

## TRAIL EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this 28 day of JANUARY, 2019 by and between **ALBERT J. VOLPINI and JANICE VOLPINI** (hereinafter referred to as "Owner of Parcels") of **101 Cox Road, Newfield, New York 14867** and the **TOWN OF DRYDEN** (hereinafter referred to as "Town"), a municipal corporation of the State of New York, with offices at 93 East Main Street, Dryden, New York 13053.

WHEREAS, Owner of Parcels is the Owner in fee simple of certain real property (hereinafter referred to as the "Parcels") consisting of approximately 2.47 acres on N.Y.S. Route 366 in the Town of Dryden, Tompkins County, State of New York, currently designated as tax parcel numbers 39-1-12.22 and 39-1-12.23, as more particularly described in a deed dated July 31, 2014, and recorded July 31, 2014 as Instrument Number 2014-09163 in the Tompkins County Clerk's Office, and shown as Parcels B and C on a survey map entitled "Resurvey Map Land of David M. Parks and Parks Pads, LLC, Lot 35, Town of Dryden, Tompkins County, New York" prepared by Michael J. Reagan, LLS, dated July 19, 2014, and filed July 31, 2014 in the Tompkins County Clerk's Office as Instrument Number 2014-09165; and

WHEREAS, Town is a municipal corporation of the State of New York which desires to preserve, protect and enhance land in its natural, scenic, educational, historical, agricultural, forested, and/or open space condition and also to provide a wide array of recreational opportunities to its residents, as well as alternative means of commuting; and

WHEREAS, Town desires to create a recreational trail (the "Trail") for non-vehicular use by the public within or adjacent to a certain abandoned railroad property, as more fully set forth in an instrument dated April 12, 1982, and recorded April 19, 1982 in Liber 588 of Deeds at page 546 in the Tompkins County Clerk's Office, a portion of which runs southeasterly of the Parcels, adjacent to the southeasterly Parcel lines, as shown on the above-referenced survey map, which Trail is intended to enhance local and regional hiking, bicycling and recreational opportunities for the general public by providing an attractive and scenic section of a local trail; and

WHEREAS, Owner of Parcels desires to grant to Town an easement across that portion of the Parcels parallel and adjacent to the southeasterly Parcel lines, consisting of land thirty (30) feet in width and 222.75 feet in length across Parcels B and C (the "Easement Area"), for Town to improve and/or maintain the Trail, and Town desires to accept said easement.

NOW, THEREFORE, in consideration of the foregoing recitals and \$1.00, and other good and valuable consideration, receipt of which is hereby acknowledged by Owner of Parcels, the parties agree as follows:

1. Grant of Easement to Town for Trail: Owner of Parcels hereby grants, transfers, and conveys to Town the following:
  - a. For the benefit of the public, a perpetual easement and right-of-way for

non-vehicular ingress, egress, and access by the public over and across the Easement Area.

- b. A perpetual easement and right-of-way for vehicular and non-vehicular ingress, egress, and access by Town personnel for construction and maintenance of the Trail and access in the event of an emergency over and across the Easement Area.

2. Purposes, Conditions, Restrictions, Reserved Rights.

- a. The easement to Town for the Trail is established for recreational and commuting trail purposes, including, but not limited to, walking, running, skiing, snowshoeing, bicycling, horseback riding, bird watching, nature study, and the use of electric-assist bicycles and power-driven mobility devices by persons who have mobility impairments.
- b. The Trail may be located anywhere within the Easement Area, at the Town's sole discretion, and may be indicated by standard markings, including within the Parcel.
- c. Owner of Parcels has the same rights accorded to the general public for use of the Trail.
- d. Owner of Parcels may remove or exclude from the Parcels any Persons who are (i) in locations other than the Trail or Trail facilities or (ii) engaged in non-permitted Trail uses.
- e. Owner of Parcels may not construct, install or maintain any facility or improvement within the Easement Area that is incompatible with the purposes of the Trail described above in 2.a., and/or that impedes public use of the Trail. Town assures Owner of Parcels that an existing water well located near the Easement Area boundary will not be impaired during construction, use or maintenance of the Trail, and Town agrees to provide a secure, tamper-resistance cover for the wellhead.
- f. Town may mow, trim brush and branches, grade and improve the Easement Area, by the application of gravel, crushed stone, cinders, stone dust and/or asphalt; and construct, install, repair and/or replace bridges, culverts, pipes, railings, fences, gates, barriers to control access, vegetative screening, and interpretive signs. All costs of such construction, installation, maintenance, repair and replacement of the Trail and/or the Easement Area will be borne by Town except to the extent necessary to repair damage caused by Owner of Parcels.
- g. Installation and maintenance by Town of the following shall require the prior written consent of Owner of Parcels: Parking areas (at roadway intersections), kiosks, bicycle racks, picnic tables and benches (collectively, "Special Trail Facilities"). Special Trail Facilities to be installed by Town and agreed to by Owner of Parcels as of the Easement Date are listed in Schedule A (if any) attached to this document entitled

"Special Conditions to Trail Easement."

