was acknowledged by NH Preservation Alliance as one of Seven to Save in 2010.

However, a long term goal of the Friends, and the crux of the Lease is to secure the ownership of the tower with the Town of Rye.

Because the tower was acquired at no cost, the tower can only be transferred in fee to a local government entity and cannot be transferred privately. At the 2011 Town Meeting, the Town of Rye approved the conveyance of the tower to the Town through the Heritage Commission, provided that, a \$130,000 endowment for future maintenance and upkeep is raised prior to the transfer.

The Friends main source of revenue is by donation or grant. All monies received by the Friends are used towards the tower's restoration or for the endowment. This Lease will allow the Friends to raise the endowment and to continue their work as stewards taking over the responsibilities of NHFG. The NHFG officers will still have access to the tower for enforcement monitoring.

The tower holds a visible, notable, and iconic status in Rye and the wider community. NHFG would like to see the Friends accomplish what they set out to do: Save the Tower.

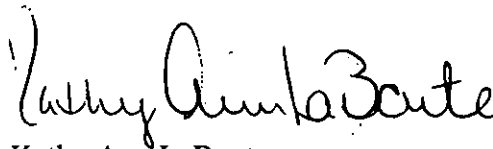
NH Council on Resources and Development members votes to recommended approval on May 30, 2013.

NH Long Range Capital Planning and Utilization Committee approved this request on September 24, 2013.

Respectfully submitted,



Glenn Normandeau  
Executive Director



Kathy Ann LaBonte  
Chief, Business Division

**LEASE AGREEMENT**  
STATE OF NEW HAMPSHIRE  
Pulpit Rock Observation Tower

**1. PARTIES TO THE LEASE**

The Lessor (hereinafter referred to as the "STATE ") is:

**The State of New Hampshire** acting by and through its Fish and Game Department, 11 Hazen Drive, Concord, NH 03301.

The Lessee (hereinafter referred to as the "FRIENDS") is:

**The Friends of Pulpit Rock Tower, Inc.** a non-profit corporation registered in the State of New Hampshire with a business address of 26 Neptune Drive, Rye, NH 03870.

The Lessor and Lessee may be referred to herein jointly as the "Parties".

**WITNESSED THAT:**

**2. DEMISE OF TOWER**

For and in consideration of the mutual covenants and agreements herein contained, the STATE hereby demises to the FRIENDS and the FRIENDS hereby leases from the STATE, the following real property with improvements known as Pulpit Rock Tower (as described below and hereinafter called the "Tower") for the Term (as defined herein) and upon the terms and conditions hereinafter set forth.

The Tower is all real property with the building thereon located at 9 Davis Road, Rye, New Hampshire, also known as Tax Map 20.2, Lot 50, consisting of approximately 0.44 acres as described in the Quitclaim deed from the United States of America to the State of New Hampshire, Fish and Game Department dated March 30, 1978, and recorded at the Rockingham County Registry of Deeds at book 2307, Page 1523, and further amendment by the United States of America at Amendment to Deed dated, May 23, 2008, and recorded at the Rockingham County Registry of Deeds Book 4941, Page 1349.

**3. PURPOSE OF THE LEASE**

The Lease is to allow The FRIENDS to assume responsibilities of the STATE as set forth in a Stewardship Plan between the Parties (attached as Exhibit A), to allow adequate time for the FRIENDS to implement the Stewardship Plan and to apply for and receive award/grant monies to assist in the Tower's architectural, structural and historic rehabilitation on behalf of STATE, and to allow FRIENDS to continue to find a solution to the long term ownership of the Tower as permitted by federal law.

#### **4. TERM AND EXTENSION OF TERM**

**A. Term:** The Term of this Lease shall be ten (10) years, commencing on the Effective Date (the "Term").

**B. Effective Date:** This Lease shall take effect upon the date the Lease is approved by New Hampshire Governor and Executive Council (herein the "Effective Date"). As of the Effective Date, this Lease shall be a legally-binding agreement.

**C. Extension of Term - General:** Subject to approval by the Governor and Executive Council, The FRIENDS and STATE may agree to extend the Term to a mutually agreeable additional term, upon the same terms and conditions as set forth herein.

