

COOPERATION AGREEMENT

THIS AGREEMENT, dated as of _____, 2020 is made between the Garnet Lake Conservation Association, Inc, a not-for-profit corporation existing under the Laws of the State of New York (“GLCA”), and the Town of Johnsburg, a municipal corporation of the State of New York (the “Town”).

WHEREAS, Garnet Lake (the “Lake”) is located in the Town and the Town of Thurman in the County of Warren (the “County”) in the Adirondack Park; and

WHEREAS, the Lake, which is approximately 2.3 miles long with over 300 acres of water surface, is maintained by impoundment through a privately-owned dam (the “Dam”), which Dam consists of an earthen impoundment and a concrete structure that includes three (3) culverts and over which Dam is located a Town Highway (as defined below); and

WHEREAS, the Lake has a total shoreline of 7.2 miles of which 4.2 miles (70%) is owned by the State of New York (the “State”); and

WHEREAS, the Lake is surrounded by a significant amount of State-owned forest land that provides camping, boating and hiking access, including a public access boat launch and numerous state-owned picnic and camp sites, that are used by residents of the Town and the general public for recreational purposes; and

WHEREAS, the Dam has been designated as a High Hazard Class C Dam by the New York State Department of Environmental Conservation (“DEC”); and

WHEREAS, a Town road (Cross Road) that is owned and maintained by the Town (the “Town Highway”) crosses over and is located on the Dam; and

WHEREAS, in a letter dated September 28, 2018 to GLCA and the Town (the “DEC Letter”), DEC stated that, because the Town Highway is situated on the Dam, the Town has an interest in the Dam and therefore is an “owner” of the Dam as defined in Section 15-0507 of the Environmental Conservation Law (“ECL”) and 6 NYCRR §673.2(t); and

WHEREAS, the Town denies that it has any interest in the Dam and nothing in this Agreement shall be deemed to waive any rights the Town has to contest this determination by DEC at future date in the manner provided by law.; and

WHEREAS, the DEC Letter further advised GLCA and the Town that DEC had assigned a rating of “Unsound-Fair” to the Dam due to the need to address the inadequate spillway capacity of the Dam and that “The owner of a dam with a condition rating of "Unsound — Fair" is in violation of ECL Article 15, Section 0507 and 6 NYCRR Part 673.16.”; and

WHEREAS, the DEC Letter encouraged GLCA as owner and the Town as reputed owner by DEC, of the Dam, “to work together to come up with a plan to operate, maintain and repair the [D]am, as necessary, and in a safe condition.”; and

WHEREAS, GLCA currently does not have sufficient financial resources to undertake a major rehabilitation of the Dam and the Town has stated that it cannot assume any financial responsibility for a privately owned dam but is responsible for the care and maintenance of the Town Highway; and

WHEREAS, the GLCA and the Town desire to: (i) comply with requirements of Article 15 of the ECL and the regulations promulgated thereunder (the “DEC Regulations”); (ii) develop a plan for operating, maintaining and repairing the Dam in accordance with the DEC Regulations; and (iii) preserve the Lake in current form so it may continue to be used by residents of the Town and the general public for recreational purposes; and

WHEREAS, GLCA and the Town further desire to enter into this written agreement to set forth the responsibilities of each party hereto in connection with: (1) the operation and

maintenance of the Dam and the Town Bridge; (2) making application for Federal and State grant funds and other sources of funds (“Grant Funds”) that are available to help GLCA pay for the cost of design and construction of improvements necessary to comply with the DEC Regulations (the “Dam Improvements”); and (3) to the extent that such Grant Funds are not sufficient to fully fund the cost of the Dam Improvements, the development and implementation of a plan for GLCA and/or a county or town improvement district or public-private partnership to be established in the future to finance the cost of the shortfall.

NOW THEREFORE, in consideration of the mutual covenants and terms set forth herein, the parties agree as follows:

ARTICLE ONE

Definitions

1.1 When used in this Agreements, all capitalized terms shall have the meanings ascribed thereto in the Recitals hereto.

ARTICLE TWO

Ownership of Property

2.1 The Dam is owned by GLCA pursuant to a deed dated July 9th, 1957 from Lester Ross to Garnet Lake Civic Association, Inc. and recorded in the Warren County Clerk’s Office in Book 370 at Page 475 and GLCA is therefore responsible for the care and maintenance of the Dam.

