



G+C 08-24-16  
Item #46B

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

July 28, 2016

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

**REQUESTED ACTION**

Authorize the Department of Resources and Economic Development (the "State") to enter into a Non-Disturbance Agreement ("NDA") with the Mount Washington Summit Road Company d/b/a Mount Washington Auto Road ("Auto Road") and its mortgagee, the Service Credit Union, to affirm that the State and the Auto Road shall maintain a lease agreement that permits the Auto Road to lease and operate the summit parking areas owned by the State and permits the State year-round passage on the Auto Road's road to the summit. The NDA enables the Auto Road to secure long-term financing for its capital investments and improvements. The term of the Agreement is approximately 17 years, beginning upon approval of Governor and Executive Council through August 2, 2033. No State Funding Required.

**EXPLANATION**

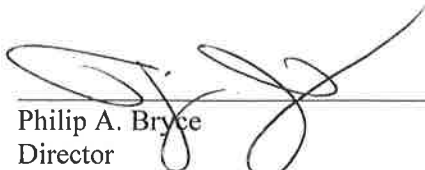
The State acquired the property where the three summit parking areas are now located from Dartmouth College by deed, dated April 21, 1964. The State and the Auto Road has had a reciprocal arrangement for the summit parking areas since 1975, when the Auto Road expanded and improved the parking areas. The current lease agreement with the Auto Road, in effect until June 30, 2018, permits the Auto Road the use of the State's parking areas as part of its Mt. Washington Auto Road operation and, in exchange, the Auto Road permits the State and those conducting business on behalf of the State year-round passage on the Auto Road's road to the summit at no cost, except that the Auto Road may charge a reasonable fee for heavy construction vehicles conducting business on behalf of the State, as the need arises, see Exhibit A.


The NDA stipulates that a lease arrangement between the State and the Auto Road for the summit parking lots will exist during the 17 year term of the NDA. The NDA further provides that the parties retain their respective rights to renegotiate the terms of a lease arrangement, subject to mortgagee approval, except that such approval shall be based on an evaluation as to whether there is a material impact to either party's financial performance, and shall be based upon value of the interest that is reviewed by an independent party. By entering into this NDA, the Auto Road is able to secure long-term financing for its capital investments and improvements.

The Attorney General's office has reviewed and approved this NDA as to form, substance and execution.

Respectfully submitted,

Concurred,

  
Philip A. Bryce  
Director

  
Jeffrey J. Rose  
Commissioner

## AGREEMENT

THIS AGREEMENT AND CERTIFICATE is made as of August 15, 2016 by and between Service Credit Union, a credit union incorporated under the laws of the State of New Hampshire, with an address of 3003 Lafayette Road, Portsmouth, New Hampshire 03801 (the "Mortgagee"), Mount Washington Summit Road Company, a New Hampshire corporation with an address of Route 16, PO Box 278, Gorham, New Hampshire 03581 ("MW"), and State of New Hampshire, Department of Resources and Economic Development, through its Commissioner, with a place of business and current address for purposes of notices at 172 Pembroke Road, Concord, New Hampshire 03301 (the "State").

### RECITALS:

WHEREAS, MW and the State have entered into a certain reciprocal lease agreement ("Lease") executed on June 30, 2015 with respect to, among other things, (i) MW's interests as follows (collectively, the "MW Property"): (a) ownership and operation of the Mt. Washington auto Road ("Auto Road") from on or about the base of Mount Washington to on or about the summit of Mount Washington; (b) ownership, use, maintenance and operation of a four (4) rod right-of-way existing in its current alignment through State property as shown on the map attached to the Lease; (c) ownership, use, maintenance and operation of the stage office for lodging and provisioning its employees and coaches; (d) right to use the space between the present stage office and signal station as turning grounds for their coaches and other vehicles; (e) right to pass over said premises to and from said auto road to other parts of the summit by the usual or customary walks and passageways; (f) exclusive right to use the water from the spring near the then-present stable (such rights are outlined in an agreement between the Pingree heirs, the Mount Washington Railway Company, the Mount Washington Summit Road Company, *et al.*, as part of the conveyance of the circular tract to the Railway Company from David Pingree, dated April 30, 1894 and recorded in the Coos County Registry of Deeds, Volume 68, Page 310); and (g) ownership, use, maintenance and operation of its Registry of wood staircase system providing pedestrian access to the summit facilities from the parking areas, and (ii) the State's three existing parking areas, located to the south and southeast of the summit of Mount Washington ("Parking Lots"); and

WHEREAS, MW has given Mortgagee an \$8,500,000.00 mortgage (the "Mortgage") and associated documentation, which includes all of MW's right, title and interest in and to (i) the MW Property, and (ii) the Lease.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, parties hereby covenant and agree as follows:

1. The Assignor and the State each hereby confirm and acknowledge the lien of the Mortgage and any extensions, renewals, additions, consolidations, increases or modifications thereof, in any sum, and each such party hereby confirms and agrees that for a term of the shorter of seventeen (17) years or the term of the Mortgage, the Assignor shall not voluntarily terminate

the Lease as set forth in Section 7 of the Lease. Upon expiration of the Lease term or any succeeding lease term, the Assignor and the State shall, in good faith and subject to provisions set forth in this Section 1, renegotiate the Lease without material change except as otherwise permitted herein. The State and the Assignor may renegotiate material lease terms including lease fees provided, however that such changes shall be subject to the approval of Mortgagee. The Mortgagee shall grant or withhold approval of material changes to lease terms based upon an independent appraisal or other independent analysis acceptable to the parties hereto acting reasonably and in good faith which demonstrates that the change does or does not have a material adverse impact on the financial performance of the Assignor or the State. In the event i) a succeeding lease agreement requires approval of the Governor and Executive Council and such approval is not granted, or ii) the parties cannot, despite good faith efforts reach agreement as to a new lease agreement, then in such either of such events, the immediately preceding lease agreement shall continue in effect on a year to year basis.

2. So long as the State is not in default in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on the State's part to be performed, the State's rights and privileges under the Lease or any renewal thereof shall not be diminished or interfered with by Mortgagee.

3. So long as the State is not in default, in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on the State's part to be performed, Mortgagee shall not join the State as a party defendant in any action or proceeding for the purpose of terminating the State's interest or estate under the Lease because of any default under the Mortgage.

