



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

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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 1st 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.

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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.

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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 27th 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 1st 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.

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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

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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.

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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.

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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

John Taylor
Witness

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

[Signature]
Witness

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

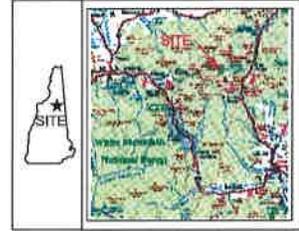
MOUNT WASHINGTON SUMMIT ROAD COMPANY

Regina Ferris
Witness

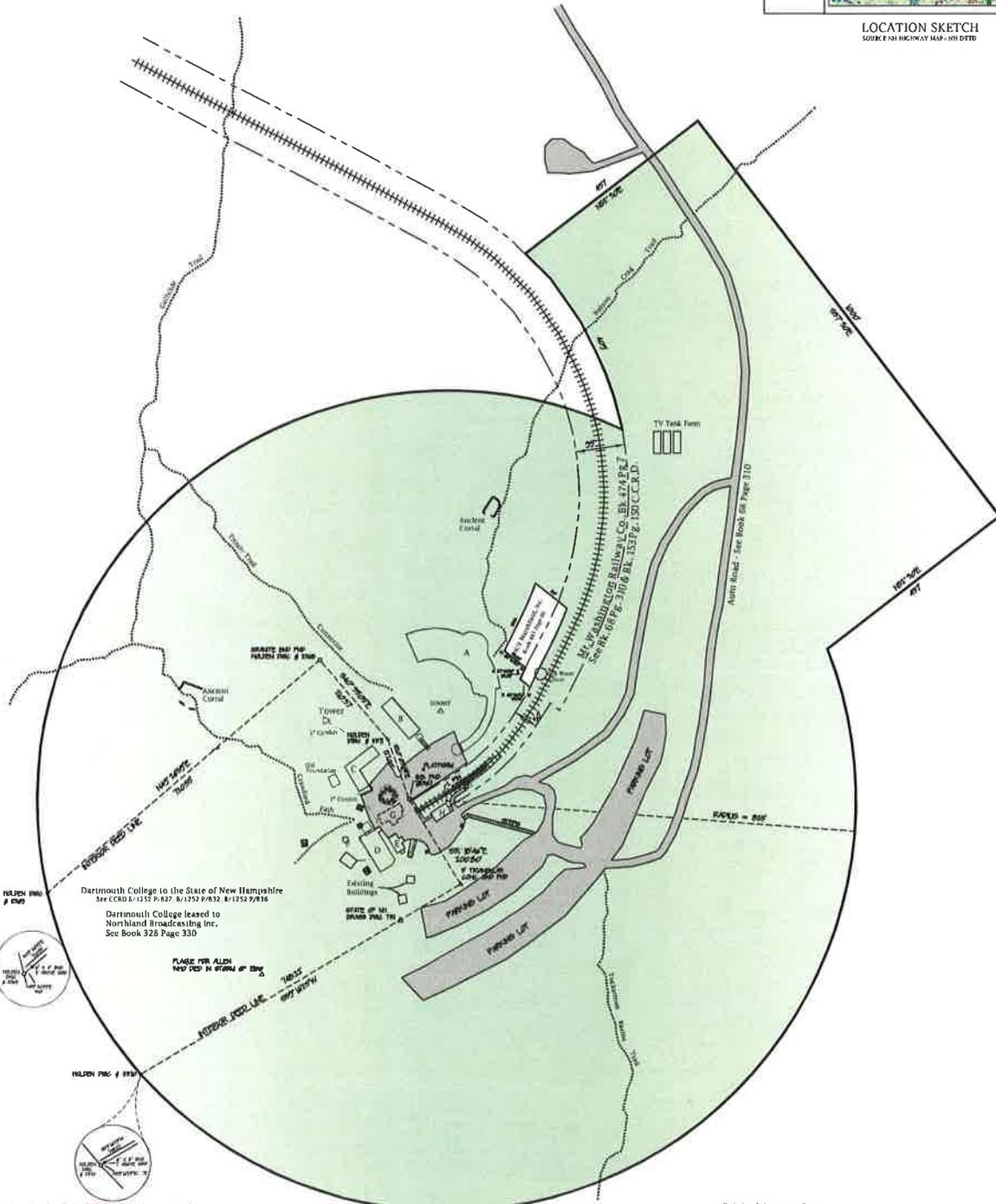
By [Signature] Date: 6/30/15
Howard Wemyss, General Manager (Duly authorized)

Exhibit A

STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES & ECONOMIC DEV.



LOCATION SKETCH
SOURCE: F-101 HIGHWAY MAP - 101 DTD



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

NOTE: This map has been compiled from the following sources:
 1. Plan of Mt. Washington Summit 12/12/63, by Hills & Lesslin.
 2. Color aerial photography from Complex Systems flown in 2003.
 3. Deed recorded in Coos County Registry, Book 481 Page 209.
 4. Survey of land leased to Northland Broadcasting, Inc. by Hollen Engineering and Surveying Inc., 1/15/88, Job #59187.
 5. Boundary Line Adjustment between Mount Washington Railway Co. and the State of NH-DRED CCRD Plan #3051
 6. Survey of Mt. Washington by Hollen Engineering #1477 delineating 8.176 acres of land conveyed 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

BENCH JOB:	ACAD DWG: DWG01 - WASHINGTON
ADD. LAYERS:	
REMARKS:	

**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