



New Hampshire Fish and Game Department

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Glenn Normandeau
 Executive Director

October 24, 2012

His Excellency, Governor John H. Lynch
 and the Honorable Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department to acquire the fee title to a 0.8+/- acre boat launching facility on Lake Winnepesaukee in Alton, NH from Downing Brothers Inc (vendor code 228791) of Alton, NH for the amount of \$1,000,000 upon Governor and Council approval through December 31, 2012. Funding is 57% Federal and 43% Other (Public Boat Access Funds).

Funding for this purchase is available in the Statewide Public Boat Access account, as follows:

03 75 75 753520- 21170000 Facilities and Lands – Statewide Public Boat Access Program

		<u>FY 13</u>
020-07500-21170000-102-500731	Contracts for Program Services	\$1,000,000

EXPLANATION

The New Hampshire Fish and Game Department (NHF&G) seeks to purchase fee title to 0.8+/- acres in Alton on the shore of Lake Winnepesaukee. The property consists of a marina with a boat launching ramp, parking area, docks and two small buildings.

NHF&G will use \$556,250 of Federal Aid in Sportfish Restoration Funds and \$443,750 in Fish and Game Statewide Public Boat Access Funds to purchase the property. This will be the Department's first and only public boat access facility on the State's largest lake. After acquiring this property, boat access and shorebank fishing to Lake Winnepesaukee will be guaranteed in perpetuity.

Respectfully Submitted,

Glenn Normandeau
 Executive Director

Kathy Ann LaBonte
 Chief, Business Division

PURCHASE AND SALE AGREEMENT

The DOWNING BROTHERS, INC., with a mailing address at 382 Main Street, P.O. Box 319 Alton Bay, NH 03810 (the "SELLER") agrees to sell, and the STATE OF NEW HAMPSHIRE, by and through its Fish and Game Department, with a mailing address at 11 Hazen Drive, Concord, NH 03301 (the "STATE") agrees to purchase certain property in accordance with the terms and conditions set forth below:

1. **Premises:** The property to be conveyed through warranty deed is known as Downing's Landing and consists of Parcel A and Parcel B as shown on a plan dated November 1969. Said plan is recorded at Plan Book 23, Page 1773 in the Belknap County Registry. The combined parcels are approximately thirty-five thousand (35,000) square feet, or eight tenths (0.80) of an acre. Said parcels are the same conveyed to the Downing Brother's Inc., by Warranty Deed, recorded at Book 1038, Page 546, and identified as Tax Map 33, Lots 82 and 83 in the Town of Alton Assessor's Office. Said parcels are subject to the Conditions Precedent described in Number 8 and Number 9 below and are (hereby known as the "Premises").
2. **Purchase Price:** The purchase price (the "Purchase Price") shall be One Million dollars (\$1,000,000), which shall be paid by the STATE to the SELLER by State of New Hampshire Treasurer's check at Closing.
3. **Title and Deed:** The SELLER shall convey the Premises to the STATE by warranty deed in the form of good, clear, and marketable title, free from all liens and encumbrances except usual public utility easements serving the property.

If the SELLER is unable to provide title as agreed, then this agreement may be terminated by either party and upon termination, the STATE may choose to accept such title as the SELLER can give. Any adverse title matter acceptable to the STATE shall be reflected in the deed and the acceptance of such a deed shall be a complete discharge of the SELLER's obligation to provide good, clear, and marketable title.

4. **Representation:** The undersigned SELLER(s) and STATE(s) acknowledge the roles of the agents as follows: Betsey McNaughten, Land Agent, is an agent of the State of New Hampshire, Fish and Game Department, and that JONATHAN H. DOWNING, is the SELLER's agent or representative.
PRESIDENT, DOWNING BROTHERS, INC.

5. **Closing:** The Deed shall be delivered and exclusive possession shall be given to the STATE, and the STATE shall tender the Purchase Price to the SELLER at Closing. The date, time, and location of

the Closing shall be as mutually agreed to by the SELLER and STATE. The premises shall be delivered free and clear of all tenants and occupants.

6. **Tax on Transfer of Real Property:** The STATE who represents this conveyance is exempt from the real estate transfer tax under RSA 78-B.

7. **Payment of Real Property Taxes:** The SELLER shall be responsible for payment of all real estate property taxes due for the current tax year up to the time and date of Closing. The SELLER shall be responsible for all real estate property taxes, interests, costs, penalties, and betterments due for prior tax years. The SELLER shall provide to the STATE proof of payment of all real estate property taxes, interests, costs, penalties, and betterments at least fourteen (14) days prior to Closing.

8. **Examination of Title:** If the STATE desires an examination of title, it shall bear the cost thereof. If, upon examination of the title, it is found that the title is not marketable, this Agreement may be rescinded at the option of the STATE.