4. In the event that the Mortgage shall be foreclosed for any reason and Mortgagee or any other purchaser of the Premises at the foreclosure sale succeeds to the interest of MW under the Lease (as used hereinafter, the term "Purchaser" shall mean the purchaser of the Premises at a foreclosure sale or through deed in lieu thereof, whether the purchaser be Mortgagee or any other party), the State (a) shall be bound to the Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, with the same force and effect as if the Purchaser were the original party under the Lease, and (b) does hereby attorn to the Purchaser as its lessor with respect to the MW Property and consent to the Purchaser as its lessee with respect to the Parking Lots, said attornment and consent to be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately upon the Purchaser succeeding to the interest of Lessor under the Lease. The respective rights and obligations of the State and the Purchaser upon such attornment and consent shall, to the extent of the then remaining balance of the term of the Lease, be the same as now set forth therein except as hereafter amended with Mortgagee's prior consent thereto, it being the intention of the parties hereto for this purpose to incorporate by reference the Lease and any amendments thereto with the same force and effect as if set forth in the entirety herein.

5. In the event that the Mortgage shall be foreclosed for any reason (or a Deed in lieu delivered) and the Purchaser succeeds to the interest of MW under the Lease, the Purchaser shall be bound to the State under all of the terms, covenants and conditions of the Lease, as the same may be amended with Mortgagee's consent, and the State shall, from and after such event, have the same remedies against the Purchaser for the breach of any agreement contained in the Lease, as amended, that the State might have had under the Lease, as amended, against MW if the Purchaser had not succeeded to the interest of MW; provided, however, that the Purchaser shall not be (a) liable for any act or omission of MW, (b) subject to any offsets or defenses which Lessee might have against MW, nor (c) bound by any rent or additional rent which the State might have paid for more than the current month to any prior lessor.

6. MW and the State hereby warrant and represent to the Mortgagee that the Lease is in full force and effect, and that neither such party is currently in default under the Lease.

7. The State shall give written notice to the Mortgagee of any failure by MW to perform or observe any of the covenants, conditions or provisions of the Lease, and the Mortgagee shall have the right, but not the obligation, to cure such failure. In the event of any such failure by MW, the State shall not take any action with respect to such failure, including without limitation any action to terminate, rescind or avoid the Lease or to withhold any rent thereunder, for a period of thirty (30) days after notice thereof to the Mortgagee; provided, however, that if such failure cannot reasonably be remedied within that thirty (30) day period, the State shall not take any action with respect to such failure, including without limitation any action to terminate, rescind or avoid the Lease or to withhold any rent thereunder, so long as the Mortgagee shall commence to remedy the failure within the thirty (30) day period and thereafter shall diligently prosecute the remedy to completion.

8. No amendment or modification of the Lease shall be effective or binding upon the Purchaser unless Mortgagee shall have given its prior written consent to such amendment or modification.


9. This Agreement shall not be amended, modified, changed or terminated, except by a written instrument executed by the parties hereto or their respective legal representatives, successors or assigns.

10. The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

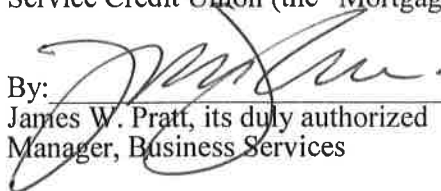
11. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.

*<Signatures appear on following pages>*

IN WITNESS WHEREOF, the parties have duly executed this Agreement as an instrument under seal as of the day and year first above written.

  
\_\_\_\_\_  
Witness

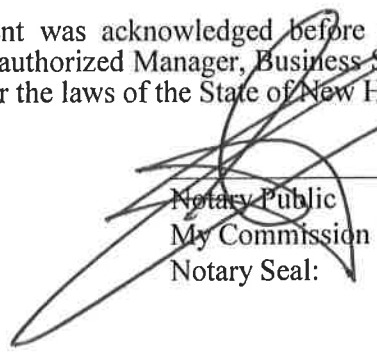
Service Credit Union (the "Mortgagee")

By:   
\_\_\_\_\_  
James W. Pratt, its duly authorized  
Manager, Business Services

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me on August 15, 2016 by James W. Pratt, duly authorized Manager, Business Services of Service Credit Union, a credit union incorporated under the laws of the State of New Hampshire, on behalf thereof.



  
\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Notary Seal:

<Signatures continue on following page>

Mount Washington Summit Road Company (the  
"Assignor")

Jessiah R. Humphrey  
Witness

By: Samuel C. Appleton  
Samuel C. Appleton, its duly authorized President

STATE OF Maine  
COUNTY OF Knox

The foregoing instrument was acknowledged before me on August 13,  
2016, by Samuel C. Appleton, in his capacity as the duly authorized President of Mount  
Washington Summit Road Company, a New Hampshire corporation, on behalf of such  
corporation.

Stacy L. Turner  
Notary Public/Justice of the Peace  
(Seal)  
My Commission Expires: 09/28/16

**Stacy L. Turner**  
**Notary Public, Maine**  
**My Commission Expires Sept. 28, 2016**

*<Signatures continue on following page>*

State of New Hampshire, Department of Resources  
and Economic Development (the "Lessee")

Julie Penney  
Witness

By: Jeffrey J. Rose  
Name: Jeffrey J. Rose  
Title: Commissioner  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

Then personally appeared before me on August 15, 2016, the above-named  
Jeffrey J. Rose [PRINT NAME], duly authorized Commissioner of Department of  
Resources and Economic Development of the State of New Hampshire, on behalf thereof.

Leanne M. Lavoie  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Notary Seal:

LEANNE M. LAVOIE, Notary Public  
My Commission Expires October 3, 2017

Approval by Attorney General (Form, Substance and Execution):

Jeanine M. Girenti 8/15/2016  
Printed: Jeanine M. Girenti Date

**END OF DOCUMENT**

Y:\CLIENT FILES\7515 - Mount Washington Summitt Road\7515.201 - Glen House Development\Documents\snda 2016 07 29 Const.doc

## AGREEMENT

THIS AGREEMENT AND CERTIFICATE is made as of August 15, 2016 by and between Service Credit Union, a credit union incorporated under the laws of the State of New Hampshire, with an address of 3003 Lafayette Road, Portsmouth, New Hampshire 03801 (the "Mortgagee"), Mount Washington Summit Road Company, a New Hampshire corporation with an address of Route 16, PO Box 278, Gorham, New Hampshire 03581 ("MW"), and State of New Hampshire, Department of Resources and Economic Development, through its Commissioner, with a place of business and current address for purposes of notices at 172 Pembroke Road, Concord, New Hampshire 03301 (the "State").

