

LEASE AGREEMENT

AGREEMENT made and entered into this 23rd day of March, 2000, by and between the **STATE OF MAINE**, acting by and through its **Department of Inland Fisheries and Wildlife** pursuant to 12 M.R.S.A., Chapter 713, as amended, with a mailing address of 41 State House Station, Augusta, ME 04333-0041 (hereinafter referred to as IFW), and the **TOWN OF RAYMOND**, acting by and through its **Selectmen**, as authorized by a vote of the Town of Raymond on March 18, 2000, with a mailing address of 401 Webbs Mills Road, Raymond, ME 04071-0401, (hereinafter referred to as the Town).

WHEREAS, the IFW has identified that a high priority need exists to preserve the public's traditional use of lands that have provided Angler and Boater access to Maine's public waters throughout the State of Maine, such need being more fully set forth in its *Strategic Plan For Providing Public Access to Maine Waters For Boating and Fishing*, on file at its principal offices in Augusta, Maine; and

WHEREAS, the IFW has also determined that many of these lands are in private ownership where the public's traditional use is either by long-time adverse possession or by permission of the underlying fee owner and where continued public use might be challenged or terminated and where continued public use may be at risk; and

WHEREAS, the Town and the IFW have determined that certain lands adjacent to and southwest of State Route 302 and Sebago Lake, in the Town of Raymond, known as the Jordan Bay Boat Launch and Recreation Area (AKA Raymond Boat Launch and Beach Area), are a traditional access site which, until recently acquired by IFW for the purposes of this lease agreement and a simultaneous license agreement between and among the Maine Department of Transportation (hereinafter MDOT), the IFW and the Town, was at risk for change of ownership and that such change of ownership, if not acquired by IFW or another public entity, could have jeopardized public recreational opportunities and benefits at that site, and

WHEREAS, both the IFW and the Town desire to retain the Jordan Bay Boat Launch Area and upgrade the boat launch ramp and parking area to assure continued public access to the recreational opportunities associated with Sebago Lake for the benefit of Anglers and Boaters, and

WHEREAS, the Town further desires to retain the swimming opportunities associated with the Jordan Bay beach area, together with parking for users of the beach; and

WHEREAS, the IFW has agreed to :

- 1) acquire all the privately owned interests in real estate and lands in the project area southwest of State Route 302;

- 2) enter into and secure an acceptable land control agreement with MDOT and the Town (hereinafter referred to as the License Agreement), for control and use of all the non-paved portions of land southwest of the State Route 302 right of way area;
- 3) provide technical assistance and coordination with the MDOT for the purpose of improving the operation of the boat launch and recreation area;
- 4) procure and finance all engineering and other necessary professional services needed to design site modifications that facilitate boat launch and parking improvements;
- 5) seek assistance from the MDOT for the materials and placement of safety improvements along the edge of pavement of the southwest side of Route 302, procure and finance all contractual services needed to implement boat launch and parking modifications approved by all parties; and

WHEREAS, the IFW does not have the resources to manage or to be involved in the day to day or annual operation or routine maintenance of this multi-user recreational area and beach, and

WHEREAS, the Town has agreed to:

- 1) accept the responsibilities for ongoing management, operation and routine maintenance of both the boat launch area, the beach area and the parking area;
- 2) make the commitment that no fees shall be charged to Anglers or Boaters for their launching of water craft or for parking associated with launchings; and
- 3) enter into and secure an acceptable land control agreement with MDOT and the IFW (hereinafter referred to as the License Agreement), for control and use of all the non-paved portions of land southwest of the State Route 302 right of way area.

WHEREAS, a portion of the lands, currently being used for parking for both the beach and the boat launch, are owned by MDOT or IFW or are within or adjacent to the southwest side of the MDOT right of way of the State Route 302 corridor, and

WHEREAS, the continued use of all portions of the MDOT right of way lands extending beyond the paved shoulders of the southwest side of State Route 302, is essential for addressing parking needs, for the continued operation of the boat launch and the beach and for the joint operation of both the launch and beach areas; and,

WHEREAS, the Town and the IFW acknowledge that a portion of the areas intended for recreational use and access, within this Lease Agreement, are lands owned by the MDOT are made available for public use in accordance with provisions of a separate License Agreement with the MDOT. This Lease Agreement, with respect to the land area made available for public use by the MDOT, is and shall always remains subordinate to the primary transportation purposes of the State Route 302 corridor (for which the right of way lands were acquired) and the authorization from MDOT to use lands within the State Route 302 transportation corridor for recreational purposes may be withdrawn by the MDOT for transportation needs in accordance with the above referenced License Agreement.

