

MUNICIPAL COOPERATION AGREEMENT

THIS AGREEMENT is made this 27th day of March 1990 by and among the Town of East Bloomfield, the Town of Victor and the Town of West Bloomfield (collectively the "Towns," or individually a "Town"), each of which is a Town in the County of Ontario, New York.

WHEREAS, the Town of East Bloomfield has entered into an agreement with the Village of Fairport, Monroe County, New York under which the town of East Bloomfield holds an option to purchase from the Village of Fairport for the sum of \$1,500,000 a certain parcel of land consisting of approximately 330.5 acres located at the Northeast corner of the intersection of Boughton and Stirnie Roads in the Town of East Bloomfield (the "Land").

WHEREAS, the Towns desire to cooperate with each other to jointly acquire the Land, to establish a public park (the "Park") thereon, and to jointly manage, operate and maintain the Park for the benefit of the citizens of the Towns and the public at large.

WHEREAS, in order to coordinate their efforts and to achieve economies of scale in the accomplishment of these purposes, the Towns desire to enter into this Municipal Cooperation Agreement as authorized pursuant to Section 119-o of the General Municipal Law of the State of New York to set forth the relative duties and responsibilities of the Towns with respect to the joint acquisition of the Land and the joint establishment of the Park, and to agree upon the method and terms by which the Park will be jointly managed and maintained and the relative responsibilities of the Towns for the costs of such management and maintenance.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements herein set forth, and intending to be legally bound, the Towns do hereby agree as follows:

ARTICLE I

Definitions

For purposes of this Agreement, the following capitalized words and phrases shall have the following meanings:

1.1 "Committee" shall mean the committee created pursuant to Section 4.2 of this Agreement to govern the management, maintenance and development of the Park.

1.2 "Corporation" shall mean the New York not-for-profit corporation organized by the Towns in accordance with Section 4.4 of this Agreement to manage, maintain and develop the park on behalf of the Towns.

1.3 "East Bloomfield" shall mean the Town of East Bloomfield, Ontario County, New York.

1.4 "Land" shall mean the approximately 330.5 acres of land located at the Northeast corner of the intersection of Boughton and Stirnie Roads in the Town of East Bloomfield, Ontario County, New York to be acquired jointly by the Towns from the Village of Fairport, Monroe County, New York.

1.5 "Park" shall mean the public park to be established upon the Land by the Towns.

1.6 "Pro Rata Share" of a Town shall mean the percentage set forth opposite the name of such Town on Schedule I attached hereto, provided that Schedule I shall be revised as of December 31, 1990 and annually thereafter on December 31 of each year during the term of the Agreement to revise such percentages to reflect the most recently determined relative annual full valuations of real property for each Town. Each Town's percentage represents a fraction, the numerator of which is the particular Town's most recently determined full valuation and the denominator of which is the sum of the most recently determined full valuations for all three Towns. On or before December 31 of each year, the Committee shall send a copy of Schedule I which has been revised to reflect the most recently determined assessed valuation of each Town to the Supervisor of each Town, which revised Schedule I shall become Schedule I for purposes of this Agreement for the next calendar year.

1.7 "Victor" shall mean the Town of Victor, Ontario County, New York.

1.8 "West Bloomfield" shall mean the Town of West Bloomfield, Ontario County, New York.

Statutory Authority

2.1 Pursuant to General Municipal Law Section 119-o, the Towns are empowered to enter into agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative basis. Pursuant to Town Law Sections 81(1)(d) and 220(4), the Towns may establish public parks, acquire the necessary lands therefore, and equip the same with suitable buildings, structures and apparatus.

ARTICLE III

Acquisition of the Land; Establishment of the Park

3.1 Joint Acquisition of the Land.

(a) The Towns hereby agree to jointly acquire the Land from the Village of Fairport for a purchase price not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000). The Land shall be owned by the Towns jointly as tenants-in-common as follows: East Bloomfield shall own an undivided 18.29 percent interest as tenant-in-common; West Bloomfield shall own and undivided 13.42 percent interest as tenant-in-common; and Victor shall own an undivided 68.29 percent interest as tenant-in-common.