9. **Conditions Precedent for the State:** The STATE's obligations under this agreement, including its obligation to purchase the Premises, are subject to each of the following conditions, which run to the STATE's exclusive benefit:

- a. The STATE must obtain approval from the New Hampshire Fish & Game Commission and the New Hampshire Governor and Executive Council to purchase the Premises. STATE agrees to promptly seek such approval and shall provide notice to SELLER within fourteen (14) days of receipt of such approval.
- b. The STATE may obtain approval from the US Fish and Wildlife Service (USFW) and has the right, but not the obligation to terminate this contract in the event the USFW fails to approve any part of the review process or the funding for this purchase of the Premises.
- c. The STATE may perform, at its cost, any necessary activities to assure that the Premises meets the Department's programmatic objectives and complies with applicable federal and state land acquisition laws and regulations, including but not limited to the following: federal and state endangered/threatened plant and animals, state historic resources, and floodplains and wetlands protection.
- d. The STATE must be satisfied with the level of hazardous waste or contaminated materials, if any, upon the Premises. The STATE may perform, at its cost, an environmental assessment of the Premises and shall provide notice to the SELLER within thirty (30) days of the execution hereof of the results of such assessment, including in such notice a statement as to whether the STATE is satisfied with the state of the Premises with regard to hazardous waste or contaminated materials.

- e. If the STATE perceives anytime before closing that it will need additional time in order to complete any necessary approval process, it shall notify the SELLER in writing of the remaining approvals necessary and the expected time frame in which such approvals can be reasonably obtained.

In the event that the Conditions Precedent referred to herein is not satisfied (or waived) by the STATE, then this Agreement shall terminate without recourse by or against either party.

10. **Condition Precedent for the Seller:** The SELLER's obligations under this Agreement, including its obligation to convey and sell said Premises to the STATE, are subject to the following conditions, which run to the SELLER's exclusive benefit:

- a. That the Closing be on or before twelve (12) months from the date of STATE's signature; and
- b. That the property be named the "Downing's Landing" Boat Access Facility, Alton, New Hampshire, which will be stated on the entrance sign.

In the event that the Conditions Precedent referred to herein is not satisfied (or waived) by the SELLER, then this Agreement shall terminate without recourse by or against either party.

11. **Risk of Loss:** Risk of loss relative to any damage or loss to the Premises shall be on the SELLER until closing. In case of loss, any sums recoverable from insurance shall be paid or assigned at Closing to the STATE.

12. **Time:** Time is of the essence of all dates and time periods in this Agreement.

13. **Default:** If either party defaults hereunder, then the other party shall have available to it all rights provided under law and in equity.

14. **Notices:** All notices shall be sent to the parties at their addresses set forth above.

15. **Merger:** All representations, statements and agreement heretofore made by and between the STATE and SELLER are merged in this Agreement, which alone fully and completely expresses their respective rights and obligations.

16. **Governing Law:** This Agreement is made in accordance with New Hampshire law and shall be interpreted, governed and enforced under New Hampshire law.

STATE OF NEW HAMPSHIRE
Inter-department Communication

To: Betsey McNaughten, Land Agent
New Hampshire Fish and Game Department

From: Evan Mulholland, Assistant Attorney General
New Hampshire Department of Justice

Re: Title Work and Warranty Deed – Downing's Landing, Alton

Pursuant to RSA 212:7, I have reviewed and approve the title work and Warranty Deed, outlined in your memo dated October 10, 2012, for the property located in the Town of Alton, New Hampshire, and owned by Downing Brother's Inc.

10-10-2012
Dated


Evan Mulholland
Assistant Attorney General

Mail to:
NH Fish and Game Department
Facilities and Land Division
11 Hazen Drive
Concord NH 03301

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS that DOWNING BROTHERS INC., with a mailing address of 382 Main Street, PO Box 319, Alton Bay, Belknap County, and State of New Hampshire 03801 (Grantor), for consideration paid, grants to THE STATE OF NEW HAMPSHIRE acting by and through its FISH AND GAME DEPARTMENT, with an address of 11 Hazen Drive, Concord, County of Merrimack, State of New Hampshire 03301 (the State), the following:

Two tracts of land located in the Town of Alton, County of Belknap, State of New Hampshire, here on after collectively known as "Downing's Landing" and shown as Parcels A and B on a plan entitled "Plan Showing Land of Lester F. Downing at the Northwesterly Corner of the Junction of Route 11 and 28A," E.B. Hodges, dated November 1969, recorded at the Belknap County Registry of Deeds on December 9, 1969, Plan # 023-1773, being further described in Appendix A, attached hereto.

This property was acquired in part with funding received by the State from Grant Agreement # _____ between the U.S. Fish and Wildlife Service (the Service) and the State of New Hampshire Fish and Game Department as grantee. All present and future uses of the protected property are and shall remain subject to the terms and conditions described in the Notice of Grant Agreement recorded herewith in the Belknap County Registry of Deeds, and to the other administrative requirements of the applicable grant funding program on the Service.