**D. Conditions on the Extension of Term:** It is hereby understood and agreed by the Parties that any extensions of this Lease are conditional upon mutual approval by the New Hampshire Governor and Executive Council and STATE. If an extension request is denied by either party, this Lease shall terminate pursuant to the original Term as set forth above, unless the Parties agree that the Lease should terminate sooner.

#### **5. CONSIDERATION**

There shall be no monies paid by the FRIENDS to STATE as rent. In lieu of rent, the FRIENDS will, at its own cost and expense, assume the STATE's burden and responsibility of compliance with the Quitclaim deed to the STATE from the United States of America dated May 30, 1978 (Exhibit B), and Amendment to Deed dated May 23, 2008 (Exhibit C) and the accompanying Application dated February 23, 1977 which includes the Program of Preservation and Utilization (Exhibit D) to the extent permitted by law.

#### **6. BIENNIAL REPORTS – COMPLIANCE WITH NATIONAL PARKS SERVICE**

As additional consideration, FRIENDS shall, on behalf of the STATE, prepare and submit the Biennial Report to the National Park Service (NPS) as required by Section 8.c. of the Original Application. A copy of the report will be sent to NH Fish and Game Department, Facilities and Lands Division, 11 Hazen Drive, Concord NH 03301.

The schedule for submission to the NPS of the biennial reports will begin November 1, 2013, and will continue biennially, on November 1, through the term of this lease.

Preparation of the Biennial Report by the FRIENDS will be to the standards outlined in the NPS, U.S. Department of the Interior, Guidelines for the Preparation of Biennial Compliance Reports for Surplus Property Historic Monuments Transfers.

#### **7. CONDITIONAL OBLIGATION OF THE FRIENDS**

It is hereby expressly understood and agreed by the Parties hereto that the existence and continuance of this Lease and the obligations of the FRIENDS hereunder, with the exception of actions required of the FRIENDS to protect the public health and safety at the Tower and

FRIENDS obligation to submit completed Biennial Reports as described in Section 6 above, are contingent upon the availability of FRIENDS funds that are made available for this purpose, and that the FRIENDS shall not be responsible for carrying out other obligations under this Lease except to the extent such funds are available. In the event it deems itself to have insufficient funds to fulfill its obligations under this Lease, the FRIENDS may, at its option, terminate the Lease by serving thirty (30) days written notice to STATE and the NPS, of its intention to terminate the Lease. Termination shall occur subject to the requirements of Section 19. STATE agrees to waive all claims for damages, injunctive relief, or other relief arising from the FRIENDS' termination of this Lease pursuant to this section.

#### **8. USE OF TOWER BY THE STATE**

The FRIENDS use of the Tower is exclusive. Notwithstanding the foregoing, the STATE may continue to use the Tower for the purpose of Enforcement Observations as determined under the Preservation and Utilization Program. The STATE may also expand its present use of the Tower only as follows:

A. Enforcement Observation: the STATE shall have access to the Tower for purpose of law enforcement activities as a means of patrolling and observation of the seacoast for illegal fishing activities. This access may be extended to the local Rye Police Department from time to time under the same restrictions required upon the STATE. The STATE shall be held accountable for the use of the Tower and shall, following each use of the Tower, leave the Tower in the same or better condition as it was immediately prior to the STATE's use, this includes the closing of all windows, doors and securing the locks to prevent access of wildlife.

B. Relay Equipment: The STATE has the exclusive right, but not the obligation, to install electronic equipment utilized to boost the radio wave signal to or from equipment used by State of New Hampshire Fish and Game Department only with the following restrictions:

- i. No more than two (2) antennas may be installed at or on the Tower;
- ii. All non-antenna equipment must occupy not more than three cubic feet and be stored inside the Tower in a manner that it does not interfere with public use or affect the historical integrity of the Tower;
- iii. No equipment shall emit light or sound beyond the walls of the Tower;
- iv. No heating or cooling systems may be added;
- v. All expenses related to the installation, removal, maintenance and other expenses concerning such equipment shall be the obligation of the STATE;
- vi. If electricity is required for such equipment, the STATE shall, at its own cost and expense, bring electric power to the Tower in a manner that does not interfere with the views of any abutter. All abutters shall be given prior written notice of not less than thirty (30) days and an opportunity to object to any such installation.
- vii. At any future time any such equipment becomes damaged, obsolete or is no longer utilized by NH Fish and Game Department, the STATE shall promptly remove such equipment and restore the Tower to its condition at the time such equipment was installed;



- viii. At no time shall any part of the Tower otherwise be used as a wireless telecommunications facility (as defined by Section 505 of Rye Zoning Ordinance, as it may be amended).