2.2 The Town Highway is a public highway by use as set forth in Section 189 of the Highway Law of the State of New York, and is maintained by the Town and for which the Town is responsible pursuant to the applicable provisions of the Highway Law of the State of New York.

2.3 Notwithstanding the ownership of the Dam and the Town Highway as described in Sections 2.1 and 2.2, DEC has determined that both GLCA and the Town are owners

of the Dam for purposes of the DEC Regulations because the Dam and the Town Highway are, in effect, a single structure. As between the Town, GLCA and any third party, GLCA acknowledges that it is the sole owner of the Dam and is solely responsible for the upkeep, repair and maintenance thereof; provided however that nothing in this Agreement, including this Section 2.3, shall be construed to make GLCA liable for any actions required to be taken or for any expenditures required to be made by the Town with respect to the Town Highway under the Highway Law of the State New York or any other law of the State of New York that imposes obligations upon the Town as a result of its ownership of the Town Highway.

ARTICLE THREE

Operation and Maintenance of the Dam and the Town Bridge and Highway

3.1 GLCA shall continue to be individually responsible for the care, operation and maintenance of the Dam, but shall cooperate and assist the Town in the performance of the Town's responsibilities relative to the Town Highway. GLCA shall oversee and undertake those actions necessary to maintain the Dam in a safe and careful manner and/or to comply with any lawful orders issued by DEC or a court.

3.2 The Town shall continue to be individually responsible for the care, operation and maintenance of the Town Highway, but shall cooperate and assist GLCA in the performance of GLCA's responsibilities relative to the Dam. The Town shall oversee and undertake all actions relative to the Town Highway such that the Town Highway shall be maintained in a safe and careful manner and in compliance with applicable regulations. Nothing contained herein shall be construed to create a special duty by the Town relative to such Town Highway, as such special duty may be expressly or impliedly created, interpreted or alleged under New York law.

3.2 Nothing in this Agreement shall be construed to make either party responsible for funding the cost or performing the responsibilities of the other with respect to the Dam and the Town Highway, as the case may be, and both parties acknowledge and agree that

their only obligations to each other hereunder are to work cooperatively together as provided in the Agreement.

ARTICLE FOUR

Design, Acquisition and Construction of Dam Improvements

4.1 GLCA and the Town shall work together to apply for and utilize any Grant Funds available to assist GLCA in GLCA's financing the cost of the design and construction of the Dam Improvements as necessary to comply with the DEC Regulations.

4.2 To the extent that Grant Funds available to GLCA and/or the Town are not sufficient to finance the full cost of the Dam Improvements, GLCA and the Town shall work together to identify other available alternatives to enable GLCA to undertake the necessary Dam Improvements. Nothing contained herein shall be construed to require the Town to fund GLCA's private Dam improvements or repairs so long as GLCA or another private entity retains ownership of the Dam as such expenditures may be an unconstitutional gift of public funds to a private entity if such expenditures are not also necessary to enable the Town to fulfill its responsibilities under Section 3.2 of this Agreement.

4.3 Any procurement of goods or services relative to the Town Highway made pursuant to this Agreement shall be done in accordance with any law governing procurements by the Town to the extent that any such law is deemed applicable by the Town. Any procurement of goods or services relative to the Dam will be made pursuant to this Agreement shall be done in accordance with any law governing procurements by GLCA to the extent that any such law is deemed applicable by GLCA.