(b) The purchase price of the Land shall be allocated among and borne by the Towns as follows: East Bloomfield, 18.29 percent; West Bloomfield, 13.42 percent; and Victor, 68.29 percent. Thus, for example, if the purchase price of the Land is \$1,500,000, East Bloomfield shall be responsible to pay \$274,392, West Bloomfield shall be responsible to pay \$201,271, and Victor shall be responsible to pay \$1,024,337. The Towns further agree to share all additional reasonable costs of acquiring the Land, including without limitation engineering, surveying and legal fees, in accordance with the percentages stated in the first sentence of this paragraph (b).

(c) The Towns hereby appoint their respective Supervisors to act as agents for the Towns to jointly negotiate with the Village of Fairport a final contract for the joint acquisition of the Land by the Towns. Such final contract shall be separately approved by the Town Board of each of the Towns and shall be entered into by each of the Towns in its own name.

3.2 Establishment of the Park.

(a) The Towns agree that the Park shall be established on the Land in accordance with Section 220 of the Town Law of the State of New York effective on the date that the Land is jointly acquired by the Towns in accordance with paragraph (a) of Section 3.1 hereof, and to take any actions required by law to accomplish the foregoing.

(b) The Towns agree to share all reasonable cost of establishing the Park on the Land in accordance with the percentages stated in the first sentence of paragraph (b) of Section 3.1 hereof.

ARTICLE IV

Purpose, Governance and Management

4.1 Purpose.

The Towns hereby acknowledge and agree that the purpose and intent of the Towns in entering into this Agreement to jointly acquire the Land and to establish a Park thereon is to preserve the Land in substantially its present condition for the use and enjoyment of the residents of the Towns and the public at large.

4.2 Governance.

(a) The Park shall be governed by a committee (the "Committee") of nine residents of the Towns, consisting of four representatives of Victor, three representatives of East Bloomfield and two representatives of West Bloomfield. Each representative shall be appointed by the Town Board of the Town which he or she represents in such manner and for such term as each Town Board shall determine in its sole discretion. The Committee shall meet from time to time as necessary, and at least quarterly, and shall have and exercise the authority to determine all questions of management, maintenance and development of the Park, except as provided in paragraphs (b), (c) and (d) of Section 4.3 hereof (relating to the approval of the annual budget for the Park) and in Section 5.2 hereof (relating to the providing of insurance for the Park). All decisions and actions of the Committee shall be approved by a majority vote of the voting strength of the Committee, with each representative casting one vote, except that the approval by the Committee of any "physical change" to the Park

(as defined in paragraph (b) of this Section 4.2) must be approved by unanimous vote of the voting strength of the Committee.

(b) For these purposes, the term "physical change" shall mean a permanent alteration of the Land or any improvement thereon which either: (i) would materially restrict or otherwise change the use or potential use of any portion of the Land or improvement; or (ii) would significantly alter the appearance or physical contours of the Park or any part thereof; or (iii) would materially adversely affect any significant portion of the plant or animal life of the Park. A physical change shall include, but shall not be limited to, the construction of hiking or skiing trails and horseback riding paths, the construction of a dock on or near any pond or lake, the construction of any building or other structure, the erection of a fence of any kind, the construction of new roads, the construction of additional parking areas and the clearing of any portion of the Park of trees or other wildlife for the purpose of creating playing fields or otherwise. A physical change shall not include, among other things, the resurfacing of an existing road or parking area, the painting or repairing of buildings, fences or other existing improvements, and the reasonable posting of signs for purposes of identifying the Park or certain landmarks therein or for the safety or convenience of users of the Park.