This right of the STATE to use the Tower for Enforcement Observations or Relay Equipment is not assignable.

STATE covenants and agrees that the FRIENDS use of the Tower under the purposes of this Lease shall not be disturbed or interfered with by the STATE, or any person claiming by, through or under STATE.

The FRIENDS agrees and covenants that in the event of an emergency requiring STATE or any other governmental entity to gain immediate access to the Tower, the FRIENDS shall not deny access..

#### **9. RESTRICTED PUBLIC ACCESS**

The Tower shall have restricted public access. Except in the event of an emergency, access for the public shall at all times be in the presence of a FRIENDS Officer or Director or a STATE official or personnel. The FRIENDS are permitted to conduct Tours (as defined in the Stewardship Plan), with restrictions described in the Stewardship Plan.

#### **10. REPAIRS & DEVELOPMENT**

All work must be done in accordance to the Stewardship Plan dated March 26, 2013. Any changes in the Stewardship Plan will require additional review and approval by the NPS in conjunction with the NH Division of Historical Resources. Any repairs, restoration, rehabilitation or maintenance to the TOWER shall be performed in a good workmanlike manner, and when completed shall be in compliance with all Federal and State statutes and in accordance with the Stewardship Plan. There shall be no future development of the site that would require state, local or federal permitting. The Tower may not be used for radio transmissions of any type, except as specifically stated in Section 8 herein with regard to relay equipment.

#### **11. SIGNS**

The FRIENDS or STATE shall have the right, at its own cost and expense to erect and maintain a sign or signs on or near the Tower which may include, but are not limited to a sign identifying the historic significance, grant or donation sources, or recognizing the Tower as being listed on the National Register of Historic Places. Any sign shall include the following statement:

The Pulpit Rock Harbor Defense Unit was acquired by the State of New Hampshire Fish and Game Department at no cost from the federal government through the General Services Administration as Historic Surplus Property on March 30, 1978. This property is monitored in perpetuity by the National Park Service.

## **12. WINTER MAINTENANCE OF TOWER**

Snow removal at the Tower will not be provided by the State and is not required of the FRIENDS.

## **13. TEMPORARY CLOSURE OF TOWER**

If conditions at the Tower pose a safety or health concern, or when construction, maintenance, or enforcement activities require, the STATE or the FRIENDS may temporarily close the Tower or any part thereof to public access.

## **14. INSURANCE**

Upon the Effective Date and throughout the Term of this Lease, and any extension thereof, the FRIENDS shall at its sole cost and expense, maintain with respect to the Tower, a comprehensive general liability insurance against all claims of bodily injury, death, or property damage occurring on (or claimed to have occurred on) in or about the Tower and caused by, or claimed to have been caused by, the FRIENDS' negligent acts or omissions. All such insurance shall cover the FRIENDS against liability and name the STATE as "additional insured" within the policy.

Such insurance is to provide minimum protection, in limits of not less than two-hundred fifty thousand (\$250,000.00) per claim and one million (\$1,000,000) per incident. All insurance shall be in the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by the State.

The first certificate of such insurance which will be attached hereto (Exhibit E) and the FRIENDS will in subsequent years send the insurance certificates to the Support Services Division of the Fish and Game Department to be kept on file.

## **15. ASSIGNMENT AND SUBLEASE**

This Lease shall not be assigned by either party without the prior written consent of the other which consent shall not be unreasonably withheld. Sublease of the Tower is not permitted.

## **16. INDEMNIFICATION**

Indemnification by FRIENDS: Except as described in the sections below, the FRIENDS will save the STATE harmless and will indemnify the STATE from and against any and all losses suffered by the STATE, and from and against any and all claims, liabilities or penalties asserted by, or on behalf of, any person, firm, corporation or public authority:

**A. Acts or Omissions of Friends:** On account of, or based upon, any injury to a person or loss or damage to property, sustained or occurring, or which is claimed to have been sustained or to have occurred on or about the Tower, on account of or based upon the act,

omission, fault, negligence or misconduct of the FRIENDS, its agents, servants, contractors or employees.