The within conveyance is a transfer to the State of New Hampshire and pursuant to RSA 78-:2(I) it is exempt from the New Hampshire Real Estate Transfer Tax.

Signatures are on the following two pages.

Executed this ____ day of November, 2012.

DOWNING BROTHERS INC.

Jonathan H. Downing, President

Nancy J. Downing, Treasurer

State of New Hampshire
County of _____

I, hereby certify that Jonathan H. Downing, President personally appeared before me on this ____ day of November, 2012, (known to me or satisfactorily proven) to be the persons described in the foregoing instrument and acknowledged that he executed the same in the capacity therein stated and for the purpose therein contained.

Notary Public/Justice of the Peace
My Commission Expires:

State of New Hampshire
County of _____

I, hereby certify that Nancy J. Downing, Treasurer personally appeared before me on this ____ day of November, 2012, (known to me or satisfactorily proven) to be the persons described in the foregoing instrument and acknowledged that she executed the same in the capacity therein stated and for the purpose therein contained.

Notary Public/Justice of the Peace
My Commission Expires:

ACCEPTED:

Accepted by the New Hampshire Fish and Game Department this _____ day of November, 2012.

Glenn Normandeau, Executive Director

State of New Hampshire
County of Merrimack

Personally appeared before me on this _____ day of _____, 2012, Glenn Normandeau, who acknowledges himself to be the Executive Director for the New Hampshire Fish and Game Department, and as such is duly authorized to executed the foregoing instrument for the purposes therein contained, by signing his name on behalf of the State of New Hampshire.

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

APPROVALS:

Approved by the New Hampshire Department of Justice as to form, substance, and execution on this _____ day of November, 2012.

Assistant Attorney General

Approved by the New Hampshire Governor and Executive Council:

Approval Date: _____ Item #: _____

APPENDIX A

Parcel A

Beginning at an iron pipe on the westerly side of route 28-a and running south eighty-six degrees, twelve minutes west (s 86°12' w) a distance of one hundred forty-eight and eight tenths (148.8') feet, to a drill hole in a boulder on the shore of Lake Winnepesaukee;

Thence running north thirty-seven degrees, two minutes east (N 37 °2' E) by the shore of Lake Winnepesaukee a distance of one hundred eighty-six and sixty-five hundredths (186.65') feet, to an iron pipe;

Thence running north eighty degree, ten minutes east (N 80 °10' E) a distance of nine (9') feet, on the westerly sideline of Route 28-A;

Thence running south ten degrees, fifty-nine minutes east (S 10 °59' E) by the westerly sideline of Route 28-A a distance of one hundred and forty-three and twenty-five hundredths (143.25') feet, to an iron pipe at the point of beginning;

Containing 11,750 square feet, more or less.

Also intending to convey all of our right title and interest in and to any land lying between the Northwest boundary of said "Parcel A" and Lake Winnepesaukee, and any land lying on the easterly boundary of said "Parcel A" and Route 28-A.

Also conveying all of our rights, title and interest in and to certain rights of way over "Parcel A" and adjacent "Parcel B" as shown on said plan.

Meaning and intending to describe and convey the premises in the deed of Downing, Downing and Downing, a partnership consisting of Judson H. Downing, Richard S. Downing and Philip E. Downing to Downing Brothers Inc. dated January 19, 1988 and recorded in the Belknap County Registry of Deeds at Book 1038, Page 546.

Parcel B

Beginning at an iron pin set in the ground on the northeasterly side of Route 11, said point being located forty (40) feet easterly from the centerline of the former Smith Bridge that extends over the Merrymeeting River at its entrance into Alton Bay on Lake Winnepesaukee;

Thence running north four degrees forty-three minutes east (N 4°43' E) by the shore of Lake Winnepesaukee to a distance of one hundred and twenty-nine and nine-tenths (129.9') feet to a drill hole in a boulder;

Thence turning and running north eighty-six degrees twelve minutes east (N 86° 12' E) other land owned by Downing, a distance of one hundred and forty-eight and eight-tenths (148.8') feet to an iron pipe at Route 28-A;

Thence turning and running south ten degrees fifty-nine minutes east (S 10°59'E) by the westerly sideline of Route 28-A a distance of one hundred and five (105') feet to an iron pin;

Thence turning and running south thirty-three degrees seven minutes west (S 33° 7' W) by the westerly sideline of Route 28-A as its intersection with Route 11, a distance of fifty-two and three-tenths (52.3') feet to an iron pin;

Thence turning and running north eighty-seven degrees thirty-eight minutes west (N 87° 38 W) by the northerly side of Route 11, a distance of one hundred-fifty and six-tenths (150.6') feet to an iron pin at the point of beginning.