NOW THEREFORE, the parties hereto, for themselves and their respective successors and assigns, do hereby mutually covenant and agree as follows:

1. The IFW hereby leases its lands owned in fee and assigns its management rights in other lands owned by the MDOT (subject to the authority and use of which is made available through a License Agreement with the MDOT) to the Town of Raymond for the purposes of public recreation and subject to the terms and conditions hereinafter set forth, said property located in the Town of Raymond, in Cumberland County, Maine, described in Exhibit A, (hereinafter "the Property") located on the southwest side of the State Route 302 right of way.
2. The Town shall have control over and shall use the Property primarily as a boat launching and parking area and secondarily as a beach and parking area without regard to race, color, creed, national origin, or place of residence, according to reasonable rules and regulations adopted by the Town, subject to the specific provision that no fees shall be charged for launching water craft or for parking vehicles and trailers associated with the launching of water craft and subject to the remaining provisions of this agreement. A sign acknowledging the contributions of anglers and boaters through the Sport Fish Restoration Access Program, for site modifications and improvements, shall be placed and maintained on the Property near the launch ramp.
3. The Town shall be financially and administratively responsible for and have jurisdiction over and have management, operation and maintenance responsibilities for the launch ramp and the beach recreational facilities. No permanent buildings may be developed on the Property. The Town shall operate, maintain, and administer the Property and use of the recreational facilities thereon in a manner so as to present and maintain a safe, attractive and inviting appearance to the general public. The Town shall maintain sanitation and sanitary facilities for users as it deems appropriate, in accordance with applicable State and Local Public Health Laws and Regulations. The Town shall keep all facilities in reasonable repair throughout their estimated lifetime so as to prevent undue deterioration. The Town shall be responsible for all land and facility management, maintenance and operation for the entire area. The IFW shall be responsible for major reconstruction and renovation of the facility for all areas that are not associated with the beach or its structures. The Town and IFW shall jointly determine *in advance*, the need, the timing, the method of implementation and the method of payment for all reconstruction and renovation projects that require funding from IFW.
4. The Town may, from time to time, establish such rules and regulations as it deems necessary to provide for proper use and protection of the Property and facilities, provided that the launch ramp and parking area shall always remain open and unobstructed to public use for anglers and boaters and that the policy that public parking use of the Property shall be on a first come, first served basis shall not be changed. Such rules and regulations shall be nondiscriminatory in accordance with

Section 2 of this Agreement. The Property shall not be deemed closed and obstructed, for the purposes of this agreement, if the launch, ramp and parking areas are full.

5. The Town may establish a public user fee system but only for users of the beach area on the Property. All fees collected from beach users shall be site specific and used by the Town to operate, maintain and improve the entire Property. Any surplus revenues from any one year's collection shall be retained and accounted for by the Town and used for future maintenance, repair and operation of the Property. The Town is authorized under this Agreement to collect fees from residents and nonresidents of the Town for use of the beach area only for swimming and bathing related activities. Such fees may be based upon a fee schedule that distinguishes between residents and nonresidents and must be allocated on a reasonable basis so as not to be prohibitive. No fees may be collected from individuals engaged in boating activities, in using the boat launching area or from anyone using any parking areas. Town authority to establish a public user fee system for the beach area shall terminate should beach activities cease and other uses are proposed for this area.
6. The term of this Agreement shall be thirty (30) years beginning May 1, 2000, but the Town's obligations shall commence on the date of completion of improvements on the southwest side of State Route 302 shown on a plan by Kleinschmidt Associates dated March 9, 2000, captioned "Jordan Bay Boat Access Site on Sebago Lake", numbered 348-036. This Agreement shall be automatically renewed for successive terms of ten (10) years each unless written notice to the contrary is given by either party to the other not less than ninety (90) days prior to the termination of this instrument, or any renewal thereof, and such renewal shall be subject to all the terms and conditions of this lease and agreement. This lease is subject to and subordinate to the License Agreement with the MDOT. The provisions set forth in this Lease and Agreement may be modified from time to time by the written mutual consent of the IFW and the Town. Any such modifications must also be approved by the Program Chief for Lands and Development, Federal Aid Division of Region 5, U.S. Fish and Wildlife Service. Should the Town decide to convey written notice to the contrary, or to otherwise withdraw from this Lease Agreement by another means, this Town action shall be considered by both parties as a Town decision to close and terminate Town use of the beach area.
7. In the event that the Town shall fail, neglect, or refuse to fulfill or perform any or all of the terms and conditions of this lease and agreement, the IFW may, after written notice and a thirty (30) day opportunity to cure, give notice of termination of this lease or any renewal thereof, by giving written notice to the Town that the lease shall cease twelve (12) months subsequent to the date of such notice. In the event the Town gives IFW notice that major reconstruction or renovation of the facility is necessary for an area of the facility not associated with the beach or its structures, and if IFW declines to agree to the major reconstruction or renovation, the date of the notice may be deemed by the Town to be the date the Town gave IFW notice of termination. In the event that the Town decides to terminate this Agreement for reasons other than its

own failure to uphold the provisions of the Agreement, the Town shall give IFW at least one (1) year's notice of termination.