### RECITALS:

WHEREAS, MW and the State have entered into a certain reciprocal lease agreement ("Lease") executed on June 30, 2015 with respect to, among other things, (i) MW's interests as follows (collectively, the "MW Property"): (a) ownership and operation of the Mt. Washington auto Road ("Auto Road") from on or about the base of Mount Washington to on or about the summit of Mount Washington; (b) ownership, use, maintenance and operation of a four (4) rod right-of-way existing in its current alignment through State property as shown on the map attached to the Lease; (c) ownership, use, maintenance and operation of the stage office for lodging and provisioning its employees and coaches; (d) right to use the space between the present stage office and signal station as turning grounds for their coaches and other vehicles; (e) right to pass over said premises to and from said auto road to other parts of the summit by the usual or customary walks and passageways; (f) exclusive right to use the water from the spring near the then-present stable (such rights are outlined in an agreement between the Pingree heirs, the Mount Washington Railway Company, the Mount Washington Summit Road Company, *et al.*, as part of the conveyance of the circular tract to the Railway Company from David Pingree, dated April 30, 1894 and recorded in the Coos County Registry of Deeds, Volume 68, Page 310); and (g) ownership, use, maintenance and operation of its Registry of wood staircase system providing pedestrian access to the summit facilities from the parking areas, and (ii) the State's three existing parking areas, located to the south and southeast of the summit of Mount Washington ("Parking Lots"); and

WHEREAS, MW has given Mortgagee a \$5,800,000.00 mortgage (the "Mortgage") and associated documentation, which includes all of MW's right, title and interest in and to (i) the MW Property, and (ii) the Lease.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, parties hereby covenant and agree as follows:

1. The Assignor and the State each hereby confirm and acknowledge the lien of the Mortgage and any extensions, renewals, additions, consolidations, increases or modifications thereof, in any sum, and each such party hereby confirms and agrees that for a term of the shorter of seventeen (17) years or the term of the Mortgage, the Assignor shall not voluntarily terminate



the Lease as set forth in Section 7 of the Lease. Upon expiration of the Lease term or any succeeding lease term, the Assignor and the State shall, in good faith and subject to provisions set forth in this Section 1, renegotiate the Lease without material change except as otherwise permitted herein. The State and the Assignor may renegotiate material lease terms including lease fees provided, however that such changes shall be subject to the approval of Mortgagee. The Mortgagee shall grant or withhold approval of material changes to lease terms based upon an independent appraisal or other independent analysis acceptable to the parties hereto acting reasonably and in good faith which demonstrates that the change does or does not have a material adverse impact on the financial performance of the Assignor or the State. In the event i) a succeeding lease agreement requires approval of the Governor and Executive Council and such approval is not granted, or ii) the parties cannot, despite good faith efforts reach agreement as to a new lease agreement, then in such either of such events, the immediately preceding lease agreement shall continue in effect on a year to year basis.

2. So long as the State is not in default in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on the State's part to be performed, the State's rights and privileges under the Lease or any renewal thereof shall not be diminished or interfered with by Mortgagee.

3. So long as the State is not in default, in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on the State's part to be performed, Mortgagee shall not join the State as a party defendant in any action or proceeding for the purpose of terminating the State's interest or estate under the Lease because of any default under the Mortgage.

4. In the event that the Mortgage shall be foreclosed for any reason and Mortgagee or any other purchaser of the Premises at the foreclosure sale succeeds to the interest of MW under the Lease (as used hereinafter, the term "Purchaser" shall mean the purchaser of the Premises at a foreclosure sale or through deed in lieu thereof, whether the purchaser be Mortgagee or any other party), the State (a) shall be bound to the Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, with the same force and effect as if the Purchaser were the original party under the Lease, and (b) does hereby attorn to the Purchaser as its lessor with respect to the MW Property and consent to the Purchaser as its lessee with respect to the Parking Lots, said attornment and consent to be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately upon the Purchaser succeeding to the interest of Lessor under the Lease. The respective rights and obligations of the State and the Purchaser upon such attornment and consent shall, to the extent of the then remaining balance of the term of the Lease, be the same as now set forth therein except as hereafter amended with Mortgagee's prior consent thereto, it being the intention of the parties hereto for this purpose to incorporate by reference the Lease and any amendments thereto with the same force and effect as if set forth in the entirety herein.

5. In the event that the Mortgage shall be foreclosed for any reason (or a Deed in lieu delivered) and the Purchaser succeeds to the interest of MW under the Lease, the Purchaser shall

be bound to the State under all of the terms, covenants and conditions of the Lease, as the same may be amended with Mortgagee's consent, and the State shall, from and after such event, have the same remedies against the Purchaser for the breach of any agreement contained in the Lease, as amended, that the State might have had under the Lease, as amended, against MW if the Purchaser had not succeeded to the interest of MW; provided, however, that the Purchaser shall not be (a) liable for any act or omission of MW, (b) subject to any offsets or defenses which Lessee might have against MW, nor (c) bound by any rent or additional rent which the State might have paid for more than the current month to any prior lessor.

6. MW and the State hereby warrant and represent to the Mortgagee that the Lease is in full force and effect, and that neither such party is currently in default under the Lease.

7. The State shall give written notice to the Mortgagee of any failure by MW to perform or observe any of the covenants, conditions or provisions of the Lease, and the Mortgagee shall have the right, but not the obligation, to cure such failure. In the event of any such failure by MW, the State shall not take any action with respect to such failure, including without limitation any action to terminate, rescind or avoid the Lease or to withhold any rent thereunder, for a period of thirty (30) days after notice thereof to the Mortgagee; provided, however, that if such failure cannot reasonably be remedied within that thirty (30) day period, the State shall not take any action with respect to such failure, including without limitation any action to terminate, rescind or avoid the Lease or to withhold any rent thereunder, so long as the Mortgagee shall commence to remedy the failure within the thirty (30) day period and thereafter shall diligently prosecute the remedy to completion.