**B. Friends Failure to Perform Obligations:** On account of or resulting from the failure of the FRIENDS to perform and discharge any of its covenants and obligations under this Lease and, in respect to the foregoing from and against all costs, expenses (including reasonable attorney's fees) and liabilities incurred in, or in connection with, any such claim, or any action or proceeding brought thereon;

**C. State's Acts or Omissions Excepted:** Notwithstanding the foregoing, nothing contained in this section shall be construed to require the FRIENDS to indemnify or hold harmless the STATE for any loss or damage resulting from the acts, omissions, fault, negligence or misconduct of the STATE or its agents, servants, and employees. The STATE shall be solely responsible for its acts, omissions, faults, negligence or misconduct.

**D.** Nothing herein shall be deemed to constitute a waiver of liability or protection afforded FRIENDS, its agents, directors, employees, contractors or volunteers under state or federal law.

#### **17. ACTS OF NATURE AND EMINENT DOMAIN AND OTHER USE BY THE USA.**

Should a portion of the Tower be substantially damaged by acts of nature, fire, vandalism or other causality, the STATE or the FRIENDS may elect to terminate this Lease. Should the Tower be taken by eminent domain by the United States of America ("USA"), this Lease shall be automatically terminated. Should the USA exercise its right to utilize the Tower as set forth in the deed of the Tower to the STATE dated May 30, 1978, seventy-five percent (75%) of any and all rent paid or owed by the USA for its use of the Tower during the Lease Term and any extensions thereof, shall be the property of FRIENDS and shall either be promptly paid directly to it by the USA or, if paid to the STATE, shall be promptly turned over to FRIENDS. The remaining twenty five percent (25%) of rental income shall be the property of the STATE.

#### **18. TERMINATION OF LEASE AND TITLE TO ALTERATIONS, ADDITIONS OR IMPROVEMENTS**

Subject to the sub-paragraph immediately below, title to all improvements constructed or installed by the FRIENDS shall be the property of the FRIENDS so long as this Lease is in effect.

**A. Removal of FRIENDS Property:** The FRIENDS may, no later than 120 days after the termination or expiration of this Lease or any extension thereof, remove from the Tower any and all personal property installed by it, such as signs, materials and equipment, provided that doing so does not cause any substantial damage to the Tower. Any structures or other permanent improvements that were constructed by the FRIENDS but are not in a safe condition for use by the public shall be removed without unnecessary damage to the Tower, unless the STATE agrees in writing to accept title to such improvements. All permanent improvements with useful life remaining, and all other property not so removed, shall become the property of the STATE at the end of the 120-day period after the termination or expiration of the Lease.

**B. Condition of Tower at Termination:** The FRIENDS shall leave the Tower in as good order and condition as at the start of this lease, and shall repair any and all damage caused by removal of its property, ordinary wear and tear of the Tower excepted.

#### **19. EVENT OF FRIENDS' DEFAULT**

In the event that the FRIENDS default in the observance of any of the covenants, agreements and obligations hereunder, and if such default materially impairs the use of the Tower by the STATE, which is not corrected within thirty (30) days of the date of the written notice by the STATE to the FRIENDS specifying such default and requiring it to be remedied, then the STATE may serve a written ten (10) day notice of cancellation of this Lease upon the FRIENDS, and upon the expiration of such a ten (10) day period, the Lease shall terminate.

If any such default of the FRIENDS does not materially impair the use of the Tower by the STATE, the FRIENDS shall cure such default within thirty (30) days of the date on the written notice or within such longer reasonable alternative amount of time agreed upon in writing by the Parties, failing which, the STATE may terminate this Lease upon ten (10) days written notice to FRIENDS.

**Rights Hereunder:** The rights granted under this Section are in addition to, and not in substitution for, any rights or remedies granted herein to the Parties, or any rights or remedies at law, or in equity.

#### **20. CONDITIONS PRECEDENT OF THE STATE**

The STATE must obtain approval from the National Parks Service and the NH Governor and Executive Council to enter into this Lease. The STATE will provide notice to the FRIENDS within ten (10) days of receipt of such approvals or denials.

#### **21. NOTICE**

Any notice sent by a party hereto to the other party shall be delivered by registered or certified mail, postage prepaid, in a United States Post Office, addressed to the Parties at the addresses provided in Section 1 above or as otherwise directed in writing.