8. In the event of termination of this lease and agreement, the IFW may immediately, or any time thereafter, re-enter and take full legal and equitable possession of all property, whether real, personal or mixed and of all fixtures.
9. The Town agrees to defend, indemnify and hold harmless IFW, its agents, attorneys, employees or independent contractors from any and all claims, actions or liabilities of any nature whatsoever arising out of losses and damages resulting from the negligent or willful acts of the Town, its officers, agents, employees or independent contractors, in connection with the Town's operating, management or maintenance activities on the Property. Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the IFW or the Town, their officers, agents or employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law. The Town's obligations under this paragraph are limited to the monetary limits and substantive areas of liability under the Maine Tort Claims Act or any monetary limits and substantive areas exceeding those limits or areas where the Town is insured.
10. The Town shall obtain premises liability insurance to cover the use of the Property with limits of no less than \$400,000 per occurrence, naming the State of Maine Department of Inland Fisheries and Wildlife as an additional insured. Such insurance must provide that the State of Maine be notified in the event the policy is canceled. The Town shall also obtain and maintain property casualty insurance for the personal property on the site such as docks, temporary gatehouses, and temporary sanitation facilities. The Town shall furnish the IFW with satisfactory proof of all insurance prior to assuming responsibility for the operation and maintenance of the Property. Said proof of insurance and any cancellation notices shall be mailed to:

David Fitts, Director
Risk Management Division
Dept. of Administrative and Financial Services
85 State House Station
Augusta, ME 04333-0085

11. The Town shall communicate with the IFW Regional Fishery Biologist, who is located at the Region A Headquarters Building in Gray, ME, on an annual basis (or more frequently as may be desired by the Town) for purposes of providing an update of facility use and operations or to coordinate the addressing of any unforeseen issues. The IFW reserves the right at all times to enter upon and inspect the Property.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their duly authorized representatives as of the dates indicated.

STATE OF MAINE
DEPARTMENT OF INLAND
FISHERIES & WILDLIFE

Cecile Sibley
Witness

By: [Signature] 3-28-00
Lee Perry, Commissioner Date

TOWN OF RAYMOND

[Signature]
Witness

By: [Signature]
Timothy R. Pomerleau

Witness

By: _____
Michael D. McClellan

[Signature]
Witness

By: Ada K. Brown
Ada K. Brown

[Signature]
Witness

By: [Signature]
Mark H. Acker

[Signature]
Witness

By: Betty Y. McDermott
Betty Y. McDermott

STATE OF MAINE
Kennebec, ss.

March 28, 2000

Then personally appeared the above named Lee D. Perry, Commissioner of the Maine Department of Inland Fisheries and Wildlife, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said State of Maine.

Before me,

Cecile Sibley
Notary Public/ ~~Attorney at Law~~
Cecile Sibley - Notary Public
State of Maine

My Commission Expires February 17, 2005

My commission expires _____

EXHIBIT A

To Lease from the State of Maine, Department of Inland Fisheries and Wildlife To the Town of Raymond, Maine

The land and interests in land in Raymond, County of Cumberland and State of Maine, bounded and described more particularly as follows:

All that portion of the land and interests in land conveyed by deed from the Trustees of St. Joseph's College to the State of Maine, Department of Inland Fisheries and Wildlife, recorded simultaneously with this lease agreement.

Together with the interests of the State of Maine, acting by and through its Department of Inland Fisheries and Wildlife, in any lands and interests in lands acquired pursuant to an unrecorded License Agreement dated March 3, 2000 by and between the State of Maine, acting by and through its Department of Transportation (MDOT), its Department of Inland Fisheries and Wildlife (MIFW) and the Town of Raymond, such License Agreement being on file with the MDOT and MIFW offices in Augusta, Maine.

Together with the interests of the State of Maine, acting by and through its Department of Inland Fisheries and Wildlife, in the fee interest in those portions of Route 302 to the centerline thereof as lie adjacent to the within leased premises.