4.3 Costs of Management and Maintenance.

(a) All costs of management, maintenance and development of the Park shall be borne by the Towns in accordance with their respective Pro Rata Shares. The Towns intend that, to the extent possible, the maintenance, management and development of the Park shall be performed by employees of one or more of the Towns and using equipment and facilities of one or more of the Towns for the purpose of reducing the costs of management, maintenance and development of the Park.

(b) The Committee shall, no later than July 15th of each year during the term of this Agreement, adopt a preliminary annual budget for the Park (the "Preliminary Budget") which shall set forth the anticipated costs of the management, maintenance and development of the Park for the calendar year beginning the following January 1st. The Preliminary Budget, as adopted by the Committee, shall be filed with the Supervisor of each of the Towns

no later than July 20th of each year, and such Preliminary budget shall be presented to a joint meeting of the Town Boards of each of the Towns not later than September 1st of each year by one or more members of the Committee designated by the Committee.

(c) After the joint meeting of the Town Boards, the Committee shall make such revisions to the Preliminary Budget as it deems appropriate and shall submit the Preliminary Budget, as so revised, to the Town Boards of each of the Towns not later than August 10th of each year for their final approval. Each Town Board, at its next regular meeting scheduled after August 10th, shall consider and either approve or disapprove such revised Preliminary Budget. Provided that such revised Preliminary Budget is approved by the Town Boards of at least two of the Towns, such budget shall become the final budget for the Park for the next calendar year (the "Final Budget"). If such Preliminary Budget is not approved by the Town Boards of at least two of the Towns, the Committee shall, as soon as practicable after the failure to obtain such approval, further amend the revised Preliminary Budget and cause such amended budget to be resubmitted to the Town Boards for approval as the Final Budget. If no Final Budget has been approved by the Town Boards of at least two of the Towns by September 1st of each year, the total Final Budget for such year shall be equal to 100 percent of the Final Budget for the immediately preceding year plus 5 percent of the amount in such prior year's Final Budget for salaries of employees of the Corporation.

(d) Each of the Towns shall cause an appropriation equal to its Pro Rata Share of the Final Budget, as approved by the Town Boards of at least two of the Towns pursuant to paragraph (c) of Section 4.3 of this Agreement, to be included in that Town's final budget adopted pursuant to Section 109 of the Town Law.

4.4 Creation of the Corporation as Park Administrator.

(a) The Towns hereby agree to create a New York not-for-profit corporation (the "Corporation") to act as the administrator of the Park to carry out the day-to-day management and maintenance of the Park. Each of the Towns shall be members of the Corporation, which shall have no other members. The Corporation, its officers and employees will perform such management and maintenance of the Park at the direction of, and in

the manner designated by or consistent with the decisions of, the Committee, which committee shall constitute the Board of Directors of the Corporation (the "Board of Directors").

(b) The Corporation shall be organized by the Towns pursuant to the New York Not-For-Profit Corporation Law, and shall be governed and operated, consistent with such Not-For-Profit Corporation Law, according to the by-laws of the Corporation (the "By-Laws"), which shall be agreed to by each of the Towns prior to their adoption, and which may be amended only with the approval of each of the Towns (or its designated representative). The Towns hereby agree that the By-Laws shall, among other things, contain in substance the following provisions: (i) the affairs of the Corporation shall be managed and directed by a Board of Directors, and the Committee shall constitute such Board of Directors, and the members of the Board of Directors shall be selected in the manner, and shall exercise such voting and other rights, described in Section 4.2 hereof; (ii) at its first meeting in each calendar year, the Board of Directors shall elect a President, Secretary and Treasurer, who shall serve until their successors are elected; (iii) the Board of Directors shall meet at regular intervals to be determined by such Board, but not less than quarterly, and such meetings shall be open to the public except to the extent that any meeting or portion thereof would not be required by the New York Open Meetings Law to be open to the public if the Corporation was a Town; (iv) notice of every regular meeting of the Board of Directors shall be mailed to every member thereof no less than ten days prior to such meeting, and shall be given to the general public in a reasonable manner as determined by the Board of Directors; (v) the Corporation will comply with the public bidding requirements of Section 103 of the New York General Municipal Law whenever the Corporation acquires goods or services which, if acquired by one of the Towns, would be subject to such requirements; (vi) no claim for payment from any person or entity with respect to work performed on or at the Park or to maintain, improve or operate the Park, shall be paid from funds of the Corporation until such claim for payment has been audited in the manner provided in subsection (c) of the Section 4.4; (vii) the Corporation may purchase such insurance as the Board of Directors determines to be reasonably necessary to protect the Corporation and its members against claims arising from the operation of the