#### **22. MISCELLANEOUS**

**A. Extent of Instrument, Choice of Laws, Amendment, etc.:** This Lease, which may be executed in a number of counterparts, each of which shall have been deemed an original but which shall constitute one and the same instrument, is to be construed according to the laws of the State of New Hampshire. It is to take effect as a sealed instrument, is binding upon, inures to the benefit of, and shall be enforceable by, the Parties. It can be amended only by a written instrument executed and approved by the STATE and the FRIENDS.

**B. No Waiver or Breach:** No assent by either party, whether express or implied, shall act as a waiver of a right of action for damages as a result of a breach of covenant, condition or

obligation by the other party, nor shall it be construed as a waiver of any subsequent breach of the covenant, condition, or obligation.

**C. Unenforceable Terms:** If any terms of this Lease, or any application thereof, shall be invalid or unenforceable, the remainder of this Lease and any application of such terms shall not be affected thereby.

**D. Meaning of "Friends" and "State":** Where the context so allows, the meaning of the term "FRIENDS" shall include the employees, agents, contractors, servants and licensees of Friends of Pulpit Rock Tower, Inc., and the term "STATE" shall include the agencies, departments, employees, agents, contractors, servants, and licensees of the State of New Hampshire. :

**E. Headings:** The headings of this Lease are for purposes of reference only, and shall not limit or define the meaning hereof.

**G. Entire Agreement:** This Lease embodies the entire agreement and understanding between the Parties hereto, and supersedes all prior agreements and understandings relating to the subject matter hereof.

**H. No Waiver of Sovereign Immunity:** Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the STATE and of New Hampshire Fish and Game Department as a subdivision of the STATE, which immunity is hereby reserved.

**I. Third Parties:** The Parties hereto do not intend to benefit any specific third Parties, and this agreement shall not be construed to confer any such benefit.

IN WITNESS WHEREOF:

The Parties hereto have set their hands on the following three signature pages:

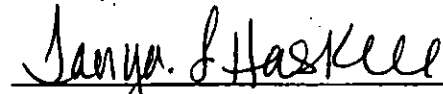
**STATE OF NEW HAMPSHIRE**

The State of New Hampshire, acting through its Fish and Game Department on this day 12 of November, 2013.

  
Glenn Normandeau, Executive Director

State of New Hampshire  
County of Merrimack

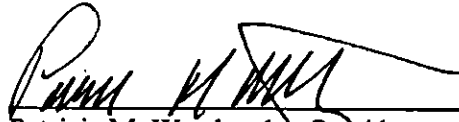
Personally appeared on this 12<sup>th</sup> day of November, 2013, Glenn Normandeau, who acknowledges himself to be the Executive Director for the New Hampshire Fish and Game Department, and as such is duly authorized to execute the foregoing instrument for the purposes therein contained, by signing his name on behalf of the State of New Hampshire.

  
Notary Public/Justice of the Peace [seal]  
My Commission Expires: \_\_\_\_\_

TANYA L. HASKELL, Notary Public  
My Commission Expires October 6, 2015

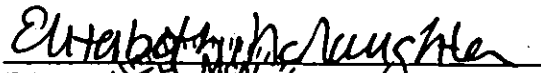
**FRIENDS OF PULPIT ROCK TOWER INC.**

The Friends of Pulpit Rock Tower on this 9<sup>th</sup> day of November, 2013.

  
Patricia M. Weathersby, President  
Friends of Pulpit Rock Tower, Inc.

State of New Hampshire  
County of Rockingham

Personally appeared on this 9<sup>th</sup> day of November, 2013, Patricia M Weathersby, who acknowledged herself to be the President of the Friends of Pulpit Rock Tower, Inc., of Rye and that she is duly authorized to execute the foregoing instrument for the purposes therein contained.

  
Elizabeth M. Naughton, Notary Public [seal]  
My Commission Expires July 19, 2018



**APPROVALS:**

Approved by the Department of Justice as to form, substance, and execution on this 19 day of November, 2013;



Assistant Attorney General

*Evan M. Holland*

Approved by the Council on Resources and Development: May30, 2013

Approved by the Long Range Capital Planning and Utilization Committee: September 24, 2013

Approved by the Governor and Executive Council: November 6, 2013, Item #83

The date of approval by the Governor and Executive Council shall constitute the Effective Date of this Lease.