Containing 23,250 square feet, more or less.

Meaning and intending to describe and convey Tract IV in the deed of Richard S. Downing, Judson H. Downing and Philip E. Downing to Downing Brothers Inc. dated July 1, 1970 and recorded in the Belknap County Registry of Deeds at Book 542, Page 147.

APPENDIX B

Notice of Grant Agreement

The State of New Hampshire, Fish and Game Department and its successors and assigns (hereinafter "DEPARTMENT") acknowledge that the Property described in the Warranty Deed executed on (insert date), and recorded in the Belknap County Registry of Deeds at Book xxxx, Page xxxx, was acquired with federal funds received from the Sport Fish Restoration Program administered by the U.S. Fish and Wildlife Service, Division of Federal Assistance and its successors and assigns (hereinafter "SERVICE") and that the Property is subject to all applicable terms and conditions for the use of these funds and of Grant Agreement Number NH F-65-L-1 (hereinafter "GRANT AGREEMENT") between the Service and the Department. A copy of the Grant Agreement is kept on file at the offices of the Service, 300 Westgate Center Drive, Hadley, MA 01035-9589 and at the offices of the Department, 11 Hazen Drive, Concord, NH 03301.

The Department acknowledges that the property, which is the subject of the Grant Agreement, was acquired for the approved purposes of providing public motorboat access to waters of the State, and to enhance public enjoyment of New Hampshire's fish and wildlife resources. The Department further acknowledges that, as the Grant Recipient, it is responsible for ensuring the Property is used and will continue to be used for the approved purposes, and that the Property may not be conveyed or encumbered, in whole or in part, to any other party or for any other use, whatsoever, without the written consent of the Regional Director of the U.S. Fish and Wildlife Service.

If the Department loses control of the property, control must be fully restored or the property must be replaced, within three years, with a like property of equal value at current market prices and equal benefits. Further, if the property is used for activities that interfere with accomplishment of approved purposes, the violating activities must cease and any resulting adverse effects must be remedied.

If the Department determines that the Property is no longer needed or useful for its original purpose and the Service concurs, the Department may, with the prior written consent of the Service, either (1) acquire a property or other interest in land of equal value that serves the same approved purpose as the original property and manage the newly acquired property or other interest in land for the same purposes specified in the original Grant Agreement, or (2) repay the Service, in cash, the proportionate federal share of funds invested in the original purchase price, or to repay the Service, in cash, the proportionate federal share of the current fair market value of the Easement, or any portion thereof, whichever is higher, or (3) as a last resort, transfer the Property to the Service or to a third-party designated or approved by the Service.

The Department, as Grant Recipient, hereby confirms its obligations and responsibilities with regards to the Property pursuant to terms and conditions associated with Grant Agreement NH F-65-L-1 (Federal Identifier: #????).

ACCEPTED:

This Notice of Grant Agreement is accepted by the New Hampshire Fish and Game Department this ____ day of November, 2012.

Glenn Normandeau, Executive Director

State of New Hampshire
County of Merrimack

Personally appeared before me on this _____ day of _____, 2012, Glenn Normandeau, who acknowledges himself to be the Executive Director for the New Hampshire Fish and Game Department, and as such is duly authorized to executed the foregoing instrument for the purposes therein contained, by signing his name on behalf of the State of New Hampshire.

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

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 DOWNING BROTHERS, INC. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on June 2, 1970. I further certify that all fees and annual reports required by the Secretary of State's office have been received 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 19th day of October, A.D. 2012

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

DOWNING BROTHERS, INC.
P.O. BOX 319
ALTON BAY, NH 03810-0319

CERTIFICATE OF VOTE

I, Nancy J. Downing, Secretary of Downing Brothers, Inc. do hereby certify that:

1. I am the duly elected Secretary of Downing Brothers, Inc.
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of Downing Brothers, Inc. duly held on April 11, 2012.

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

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

3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of September 21, 2012.

4. Jonathan H. Downing is the duly appointed President and Nancy J.

Downing is the duly appointed Senior Vice President of the Organization.
IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of Downing Brothers, Inc. this 21st day of September, 2012.


Nancy J. Downing, Secretary

State of New Hampshire, County of Belknap

On this the 21st day of September, 2012, before me,  the undersigned officer, personally appeared Nancy J. Downing, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.


DONNA J. RUSSELL, Notary Public
My Commission Expires February 13, 2013



**Downing's Landing Boat Access Facility
Winnepesaukee Lake, Alton, NH**

**Proposed Acquisition by
New Hampshire Fish and Game Department
Statewide Public Boat Access Program**

**Downing's Landing Boat Access Facility
Alton Bay, Lake Winnepesaukee
Proposed Acquisition
New Hampshire Fish and Game Department
Statewide Public Boat Access Program**

Photos taken May 5, 2011