8. No amendment or modification of the Lease shall be effective or binding upon the Purchaser unless Mortgagee shall have given its prior written consent to such amendment or modification.

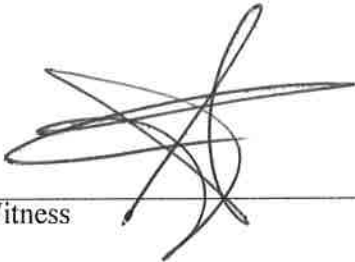
9. This Agreement shall not be amended, modified, changed or terminated, except by a written instrument executed by the parties hereto or their respective legal representatives, successors or assigns.

10. The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

11. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.

*<signatures appear on following pages*

IN WITNESS WHEREOF, the parties have duly executed this Agreement as an instrument under seal as of the day and year first above written.

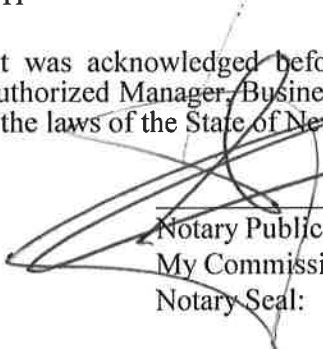
Witness 

Service Credit Union (the "Mortgagee")

By:   
James W. Pratt, its duly authorized  
Manager, Business Services

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me on AUGUST 15, 2016 by James W. Pratt, duly authorized Manager, Business Services of Service Credit Union, a credit union incorporated under the laws of the State of New Hampshire, on behalf thereof.

  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Notary Seal:

*<signatures continue on following page*



Mount Washington Summit Road Company (the  
"Assignor")

Jessia R. Humphrey  
Witness

By: Samuel C. Appleton  
Samuel C. Appleton, its duly authorized President

STATE OF Maine  
COUNTY OF Knox

The foregoing instrument was acknowledged before me on August 13,  
2016, by Samuel C. Appleton, in his capacity as the duly authorized President of Mount  
Washington Summit Road Company, a New Hampshire corporation, on behalf of such  
corporation.

Stacy Turner  
Notary Public/Justice of the Peace  
(Seal)  
My Commission Expires: 09/28/16

<signatures continue on following page>

**Stacy L. Turner**  
**Notary Public, Maine**  
**My Commission Expires Sept. 28, 2016**

State of New Hampshire, Department of Resources  
and Economic Development (the "Lessee")

Julie Penney  
Witness

By: Jeffrey J. Rose  
Name: Jeffrey J. Rose  
Title: Commissioner  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

Then personally appeared before me on August 15, 2016, the above-named  
Jeffrey J. Rose [PRINT NAME], duly authorized Commissioner of Department of  
Resources and Economic Development of the State of New Hampshire, on behalf thereof.

Leanne M. Lavoie  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Notary Seal:

LEANNE M. LAVOIE, Notary Public  
My Commission Expires October 3, 2017

Approval by Attorney General (Form, Substance and Execution):

Jeanine M. Girgenti 8/15/2016  
Printed: Jeanine M. Girgenti Date

**END OF DOCUMENT**

Y:\CLIENT FILES\7515 - Mount Washington Summitt Road\7515.006 - Refinance\Documents\SNDA 2016 07 29 Refi.doc



# State of New Hampshire

## Banking Department

53 Regional Drive, Suite 200  
Concord, New Hampshire 03301

Telephone: (603) 271-3561  
FAX: (603) 271-1090 or (603) 271-0750

GERALD H. LITTLE  
BANK COMMISSIONER

INGRID E. WHITE  
DEPUTY BANK COMMISSIONER

### CERTIFICATE OF THE BANK COMMISSIONER OF THE STATE OF NEW HAMPSHIRE

*I, Gerald H. Little, Bank Commissioner of the State of New Hampshire, hereby certify that Service Credit Union, Portsmouth, New Hampshire is a New Hampshire-chartered credit union duly organized and validly existing now under New Hampshire Revised Statutes Annotated Chapter 383-E, and that the credit union is empowered thereunder to do a general credit union business, and is duly authorized to conduct such credit union business in the State of New Hampshire.*

*Dated at Concord, New Hampshire this 1st day of August, 2016.*

*Gerald H. Little, Bank Commissioner*

*State of New Hampshire  
County of Merrimack*

*The above Certificate of the Bank Commissioner of the State of New Hampshire was signed or attested before me on August 1, 2016 by Gerald H. Little.*

*Teresa R. Moulton*

*Notary Public*

*My commission expires: July 24, 2018*



CORPORATE OFFICES

PO BOX 1268
PORTSMOUTH, NH 03802-1268

CERTIFICATION

The undersigned, Interim President/CEO of Service Credit Union, a credit union incorporated under the laws of the State of New Hampshire ("SCU"), hereby certifies the following:

RESOLVED: That the Agreement by and between Service Credit Union, Mount Washington Summit Road Company and the State of New Hampshire, Department of Resources and Economic Development dated as of the 15 day of AUGUST, 2016 (the "Agreement"), is hereby authorized.

RESOLVED: That James W. Pratt, Manager of Business Services, is hereby authorized and directed to execute the Agreement on behalf of SCU.

Dated: July 29, 2016

Signature of David Van Rossum
David Van Rossum
Interim President/CEO



# State of New Hampshire Department of State

## CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that MOUNT WASHINGTON SUMMIT ROAD COMPANY is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on June 27, 1859. I further certify that all fees required by the Secretary of State's office have been paid and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 29<sup>th</sup> day of July, A.D. 2016

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

William M. Gardner  
Secretary of State





COOPER  
CARGILL  
CHANT  
ATTORNEYS AT LAW

July 29, 2016

Brian W. Buonamano, Esq.  
Assistant Attorney General  
New Hampshire Department of Justice  
Office of the Attorney General, Civil Bureau  
33 Capitol Street  
Concord, New Hampshire 03301

**Re: Evidence of Authority of Mount Washington Summit Road Company to Enter into Non Disturbance Agreement with the State of New Hampshire**

Dear Mr. Buonamano:

We have acted as counsel for Mount Washington Summit Road Company, a New Hampshire corporation (the "Corporation"), in connection with commercial loans in the amount of (i) Five Million Eight Hundred Thousand Dollars (\$5,800,000.00) and (ii) Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) (collectively, the "Loan") to be offered by Service Credit Union ("SCU") to Corporation. This opinion is furnished to the New Hampshire Department of Resources and Economic Development ("DRED") to evidence the authority of The Corporation to enter into certain non-disturbance agreements with the State of New Hampshire. In our capacity as counsel to The Corporation and for purposes of rendering this opinion, we have reviewed the following:

1. Articles of Incorporation of the Corporation dated June 27, 1859, as amended;
2. Bylaws of the Corporation as amended on May 17, 2014;
3. Lease Agreement between the Corporation and DRED dated June 30, 2015;
4. Non-Disturbance Agreement (entitled "Agreement") pertaining to a loan in the amount of \$5,800,000.00;
5. Non-Disturbance Agreement (entitled "Agreement") pertaining to a loan in the amount of \$8,500,000.00;
6. Minutes of the Shareholder meeting dated May 14, 2016;

7. Minutes of the Director's meeting dated March 19, 2016;
8. Certificate of Good Standing for the Corporation issued by the New Hampshire Secretary of State;

Based on our prior and ongoing representation of the Corporation and on our review of the above enumerated documents, we are of the opinion that:

- 1) The Corporation is a validly-existing New Hampshire corporation duly organized and in good standing as of the date of the evidence referenced above under the laws of the State of New Hampshire;
- 2) The Corporation has adequate power and authority to enter into the (i) Non-Disturbance Agreement (\$5,800,000.00) and the (ii) Non-Disturbance Agreement (\$8,500,000.00) (collectively, the "Non-Disturbance Agreements"); and
- 3) Samuel C. Appleton, President of the Corporation, is authorized to act for and bind and to execute the Non-Disturbance Agreements on behalf of the Corporation.

Our opinions herein are limited solely to the laws of the State of New Hampshire and any applicable federal laws, and we express no opinions as to the laws of any other jurisdiction.

Very truly yours,

COOPER CARGILL CHANT, P.A.

Kenneth R. Cargill  
[kcargill@coopercargillchant.com](mailto:kcargill@coopercargillchant.com)

KRC/eaj

Y:\CLIENT FILES\7515 - Mount Washington Summit Road\7515 006 - Refinance\Documents\Existence and Authority Opinion - MWSRC 07 29 16.docx





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

**And  
MOUNT WASHINGTON SUMMIT ROAD COMPANY**

**LEASE AGREEMENT # 2015-21**

This Lease Agreement (the "Lease") is between the STATE OF NEW HAMPSHIRE, DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT (the "State" or "DRED"), through its Commissioner, and the MOUNT WASHINGTON SUMMIT ROAD COMPANY, DBA Mount Washington Auto Road (the "Auto Road"), having its principal mailing address of PO Box 278, Gorham, NH 03581, in consideration of the mutual promises made herein.

The State recognizes the Auto Road's: a) ownership and operation of the Mt. Washington Auto Road ("Auto Road") from on or around the base of Mount Washington to on or around the summit of Mount Washington; b) ownership, use, maintenance and operation of a four (4) rod right-of-way existing in its current alignment through State property as shown on the attached map; c) ownership, use, maintenance and operation of the stage office for lodging and provisioning its employees and coaches; d) right to use the space between the present stage office and signal station as turning grounds for their coaches and other vehicles; e) right to pass over said premises to and from said auto road to other parts of the summit by the usual or customary walks and passageways; f) exclusive right to use the water from the spring near the then-present stable (such rights are outlined in an agreement between the Pingree heirs, the Mount Washington Railway Company, the Mount Washington Summit Road Company, *et al.*, as part of the conveyance of the circular tract to the Railway Company from David Pingree, dated April 30, 1894 and recorded in the Coos County Registry of Deeds, Volume 68, Page 310); and g) ownership, use, maintenance and operation of its wood staircase system providing pedestrian access to the summit facilities from the parking areas.

**DESCRIPTION OF LEASED PREMISES**

The State agrees to lease to the Auto Road, and the Auto Road agrees to accept, subject to the terms and conditions hereinafter set forth, **three (3) existing parking areas, located to the south and southeast of the summit of Mount Washington (the "Premises"), which are owned and controlled by the State as part of Mount Washington State Park (the "Park"), as shown on the map attached hereto as Exhibit A.**

The State and the Auto Road hereby covenant and agree as follows:

**1. USE OF PREMISES**

The Premises shall be used solely for parking facilities for motor vehicles. The State claims all aural and visual broadcast rights on its property on or around the summit of Mt. Washington. The State acknowledges that the Auto Road has been operating or leasing to operate, two-way communication equipment from the Stage Office since 1982; and agrees that current and active operations shall be grandfathered without permit or fee provided that such operations shall abide by all FCC rules and shall not, in any way, interfere with the State's communications operations. The Auto Road may transfer communication equipment from the Stage Office to DRED under terms agreeable to the parties. The Auto Road shall cease and desist, with no option to renew, create new

## LEASE AGREEMENT

or expand by any party, all grandfathered communications operations and leases upon the termination, expiration or quit of all such operations and agreements, whichever action comes first.

### 2. TERM OF LEASE

The term of this Lease shall be for a period of no more than three (3) years from date of signatory approval by all parties through June 30, 2018.

### 3. LEASE PAYMENTS

The Auto Road shall pay the State a \$1.00 fee per year. Payment shall be due each January 1<sup>st</sup> during the lease term without demand.

### 4. STATE'S USE OF THE AUTO ROAD AND FACILITIES

The Auto Road shall allow passage on the auto road by the State and those conducting business on behalf of the State, at no cost to the State or to those conducting business on behalf of the State on a year-round basis. The Auto Road may charge a reasonable fee for heavy construction vehicles conducting business on behalf of the State as the need arises.

The Auto Road shall allow the State year-round use of parking spaces at the base of the Mount Washington Auto Road for employee parking, parking of State's snow tractors during the winter, and occasional staging of contractor's equipment and supplies with 24-hours advance notice. The Auto Road shall allow the State use of the Auto Road's garage space to perform maintenance work on, and to occasionally thaw, the State's snow tractors with 24-hours prior notice. Reasonable access to an electrical "block heater" plug-in shall be provided the State, with power use metered and charged at the prevailing PSNH, or its successor, rate.