Park; and (viii) to the extent permitted by law, the Corporation shall indemnify and hold each individual member of the Board of Directors harmless from liabilities, damages, claims, demands, judgments, losses, costs or expenses, suits or actions arising out of such member's performance of his or her duties.

(c) The Corporation shall establish a separate bank account into which shall be deposited no later than February 1st of each year each Town's Pro Rata Share of the Final Budget approved in the manner described in paragraph (c) of Section 4.3 hereof. The Corporation shall pay from such separate account all expenses incurred for the maintenance, management and development of the park, provided that such expenses shall be provided for in the applicable Final Budget and that all such payments shall be audited in advance in the manner provided in Sections 34 and 119 of the Town Law by the Town Board of one of the Towns, which shall be appointed annually by the Committee to perform such audits. The Committee shall make such appointments so that each Town Board shall be responsible for auditing such payments by the Corporation for one year out of every three consecutive years.

(d) The Corporation shall have the authority, exercisable only by action of the Committee as the Board of Directors of the Corporation, to hire any employees required to manage and maintain the park as employees of the Corporation. The Corporation shall pay such employees salaries or wages at levels to be set by the Committee, and shall provide such other employment benefits to such employees as shall be approved by the Committee.

(e) The Corporation shall keep proper books and records to account for its administration of, and costs and expenses incurred in connection with, the management, maintenance and development of the Park, and shall make such books and records available for the inspection of the Committee and the Towns, or their representatives, during normal business hours and at other reasonable times. The Corporation shall prepare and distribute to the Towns and the Committee such periodic financial reports pertaining to the operation of the Park as the Committee shall direct.

ARTICLE V

Liability of Towns; Indemnity and Insurance

5.1 Liability of Towns

(a) Each of the Towns, shall be jointly and severally liable for all liabilities, damages, claims, demands, judgments, losses, costs or expenses, suits or actions arising out of the Agreement or the ownership, operation, management, maintenance or development of the Park, and shall share the cost of the defense of any such suits or actions in accordance with their Pro Rata Shares.

(b) Except as to liabilities, damages, claims, demands, judgments, losses, costs or expenses relating to any suit or action which arises out of one Town's grossly negligent acts or omissions, which costs or expenses shall be borne solely by such grossly negligent Town, each Town's share of any liability described in paragraph (a) of this Section 5.1 or in Section 5.2 hereof shall be limited to its Pro Rata Share of the total of such liability. If any Town shall have paid a portion of any liability described in paragraph (a) of this Section 5.1 or in Section 5.2 hereof in excess of its share of such liability, as such share is determined in accordance with the first sentence of this paragraph (b), such Town shall be promptly reimbursed for the amount of such excess by the other Town or Towns which have paid less than their share of such liability to the extent any such other Town has paid less than its share.

5.2 Indemnification of the Corporation.

The Towns shall jointly and severally indemnify and hold the Corporation and the Committee and any member thereof (the "Indemnified Parties") harmless from all liabilities, damages, claims, demands, judgments, losses, costs or expenses, suits or actions arising out of any Indemnified Party's operation, management, maintenance or development of the Park, and the Towns shall share the cost of the defense of any such suits or actions in accordance with their Pro Rata Shares, except that no Indemnified Party shall be entitled to any of the benefits of this Section 5.2 with respect to any liability, damage, claim, demand, judgment, loss, cost or expense, suit or action which arises out of such Indemnified Party's grossly negligent act or omission.