- h. No person is permitted to charge a fee for access to the Trail or use of Trail facilities.
  - i. Right to Suspend Trail Use. Town or its designee, in its sole discretion, shall have the right to suspend public use of the Easement Area from time to time.
  - j. The special conditions, if any, attached hereto in Schedule A are made a part of this instrument as if more fully set forth herein.
- 3. Easement Runs with Land, Successors and Assigns. This Easement shall bind and run with title to the Parcels forever, and shall inure to the benefit of the parties hereto and their successors and assigns; provided, however, that any successor or assignee of the Town must be a federal, state or local government corporation or a Not-For-Profit Corporation qualified under the laws of New York State to hold such easements; and further provided that Town may terminate this Easement as provided under Paragraph 5 below.
- 4. Hold Harmless, Indemnification of Owner of Parcels. Town agrees to defend, indemnify and hold harmless Owner of Parcels from any claims, suits, actions or proceedings for any cause of action arising out of any negligent act or omissions of Town with respect to the easement herein granted, and from any claims, suits, actions or proceedings for any cause of action claimed or brought by any person using the Easement Area, except for intentional or negligent acts of Owner of Parcels.
- 5. Termination/Modification. In the event that Town determines that the Easement Area is no longer needed or desirable across the Parcel, Town may terminate said easement by written instrument duly signed by Town and acknowledged and recorded in the Tompkins County Clerk's Office. This Easement may only be modified or amended by written instrument executed by the parties (or their successors in interest) and recorded in the Tompkins County Clerk's Office.
- 6. Governing Law. This Easement shall be governed by and construed in accordance with the laws of the State of New York.
- 7. Dispute Resolution. It is possible that in the future the parties may have disagreements with one another concerning the interpretation of this Easement Agreement or concerning modification of provisions of this Easement Agreement. Notwithstanding this, the parties wish to not resort to litigation before reasonable non-court alternatives have first been attempted. The parties agree, therefore, to try to resolve any disputes that may arise in the future as set forth below, except in the case of urgent or emergency situations which would reasonably prevent such resolutions or make them impracticable:
  - a. As a first step in resolving future differences, if any, the parties first will attempt in good faith to confer with one another orally.

- b. If speaking with one another is unsuccessful, then as the second step the parties will try to achieve resolution in writing, with each of them to present to the other a proposed modification to and/or implementation of this easement agreement.
- c. If there is no resolution at the end of the second step, as a third step the parties agree to participate in mediation or Collaborative Law negotiations to resolve the dispute. Both parties agree to participate in mediation or Collaborative Law negotiations in good faith and to attend at least three mediation or negotiation sessions prior to resorting to litigation.
- d. If there is no resolution at the third step, either party may commence contested court proceedings. It is the intent and commitment of the parties to make diligent efforts to avoid court proceedings and resolve disputes by agreement.

TO HAVE AND TO HOLD said easement and the rights granted hereunder to Town and to Owner of Parcels, their respective successors and assigns forever.

IN WITNESS WHEREOF, Owner of Parcels and Town have set their hands on the day and year first above written.

**TOWN OF DRYDEN**

  
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**ALBERT J. VOLPINI**

By: \_\_\_\_\_  
**JASON M. LEIFER,**  
Town Supervisor

  
\_\_\_\_\_  
**JANICE VOLPINI**

STATE OF NEW YORK )  
COUNTY OF TOMPKINS) ss.:

On the 28 day of January in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared **ALBERT J. VOLPINI and JANICE VOLPINI**, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the persons upon behalf of whom the individuals acted, executed the instrument.

Karen Miller Kenerson  
Notary Public

KAREN MILLER KENERSON  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01M16187885  
QUALIFIED IN TOMPKINS COUNTY  
COMMISSION EXPIRES JUNE 2, 2020

STATE OF NEW YORK )  
COUNTY OF TOMPKINS ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared **JASON M. LEIFER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the persons upon behalf of whom the individuals acted, executed the instrument.

\_\_\_\_\_  
Notary Public