ARTICLE FIVE

Responsibility for Damages and Claims

5.1 In the event any liability is assessed against either of the parties to this Agreement by any third-party arising out of the operation, repair, maintenance, design or construction of the Dam or the Town Highway, as the case may be, the parties shall be separately liable for the defense and payment of such claims and nothing in this Agreement shall be construed to obligate either party to assume or take responsibility for the legal obligations of the other with respect to the Dam or the Town Highway, as the case may be. Each party shall indemnify, defend and hold harmless the other from any claims, causes of action, damages, fines or penalties arising from any act or omission of such party relative to their ownership and obligations hereunder. It is expressly agreed that the Town has and shall have no obligation for operation, maintenance, repair or replacement of the Dam as between GLCA and the Town, and that GLCA has and shall have no obligation for operation, maintenance, repair or replacement of the Town Highway as between GLCA and the Town. Notwithstanding the foregoing, nothing in this Agreement shall be construed to make GLCA liable for any actions required to be taken, or for any expenditures required to be made by, the Town with respect to the Town Highway under the Highway Law or any other law of the State of New York that imposes obligations upon the Town as a result of its ownership of the Town Highway.

5.2. The obligations and agreements of GLCA and of the Town contained herein and shall be deemed the obligations and agreements of the GLCA or the Town, as the case may be, and not of any member, officer, director, agent or employee of GLCA or of the Town in his or her individual capacity, and the members, officers, directors, agents and employees of GLCA and the Town shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby.

ARTICLE SIX

Term of the Agreement

6.1 This Agreement shall remain in full force and effect until December 31, 2025 and shall automatically be renewed for an additional term of five years unless one party gives the other party written notice of its intent to terminate the Agreement at the end of such term or any renewal term. Such notice must provide for the termination of the Agreement as of the first day of January next succeeding such notice and must be provided at least six months prior to such January 1st. Notwithstanding said term, the foregoing term shall not be construed to eliminate or alleviate ownership obligations relative to the Dam and/or Town Highway, as the case may be.

ARTICLE SEVEN

Miscellaneous

7.1 Entire Agreement This Agreement constitutes the full and complete understanding and agreement between the parties with respect to the matters set forth herein. This Agreement supersedes all prior oral or written agreements, communications and documents among the parties with respect to the subject matter hereof.

7.2 Assignment This Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other party. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns.

7.3 Amendments This Agreement shall be amended only upon written agreement of both parties.

7.4 Absence of Waiver The failure of a party to insist upon strict performance of any provision hereof shall not constitute a waiver of, or estoppel against, asserting the right to require such performance in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later breach of a similar nature or otherwise.

7.5 Survival of Obligation The provision of Sections 5.1 and 5.2 shall survive for a period of time equal to the longest statute of limitations existing as of the date of termination or expiration of this Agreement and applicable to any claim which could be brought under this Agreement or against either of the parties to this Agreement and arising out of the activities contemplated under this Agreement.

7.6 Further Assurances Each of the parties hereby agrees that it shall hereafter make, execute and deliver any and all such further and other instruments, documents and agreements, and do such other and further acts and things, as may be necessary or expedient to carry out and give full force and effect to the intent and purpose of this Agreement and to the provisions hereof and to assure that each of the parties hereto enjoys the benefits contemplated by this Agreement.

7.7 Severability The parties intend each provision of this Agreement to be construed as may be possible and reasonable in a manner which will make it legal, valid and enforceable. Any provision or provisions hereof, or any portion thereof, found to be unenforceable or prohibited by law will be ineffective only to the extent of such unenforceability or prohibition, and no other provision of this Agreement will be invalidated thereby, but only if and to the extent such enforcement would not materially and adversely frustrate the parties' essential objectives expressed herein.

7.8 Counterparts This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

7.9 No Third-Party Beneficiaries The provisions of this Agreement are intended for the sole benefit of GLCA and the Town and there are no third-party beneficiaries other than assignees contemplated by the terms herein.

ARTICLE 8

NOTICES

8.1 Giving of Notice. Except as provided otherwise in this Agreement, any notice to either GLCA or the Town required herein shall be in writing and deemed to have been given when delivered, if delivered in person, or two days after delivery to a carrier if sent by registered or certified mail, return receipt requested, or nationally recognized courier service, addressed as follows:

To Garnet Lake Conservation Association, Inc.:

To the Town of Johnsburg:

8.2 Change of Address. Either party may change, at any time, its address for receiving notices by delivery of written notice to the other party of such change.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date set forth above.

WITNESS:

**GARNET LAKE CONSERVATION
ASSOCIATION, INC.**

By: _____

Date: _____

WITNESS:

TOWN OF JOHNSBURG

By: _____

Date: _____

