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AGREEMENT BETWEEN
THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND THE
FRIENDS OF LAPHAM PEAK UNIT – KETTLE MORAINES STATE FOREST, INC.

This Agreement is between the Department of Natural Resources (hereinafter referred to as the "DNR"), acting through the Secretary, and the Friends of Lapham Peak Unit – Kettle Moraine State Forest, Inc. (hereinafter referred to as "The Friends"), acting through the President of its Board of Directors or the Board's designee.

WITNESSETH:

WHEREAS, it is the purpose of the DNR to preserve, interpret, and manage its properties for the benefit, education, and enjoyment of the people of the state; and

WHEREAS, the DNR desires to extend its program and services at The Lapham Peak Unit-Kettle Moraine State Forest (hereinafter referred to as "the property"); and

WHEREAS, The Friends has incorporated to assist the DNR in extending its program and services at the property,

NOW, THEREFORE, pursuant to authority contained in Chapter 27, Wis. Stats., and in consideration of the mutual benefits which will accrue to the DNR and The Friends, the parties agree as follows:

1. AUTHORIZATION

The DNR authorizes The Friends to provide, and The Friends agrees to provide when able, the hereinafter described services to the visiting public for a period of three years commencing on the day following the ratification of this Agreement by the DNR. The Agreement shall automatically renew for additional consecutive three-year periods, unless reasonable notice of cancellation is given by either party before the date of renewal. The DNR or The Friends reserve the right to terminate this Agreement or any part thereof, at any time upon 90 days written notice without the necessity of any legal process, after holding a meeting prior to the termination setting forth the reasons for termination.

An evident and distinct separation shall be maintained between the management and the decision-making activities of The Friends and those of the DNR. All steps shall be taken to avoid even an appearance that the DNR directs the management or decision-making process of The Friends.

The management and operation of The Friends is subject to all applicable Wisconsin Statutes and the Wisconsin Administrative Code.

2. DNR RESPONSIBILITIES

The DNR shall allow The Friends to use facilities at the property which are designated for the sale of educational and interpretive items for the benefit of the visiting public. The property manager shall have sole discretion in deciding which and how much display/sales area is used for The Friends items. Exhibit A. shows the location of such facilities.

A. Sales Items

The DNR shall cooperate with The Friends in the planning and design of merchandise appropriate for sale by The Friends at the facilities provided by the DNR.

B. Facilities

- (1) The DNR shall provide The Friends with office and storage space and with such sales and other facilities as may be deemed necessary or desirable by the DNR. The DNR reserves the right to relocate or remove any such facilities in order to meet needs of the DNR upon reasonable notice. All facilities shall be subject to the right of the DNR to make such surveys and inspections as it deems necessary.
- (2) The DNR reserves the right to design and construct any new facilities, and shall allow The Friends to review and comment on any such plans.
- (3) The DNR shall provide The Friends with incidental utility services at each assigned facility, including water, local phone calls, copies up to 200 per month, electricity, heat, and air conditioning, to the extent these utilities are required for the operation of the building for governmental purposes. All other utilities shall be provided The Friends on a reimbursable basis.
- (4) The DNR shall provide all general maintenance and repair services for the state-owned buildings.
- (5) The Friends shall be given special consideration in scheduling activities outside the normal building use schedule.

C. The DNR shall designate the property manager or the property manager's designee as liaison or property coordinator with The Friends.

D. Monies donated by The Friends to the DNR shall be expended to support the mission and activities of the property. ✓

E. The DNR shall promote The Friends in publications and announcements where DNR deems appropriate.

3. FRIENDS RESPONSIBILITIES

A. Exclusive Support

The Friends shall limit its official activities to the support of the property.

The Friends may use facilities and equipment within the property at the sole discretion of the DNR for its programs and activities for the benefit of the visiting public.

B. Organization

(1) The Friends' bylaws shall comply with the requirements of the State of Wisconsin. Nonprofit status must be maintained in accordance with state laws. The Friends shall make documents demonstrating nonprofit status available for inspection by the DNR upon request. This Agreement shall automatically terminate if nonprofit status is lost, or if the bylaws are amended in such a way as to alter the intent of this Agreement.

(2) DNR employees may be members of The Friends, but shall not serve on the board of directors or as treasurer. DNR employees shall not represent The Friends in any matter between The Friends and the DNR.

(3) The role of the property coordinator is to represent the interests of the DNR and to provide cooperative assistance to The Friends. The coordinator's responsibility to The Friends shall be limited to providing assistance to The Friends activities and serving as liaison between the DNR and The Friends.

C. Interpretive Activities

Interpretive activities engaged in by The Friends must meet DNR standards and be approved by the property manager.