5.3 Insurance.

The Towns shall contract for such separate or joint policies of liability and other insurance as they shall from time to time determine to be reasonably necessary to protect their investment in the Park and to cover the cost of the liability described in paragraph (a) of Section 5.1 hereof. If the Towns determine that a joint policy or policies of insurance shall be obtained the cost of such policies shall be included by the Committee in the Preliminary Budget.

ARTICLE VI

Miscellaneous Provisions

6.1 Notices.

(a) All notices, consents, invoices and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be telexed, cabled or delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and in any case shall be addressed as follows:

Town of East Bloomfield
Town Hall
Main Street
East Bloomfield, New York 14443
Attention: Supervisor

Town of West Bloomfield
Town Hall
Box 15
West Bloomfield, New York 14585
Attention: Supervisor

Town of Victor
Town Hall
85 East Main Street
Victor, New York 14564
Attention: Supervisor

(b) Changes in the respective addresses to which such notices, consents, invoices or other communications may be directed may be made from time to time by any Town by notice to the

other Towns. Notices and consents given by mail shall be deemed to have been given five business days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.

6.2 Entire Agreement.

This Agreement constitutes the entire and complete agreement among the Towns with respect to the subject matter hereof, and supersedes all other understandings, arrangements, commitments and representations.

6.3 Other Documents.

Each Town promises and agrees to execute and deliver any instruments and to perform any acts which may be necessary or reasonably requested by the other Towns in order to give full effect to this Agreement.

6.4 Applicable Law.

The laws of the State of New York shall govern the validity, interpretation, construction and performance of this Agreement.

6.5 Headings.

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

6.6 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered shall together constitute one and the same instrument.

6.7 Severability.

If any term, covenant, condition or provision of this Agreement is, for any reason, determined by a court of competent jurisdiction to be invalid, illegal, void or unenforceable in any respect, the remainder of the provisions of this Agreement shall remain in full force and effect. Furthermore, if any one or more of the provisions of Section 4.4 hereof, or any part thereof,

relating to the formation, duties, powers or authority of the Corporation is determined by a court of competent jurisdiction or by any administrative agency of the State of New York to be invalid, illegal, void or unenforceable in any respect, the Towns agree to amend such Section 4.4 and any other provisions hereof as may be necessary to provide for the continued joint management, maintenance and operation of the park in a manner which would be valid, legal and enforceable.

6.8 Continuance of Performance.

Unless expressly agreed to the contrary in writing by all the parties, the Towns each agree to continue to perform their respective obligations under this Agreement during the pendency of any disagreement with any other Town.

6.9 Waivers of Provisions.

The terms and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of any party at any time or times to require performance of any provision of this Agreement shall in no manner affect the right at a later date to enforce the same. No waiver by any party of any condition or the breach of any provision or term, contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision or term of this Agreement.

ARTICLE VII

Term of Agreement; Amendment

7.1 Term.

This Agreement shall become effective as of the first date that the resolutions of the Town Boards of each Town approving this Agreement, and the bond resolution authorizing the issuance of joint indebtedness to finance the acquisition of the Land, are effective, and shall continue, unless earlier terminated or extended by the unanimous written consent of the Towns, until December 31, 2039.

7.2 Amendment.

This Agreement shall not be modified or amended except by a writing duly executed by all of the parties hereto.

IN WITNESS WHEREOF, the Towns have caused this Agreement to be executed in their respective names.

TOWN OF EAST BLOOMFIELD

By: [Signature]
Title: SUPERVISOR

TOWN OF WEST BLOOMFIELD

By: [Signature]
Title: Supervisor

TOWN OF VICTOR

By: [Signature]
Title: Town Supervisor

*Signed 3/27/90
in East Bloomfield.*

SCHEDULE I

The Pro Rata Share of each Town shall be:

<u>Town</u>	<u>Pro Rata Share</u>
East Bloomfield	18.29%
West Bloomfield	13.42%
Victor	68.29%