

## **Appendix C: Access Agreement with Lake Placid-North Elba Historical Society**

## ACCESS AGREEMENT

*For the property owned by the Lake Placid-North Elba Historical Society, Inc., identified as a portion of Tax Map Parcel Number 42.238-2-1.100, located in the Town of North Elba, County of Essex, and State of New York.*

*The attached map in Schedule A, depicting the location of the proposed multi-use trail, is made part of this agreement. All parties have signed the map and approve the location of the multi-use trail.*

### WITNESSETH

This Agreement is made by and between the Lake Placid-North Elba Historical Society, Inc., with a mailing address at P.O. Box 189, Lake Placid, New York; 12946 (hereinafter "Landowner"), and the New York State Department of Environmental Conservation (hereinafter "DEC").

WHEREAS, Landowner is the owner in fee of certain real property (hereinafter the "Property") depicted in red outline and more fully shown on the map in Schedule A attached hereto and made a part hereof, and;

WHEREAS, DEC wishes to establish and maintain a multi-use trail ("trail") on and across a portion of the Property. The trail is for the use and benefit of the public in accordance with the terms of this Access Agreement. The trail is a strip of land located on a portion of the Property, that is labeled "Public Access" in the map key and depicted in yellow cross-hatch as shown on the attached map in Schedule A, and;

WHEREAS, DEC has determined that the establishment and maintenance of such trail will provide substantial public benefit and therefore wishes to enter into this Agreement, and;

WHEREAS, New York State General Obligations Law § 9-103 grants landowners immunity, and creates no duty for a landowner to protect the public from injury on their property, when they allow the public to use their lands for the purposes stated in this Agreement, and;

WHEREAS, the New York State Attorney General may provide a legal defense for the Landowner, when injuries arise to members of the public due to reasons arising from the use of the Property in accordance with this Agreement.

NOW, THEREFORE Landowner and DEC agree to the terms and conditions as follows:

- 1) The term of this Agreement is five (5) years. It shall commence on the date last signed and terminate five (5) years later, unless sooner terminated in accordance with paragraph 3b of this Agreement. Either party may extend the term of this Agreement for additional five-year periods by providing the other party notice to that effect before the expiration of the original term of this Agreement. Any extension of this Agreement will be considered an amendment and must be agreed to in writing signed by the Landowner and DEC.
  
- 2) (a) This Agreement grants DEC permission to establish and maintain a trail on a portion of the Property, to be used as a public multi-use recreational trail. This Agreement grants to DEC the permission but not the obligation to develop and maintain such public trail.  
  
(b) The location of said public trail and access is depicted on the map in Schedule A, attached hereto and made a part hereof.
  
- 3) (a) This Agreement and the permission to utilize the public trail area are granted without monetary consideration from DEC.  
  
(b) This Agreement is revocable by Landowner by written notice to DEC at least three months prior to the actual termination of the Agreement. Termination by Landowner shall be based on cause, such as breach by the Department of a material term of this Agreement, after notice to the DEC and an opportunity to cure.
  
- 4) DEC may do all things necessary and incidental to create and utilize such public trail, provided that:
  - a. any DEC activity shall be undertaken at no cost to the Landowner;
  - b. no trees greater than five (5) inches in diameter at breast height shall be removed or destroyed without prior written consent of Landowner;
  - c. DEC will maintain the trail as needed on an annual basis to ensure that the trail is safe and to remediate any damage to the trail that may arise. DEC will provide signs and markers to confine users of the trail to the limits of the trail, and;

- d. DEC will respond to any report by Landowner regarding trespass or other misuse of said trail.
- 5) In consideration of the permission granted by the Landowner and in accordance with the hold-harmless provisions in paragraph 9, DEC shall hold the Landowner harmless and not claim any damages from Landowner in connection with or on account of any injuries or damages arising in or on the trail while being used by members of the public.
  - 6) The obligation of the DEC hereunder shall be deemed executory only to the extent of monies lawfully appropriated and available and no liability shall be incurred by the DEC beyond monies available for the purpose.
  - 7) The DEC, or any party it authorizes, shall have permission to access the trail at any and all times for the purposes of developing and managing the trail and for any other purpose connected therewith.
  - 8) This Agreement merges all prior negotiations between the parties. There are no agreements, promises, covenants or representations except those herein set forth. This Agreement may not be modified except in writing mutually subscribed by all parties.
  - 9) Subject to the availability of lawful appropriations, and as provided by New York State's Court of Claims Act and Section 17 of the Public Officers Law, DEC agrees to indemnify and hold harmless the Landowner, its successors and assigns, officers, employees, and agents, for any and all causes of action in law or equity, arising directly from the negligence of DEC or its employees, to the extent attributable to said negligence, in the use and access of the trail, for the purposes described herein.

DEC's duty to indemnify and save harmless prescribed by this paragraph shall be conditioned upon:

- a. Delivery to the Attorney General by the Landowner of the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after it is served with such document; and
- b. Representation by the Attorney General or, if the Attorney General determines in his or her sole discretion based upon investigation and review of the facts and circumstances of the case that representation by the Attorney General would be inappropriate, representation by private counsel to be selected by the Attorney General after consultation with the

Landowner; and

c. The full cooperation of the Landowner in the defense of such action or proceeding against DEC based upon the same act or omission, and in the prosecution of any appeal.

IN WITNESS WHEREOF, the parties execute this Agreement and the term of the Agreement begins on the date last signed.

**LANDOWNER, Lake Placid-North Elba Historical Society, Inc.**

Print Name: PARMELEE TOLKAN

By: Parmelee Tolkan Date: Sept 24, 2019

Landowner's Acknowledgment:

STATE OF NEW YORK )  
COUNTY OF Essex ) ss.

On the 24<sup>th</sup> day of September in the year 2019 before me, the undersigned, personally appeared Parmelee Tolkan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary JH Bliss

JANET H. BLISS  
Notary Public, State of New York  
No. 02BL4788975  
Qualified in Essex County  
Commission Expires May 30, 2023

**THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

By: *Nancy Wussier* Date: 10/22/19  
Nancy Lussier  
Director, Division of Management and Budget Services

Department Acknowledgment:

STATE OF NEW YORK )  
COUNTY OF ALBANY ) ss.

On the 22<sup>nd</sup> day of October in the year 2019 before me, the undersigned, personally appeared Nancy W. Lussier, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Cathleen A. Musella*  
Notary

Cathleen A. Musella  
Notary Public, State of New York  
Qualified in Albany County  
Reg. No. 01MU6298330  
Commission Expires 03/10/2022

**SCHEDULE A**

Location of Trail and Access to Property for Construction and Maintenance Purposes.

**(Map attached)**