D. Sales Items

(1) The Friends shall not sell any item that has not been approved by the property manager or designee. Whenever possible and

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appropriate, The Friends shall sell Wisconsin-made products. The Friends shall allow publications to be reviewed by the DNR for editorial and design quality.

- (2) The Friends is not by this Agreement granted the right to sell items, the sale of which would infringe on applicable contract rights of a concessionaire, if any.
- (3) The Friends shall maintain a high standard of quality as determined by the property manager in all items produced or sold.
- (4) The Friends shall sell items at or near market value of similar goods or services in the area of the property and such prices shall be approved in advance by the property manager.
- (5) The Friends shall display the sales items in good taste and in keeping with the general design and decor of the property.

E. Fund-raising

Fund-raising events and activities sponsored by The Friends shall be approved by the property manager or the manager's designee.

F. Facilities

- (1) The Friends may redesign and renovate existing sales facilities as necessary, including renovation of display structures, furnishing, equipment, signing, display lighting, and lighting in the immediate area of the facility, provided that all plans are approved in advance by the property manager.
- (2) The Friends shall keep the sales facility clean and presentable throughout the work day.
- (3) The Friends shall exercise reasonable care to prevent damage to any DNR property used by it during its operation and shall, insofar as possible, protect all such property.
- (4) The erection of signs and advertising or display materials relating to The Friends is not allowed unless authorized by the property manager. All signs, advertising or display materials, and all publications, stationery, and other promotional material issued or used exclusively by The Friends shall be paid for by The Friends.

All these materials shall clearly identify the property as a property of the State of Wisconsin Department of Natural Resources.

G. Records and Accounting

- (1) The Friends shall conduct its fiscal operations in accordance with accepted business practices, using purchase orders, receipts, invoices, and inventory records.
- (2) The Friends shall submit to the property manager an annual financial report detailing, as a minimum, all income and expenditures, within 90 days following the end of The Friends' fiscal year (October 1 to September 30). The report is not required to include a list of donors or itemized donations. The report shall be accompanied by a written summary of The Friends activities for the year.
- (3) The DNR may review and/or audit the records of The Friends at any time during the term of this Agreement with reasonable notice, but no less than 30 days notice.
- (4) The Friends shall maintain a checking account in its name, and shall deposit proceeds from sales, donations and other revenue in the account at least once each month wherein there is revenue. Only the treasurer or the (president's or treasurer's) designee may make the deposits. Unless otherwise stipulated in The Friends' bylaws, all withdrawals and expenditures of funds shall require the signatures of two board members of The Friends.
- (5) The Friends shall provide notice of its meetings in a manner that is reasonably likely to apprise interested persons.

H. Personnel

- (1) The Friends shall provide such personnel as are reasonably necessary to operate the sales facilities as indicated by the level of gross sales. These personnel may include, as necessary, a business office staff, facility managers, and sales clerks. Otherwise, DNR personnel may offer sales items to the public as an incidental supplement to their regular duties.
- (2) The Friends shall designate one member or employee who is authorized to act as liaison with the DNR.
- (3) All employees and volunteers of The Friends, involved in visitor service, shall be oriented in the visitor service programs of the property and shall be approved by the property manager before assuming such responsibilities.

- (4) The Friends personnel are not DNR employees and are not authorized to undertake any DNR function or activity on behalf of the DNR beyond routine visitor information services and participation in interpretive programs. The Friends employees and members shall not engage in activities that would reasonable lead the visiting public to conclude that they are DNR employees. No employee or member of The Friends shall wear a DNR uniform. All employees and volunteers of The Friends, involved in public service, shall wear some easily observable and readily identifiable indicia of The Friends affiliation while at the property or on The Friends business. If the DNR specifies volunteer uniforms or indicia, The Friends' employees and volunteers shall wear them while on duty. The DNR and The Friends will negotiate the maximum amount that can be spent on such uniforms.
- (5) Where applicable, The Friends shall furnish full worker's compensation coverage for its employees and shall comply with all social security and withholding tax laws and rules. A person claiming that the coverage is not required under Chapter 102, Wis. Stats., shall upon request, provide the basis for such opinion in writing to the DNR. When required to furnish full worker's compensation coverage for its employees, The Friends shall provide a copy of the insurance certificate to the property superintendent. Any changes in insurance coverage shall require immediate notification to DNR.
- (6) In connection with the performance of work under this Agreement, The Friends agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Friends further agrees to take affirmative action to ensure equal employment opportunities. If the annual work force is less than 10 employees, The Friends is exempted from this requirement.

I. Approvals

- (1) Hours of operation, rates and prices, standards of service, and merchandise to be sold shall be subject to the approval of the property manager.

- (2) The Friends may at any time make a written request to the property manager for such necessary approvals. Failure to disapprove within 30 days of receipt of such written request shall be deemed to constitute DNR approval.