### 5. SPECIAL EVENTS

The State recognizes and supports the economic activity that the Auto Road generates through its special events. Through the Special Use Permit process, the State shall permit the Auto Road's reasonable use of certain State-owned summit facilities in support of such events. Special Use Permits are required to grant the Auto Road permission to hold special events at the Park that go beyond the routine activities, recreational or otherwise, at the Park. The Auto Road shall apply for Special Use Permits from the State Park Manager in accordance with Park permitting policies. Special events and all related activities shall not adversely impact the use of the Park by the general public. The Auto Road shall refer all third party event coordinators intending to use the Park to the State Park Manager in order to apply for a Special Use Permit.

### 6. RETAIL – SUMMIT STAGE OFFICE

The Auto Road may operate a summit retail operation for sales of Auto Road memorabilia and related Auto Road and Mount Washington material in its current location on the summit. The Auto Road shall not expand its summit retail operation beyond its historical practice of utilizing 550 square feet of unfinished seasonal retail space to sell items. Food and beverage sales shall not be permitted.

### 7. TERMINATION BY AUTO ROAD

This Lease shall be subject to termination by the Auto Road, regardless of grounds therefore, by giving the State sixty (60) days written notice of termination.

## LEASE AGREEMENT

### 8. TERMINATION BY STATE

This Lease shall be subject to termination by the State in the event of the failure of the Auto Road to perform, keep, or observe any of the conditions of the Lease and the failure of the Auto Road to correct the default or breach within a time specified by the State, by giving the Auto Road sixty (60) days written notice of termination. This Lease is also subject to termination by the State under the provisions of paragraph 20, Provisions for Property Tax; and under paragraph 22, Construction of Lease, herein.

### 9. DISPUTES

Disputes between the parties regarding the terms or enforcement of this Lease shall be handled according to the provisions of this paragraph:

9.A. Non-Binding Mediation. The State and the Auto Road shall have the right to have any dispute arising under the Lease determined by the Merrimack County Superior Court or submitted to mediation in accordance with this paragraph. In this paragraph, any reference to "mediation" shall mean non-binding mediation. The parties agree that mediation shall not operate to stay any proceedings that either party may institute in the Superior Court, but that, where possible, parties shall reasonably attempt to resolve matter through mediation prior to engaging in litigation in the Superior Court. If either party requests that mediation of a particular matter or matters be undertaken and if that matter is not at the time of the request already the subject of an action in the Superior Court or if it does not become the subject of an action in the Superior Court during the course of the mediation, then the parties shall agree that the matter will be submitted to mediation. The agreement for mediation shall be in writing, signed by both parties, and include a statement of the matter or matters that are the subject of the mediation.

9.B. Selecting Mediators. If mediation is requested in a manner consistent with Section 10.A, the State and the Auto Road shall each choose a mediator within 15 days of the date of the written agreement for mediation. These mediators shall be notified, in writing, that they have been chosen as mediators and that they are required to choose a third mediator within 15 days of the date of the notice. The fees and costs for the three mediators shall be agreed to, in writing, by the parties and the mediators. Each party shall pay one-half the total fees and costs of the mediators.

9.C. Scheduling Mediation. When the three mediators have been selected, they shall, with the agreement of the parties, schedule a date or dates for the mediation hearing as soon as practicable. All three mediators shall be present for the mediation hearing. The mediation hearing date may only be postponed for good cause accepted by at least two of the three mediators.

9.D. Written Decision. A written decision shall be rendered and signed with the agreement of at least two of the three mediators. The decision shall be issued within 45 days after the submission of the dispute and shall be considered the final decision of the mediators.

### 10. ASSIGNMENT OR SUB-LEASE

The Auto Road shall not assign this Lease or sublet the Premises in whole or in part or allow the Premises to be occupied or used for any other purpose, to include communications and aural rights retained by the State, than that for which the Premises are leased.

## LEASE AGREEMENT

### 11. ABANDONMENT

If at any time, the Auto Road shall cease to use all of the Premises granted herein for a period of two (2) consecutive years, all rights granted hereunder shall terminate and all improvements on the Premises shall become the property of the State without compensation to the Auto Road.

### 12. CASUALTY ADJUSTMENT AND RISK OF LOSS

In the event that the Premises or any part thereof shall, during the term of this Lease, be destroyed or damaged by fire, flood, war, or other casualty so that the same shall be thereby rendered unfit for the purposes of the Auto Road, the Auto Road may terminate this Lease at its option. In any event, the State shall not be obligated to rebuild or replace any building, facility, or premises wholly or substantially destroyed by fire, flood, war, or other casualty.

All property of every kind on the Premises shall be at the sole risk of the Auto Road. The State shall not be liable to the Auto Road or any other person for any injury, loss, damage, or inconvenience occasioned by any cause whatsoever to said property, including, but not limited to, any loss of income for any function, program or contract that may not take place for whatever reason due to an emergency or unforeseeable situation.

### 13. RIGHT TO INSPECT

The Auto Road shall allow the State, or such person designated by the State, access to the Premises at all reasonable hours, for the purpose of examining and inspecting the Premises or for any other purpose not unduly affecting the operation of the Auto Road's business.

### 14. UTILITIES

The Auto Road shall, at its own expense, furnish, maintain and operate the systems and equipment that deliver heat, electricity, water and any other utilities and services within limits of its present stage office facilities. The State shall bill the Auto Road for electricity usage at prevailing rates established for the summit of Mount Washington, payable upon receipt. Electricity will be invoiced by the State on or around the 27<sup>th</sup> of each month of the lease term. Payment shall be due to the State within thirty (30) days of the date of the State's invoice. The State will review annual rates after the first of the year and the rates will be set and effective by March 1<sup>st</sup> of each year of the lease term for the forthcoming year. Nonpayment and/or three late payments of utilities by the Auto Road shall constitute a material breach of the Lease. Payments made later than 30-days of invoice shall be considered late and shall be assessed with a late fee of 2% of the balance due.

Expanded or additional services shall be at the expense of the Auto Road, and shall not impact, impede nor compete with the services provided to other summit tenants by and including the State. Telephone and internet services for Auto Road's own use shall be the responsibility and expense of the Auto Road.