4. INDEMNIFICATION AND INSURANCE

A. General

The Friends shall not be required to purchase liability insurance as long as it is engaged only in the sale of books, brochures, and other non-food items related to natural history, or in assisting DNR interpretive programs, or in assisting DNR in minor grounds maintenance projects.

B. Exception

In the event of The Friends sponsorship of events, programs, and projects beyond the scope of those noted in Paragraph A, The Friends shall purchase public liability insurance to be effective during a period of time specified by DNR to provide adequate protection of the state's interests. The liability insurance shall name the State of Wisconsin, Department of Natural Resources and its employees, and Friends of Lapham Peak, Inc., as insureds, in the minimum amount of \$300,000 single limit per occurrence including coverage of \$300,000 for bodily and personal injury and \$25,000 for property damage so that the DNR shall be protected from any liability arising out of the activities of The Friends. The Friends shall furnish the DNR with a copy of the insurance policy or a certificate of insurance, to be placed in a file with the Agreement, at least two weeks before The Friends begins such events, programs, or projects. The Friends shall indemnify the DNR against any cause of action, claim, damage, cost of expense, including reasonable attorney's fees, arising from its management or operation or from any breach or default by The Friends in the performance of this Agreement, or from any negligence of The Friends during such events, programs, or projects. If any action or proceeding is brought against the DNR by reason of any such cause or claim, The Friends, upon notice from the DNR, shall defend the DNR by counsel satisfactory to the DNR. If insurance is required, this Agreement shall be conditioned on the DNR's approval of the insurance policy. Any notice of cancellation of the insurance policy shall require immediate notice to the DNR.

C. Copyright Infringement

The Friends, in selling the articles described herein, guarantees that the sale or use of those articles shall not infringe on any copyright. The Friends covenants that it shall at its own expense defend every suit which shall be

brought against the State of Wisconsin (provided that The Friends is promptly notified of such suit, and all papers therein are delivered to The Friends) for any alleged infringement of any copyright by reason of the sale or use of such articles sold or distributed by The Friends, and agrees that The Friends shall pay all costs, damages, and profits recoverable in any such suit.

5. ASSIGNMENT

No transfer or assignment of this Agreement or of any part thereof or interest therein, directly or indirectly, voluntary or involuntary, shall be made unless such transfer or assignment is first approved in writing by the DNR Secretary or the Secretary's authorized representative.

6. APPROPRIATIONS

Nothing herein contained shall be construed as binding the DNR to expend any sum in excess of appropriations made by the Legislature, or administratively allocated, for the purpose of the Agreement, or to involve the DNR in any contract or other obligation for the future expenditure of money in excess of such appropriations or allocation.

7. MISCELLANEOUS

A. The rights and benefits conferred by this Agreement shall be subject to the Laws of the State of Wisconsin governing the DNR and the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or provided; and the mention of specific restrictions, conditions, and stipulations herein shall not be construed as in any way impairing the general powers of supervision, regulation, and control by the DNR.

B. Both parties agree to keep this Agreement in force when signed by both parties hereto until terminated by mutual agreement or at the option of either party upon 90 days notice given in writing upon any anniversary date hereof. DNR and The Friends shall review the Agreement every three years and at such other times as may be required by either party on 30 days written notice.

C. DNR or The Friends may terminate this Agreement upon 90 days written notice to the other party if, after reasonable effort by said party to correct a default, it is determined that conditions still exist contrary to this Agreement. In the event of a termination, The Friends' net assets shall become the property of the property's Gifts and Donations Account.

This Agreement is effective between The Friends and DNR with regard to, and only to, the following specified sites, which are collectively referred to throughout this Agreement as "the property", to wit:

Lapham Peak Unit – Kettle Moraine State Forest, Inc.

IN WITNESS WHEREOF, the Friends of Lapham Peak Unit – Kettle Moraine State Forest, Inc. has caused this Agreement to be executed this 4th day of June, 2008.

Friends of Lapham Peak, Inc.

By: *Jaimie Bronyski*
President, Board of Directors

Attested: *Aris A. Peterson*

Position: *Record custodian*

IN WITNESS WHEREOF, the Department of Natural Resources has caused this Agreement to be ratified this _____ day of _____, 2_____.

Department of Natural Resources

By: _____
Secretary

This Agreement is effective between The Friends and DNR with regard to, and only to, the following specified sites, which are collectively referred to throughout this Agreement as "the property", to wit:

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Friends of Lapham Peak, Inc.

By: 
President, Board of Directors

Attested: 

Position: Record custodian

IN WITNESS WHEREOF, the Department of Natural Resources has caused this Agreement to be ratified this 25th day of July, 2008.

Department of Natural Resources

By: 
Secretary