### 15. DAMAGES TO LEASED PREMISES

The Auto Road shall do no unnecessary damage to the Premises in maintaining or using its facilities on the Premises, and all such work shall be undertaken in a manner which shall be compatible with the aesthetic quality of Mount Washington as determined solely by the State, whose determination shall be final.

## LEASE AGREEMENT

The Auto Road shall promptly report any and all damage to the Premises occasioned by storm, accident, or other events. The Auto Road shall be held legally and financially liable for any and all damages, repairs or rehabilitation caused by its use of or operations within the Premises.

### 16. SIGNS

The Auto Road shall install and maintain all signs pertaining to their patrons including but not limited to handicapped parking designation signs. All exterior signs and advertising matter must be in good taste and acceptable to the State, whose decision in all cases shall be final.

### 17. STATUTES, ORDINANCES, AND REGULATIONS

The Auto Road shall comply with all applicable statutes, ordinances and regulations of all federal, state, county, and municipal governments, including those of DRED, and procure all necessary licenses and permits required in connection with the operations described therein.

### 18. PERFORMANCE AND INDEMNITY

The Auto Road agrees to perform and faithfully observe and comply with the conditions, regulations and provisions prescribed herein, and further to indemnify, save and keep harmless the State, its officers, agents, employees of and from all liability, lien, judgment, costs, damages, and expense of whatsoever kind which may in any way be suffered by the State or by its officers, agents, or employees by reason of or in consequence of the operation of the premises by the Auto Road or on account, or supposed authority, of such grant.

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

### 19. INSURANCE

19.A. The Auto Road shall deposit with the State at the time of the execution of this Lease a thirty (30) day binder evidencing purchase of a public liability insurance policy (including products) protecting the parties hereto from loss or damage because of liability that may be incurred by the State and the Auto Road, or either of them in the performance of the Lease when such liability is imposed on account of injury to or death of a person or persons. The policy(ies) shall provide for a liability limit on account of each accident resulting in bodily injury or death to one person of not less than \$1 million and liability limit in account of accident resulting in bodily injury or death to more than one person of \$2 million.

19.B. Throughout the term of this Lease, the Auto Road shall maintain property damage insurance protecting the parties under this Lease from loss or damage because of liability for loss of or damage to the property of other persons. The Auto Road shall deposit with the Lessor at the time of execution of this Lease a certificate evidencing that the Auto Road holds such insurance. The policy shall provide for a liability limit of not less than \$500,000 for each incident.

### 20. PROVISION FOR PROPERTY TAX

The Auto Road agrees to hold the State harmless with respect to taxes levied against the Premises as a consequence of the application of RSA 72:23-I. The Auto Road agrees to pay in addition to other payments herein under all properly assessed real and personal property taxes against the Premises in accordance with the provision of RSA 72:23-I. In the event the Auto Road shares a larger parcel of land with other sub-lessees, it shall be obligated to pay only its pro-rated

## LEASE AGREEMENT

share of any such taxes. Failure of the Auto Road to pay the duly assessed personal and real estate taxes when due shall be cause to terminate the Lease by the State for any taxes paid by the State pursuant to RSA 72:23-I as result of the Auto Road's failure to pay properly assessed real estate or personal property taxes.

### 21. NOTICE

Any notice by a party hereto the other party shall be deemed to have been duly delivered or given at the time of mailing postage prepaid, in a United States Post Office, addressed to the parties at the following addresses:

Dept. of Resources & Economic Development  
172 Pembroke Road  
Concord, NH 03301

Mount Washington Auto Road  
PO Box 278  
Gorham, NH 03581

### 22. CONSTRUCTION OF LEASE

This Lease may be executed in a number of counterparts, each of which shall be deemed an original but which jointly constitute one and the same instrument. This Lease is to be construed in accordance with the laws of the State of New Hampshire; sets forth the entire agreement between the parties; and may be cancelled, modified, or amended only by a written instrument executed by the State and the Auto Road and, if necessary, as determined by the State, the Governor and Council of the State. The captions are used only as a matter of convenience and are not to be considered part of the Lease or to be used in determining the intent of the parties to it.

### 23. REPRESENTATION AND MEETINGS

Day-to-day activities shall be coordinated between Mt. Washington Auto Road General Manager Howie Wemyss and State Park Manager Mike Pelchat, or duly appointed successor. Matters pertaining to this Lease shall be administered between Mt. Washington Auto Road General Manager Howie Wemyss and State Park Division Director Philip Bryce, or duly appointed successor.

Meetings between the parties shall be held when deemed necessary by the State or Auto Road, at a place and time to be agreed upon mutually by the State and the Auto Road, for the purpose of discussing current operational problems, presentation of official requests for changes in schedules, products, or policies, and other pertinent business which may arise.

The State will be represented at the meetings by an authorized representative and such subordinate supervisory personnel fully acquainted with the field operations as it shall designate. The Auto Road shall be represented as a minimum by one officer of the company if a corporation, a partner if a partnership, or the owner or their duly authorized representative(s).

### 24. CONDITIONAL OBLIGATION OF THE STATE

Notwithstanding anything to the contrary contained in the Lease, it is understood and agreed by the parties that all obligations of the State, including, without limitation, the continuance of maintenance and/or payment of funds, are contingent upon the availability and continued appropriation of funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to terminate this Lease by giving the Auto Road sixty (60) days advanced written notice of such termination, and upon the expiration of sixty (60) days, this Lease shall terminate.



## LEASE AGREEMENT

### 25. RELATION TO THE STATE

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

### 26. WAIVER OF BREACH

No failure by the State to enforce any provisions of the Lease after any event of default shall be deemed a waiver of its rights with regard to that event or any subsequent event. No express failure of any event of default shall be deemed a waiver of the right of the State to enforce each and all of the provisions of the Lease upon any further or other default on the part of the Auto Road.

*REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK*

**LEASE AGREEMENT**

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

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

Kevin Taylor  
Witness

By [Signature] Date: 6-30-15  
Phillip A. Bryce, Director

Zach Cousin  
Witness

By [Signature] Date: 6/30/15  
Jeffery J. Rose, Commissioner

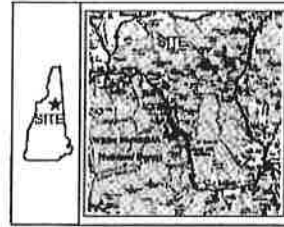
**MOUNT WASHINGTON SUMMIT ROAD COMPANY**

Reggie Ferris  
Witness

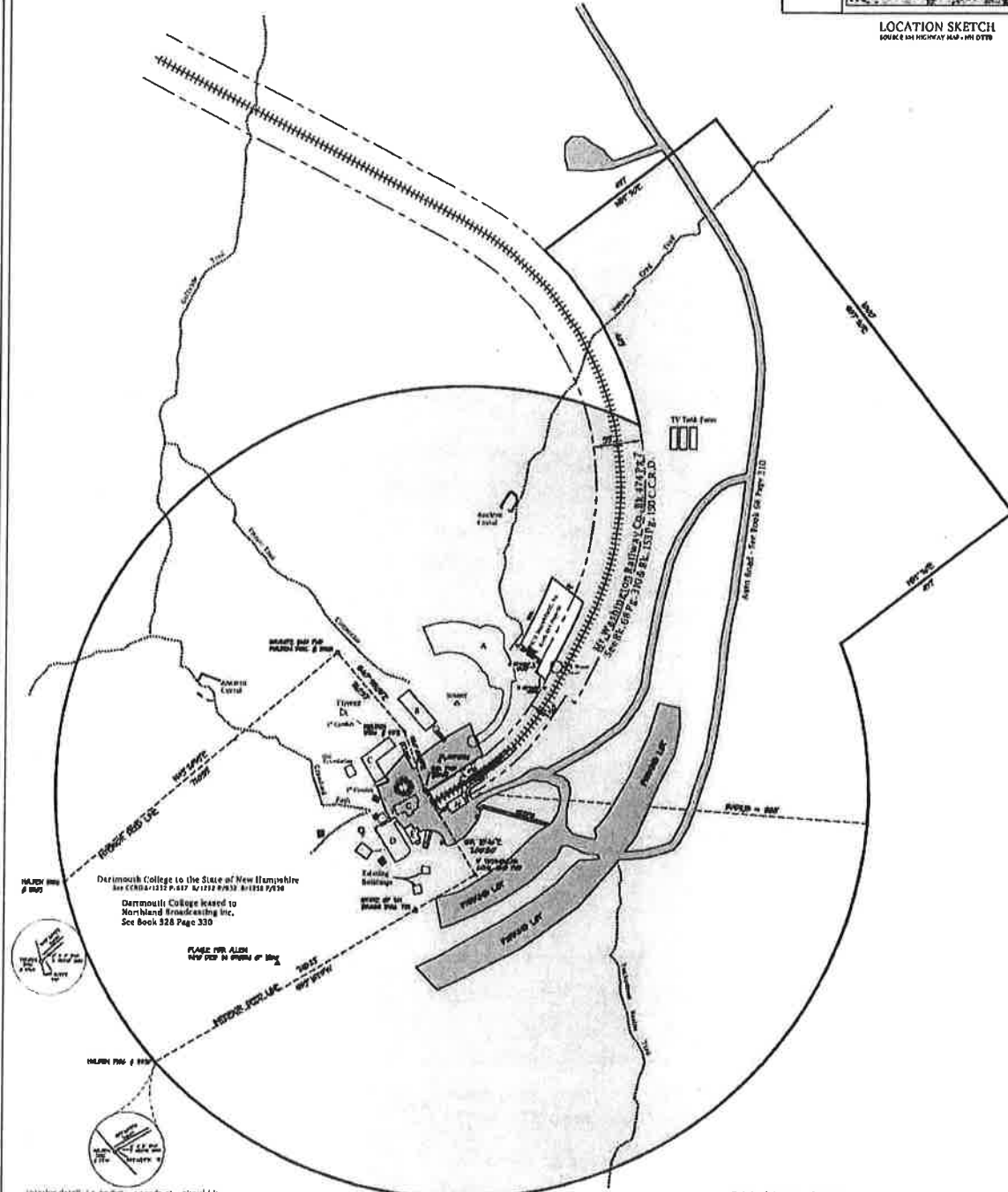
By [Signature] Date: 6/30/15  
Howard Wemyss, General Manager (Duly authorized)

# Exhibit A

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF RESOURCES & ECONOMIC DEV.



LOCATION SKETCH  
SOURCE: SA HIGHWAY MAP - 196 DTR



Dartmouth College to the State of New Hampshire  
See CCRD 1212 P. 637 to 1212 P. 639 & 1212 P. 639  
Dartmouth College leased to  
Northland Broadcasting Inc.  
See Book 326 Page 330

Interior detail, i.e. buildings, roads etc. should be  
considered approximate in location.  
No underground utilities are shown.

- LEGEND:**
- A. Summit Building
  - B. Tip Top House
  - C. Yankee Network Transmitter Building
  - D. WMTV - FM - TV
  - E. Power House
  - F. RCA Tower
  - G. Mt. Washington Observatory (demolished)
  - H. Stage Office
  - ▭ Roads, parking, and graded areas.
  - ⋯ Hiking trails
  - Concrete pads

- NOTES:** This map has been compiled from the following sources:
1. Plan of Mt. Washington Summit 12/12/63, by Hill & Hession.
  2. Color aerial photography from Complex Systems (taken in 2005).
  3. Deed recorded in Coos County Registry, Book 461 Page 200.
  4. Survey of land leased to Northland Broadcasting, Inc., by Holden Engineering and Surveying, Inc., 1/15/88, Job #89187.
  5. Boundary Line Adjustment between Mount Washington Railway Co. and the State of NH-ORSD CCRD Plan #3051
  6. Survey of Mt. Washington by Holden Engineering #1477 delineating 8.176 acres of land covered by Dartmouth to the State of New Hampshire/July/2008.

Original Acreage-52 Acres.  
Addition of .077 Acres: January, 2008  
Addition of 8.176 Acres: July, 2008

**WASHINGTON MOUNTAIN  
STATE PARK**

Sargent's Purchase, New Hampshire

SCALE:

DATE: February 2005 (Rev. 1/2008, Rev. 7/2008)  
AREA = 60.25± Acres SURVEYED BY: See Notes

**BENCH MARK**

ALCANTARA BRIDGE - WASHINGTON
ADJ. TAYLOR
HEMLOCK