

**MANAGEMENT AGREEMENT
BETWEEN OPEN SPACE INSTITUTE LAND TRUST, INC. and
FRIENDS OF SARATOGA BATTLEFIELD and
HISTORIC HUDSON-HOOSIC RIVERS PARTNERSHIP
FOR THE DEVELOPMENT OF THE
SARATOGA SURRENDER SITE**

This Management Agreement (“**Agreement**”) is entered into this ____ day of _____, 2016 by and among the following three entities (“**Parties**”):

Open Space Institute Land Trust, Inc. (“OSILT”), a New York not-for-profit corporation whose mission is to protect scenic, natural and historic landscapes to provide public enjoyment, conserve habitat and working lands and sustain communities with its principal place of business at 1350 Broadway, New York, NY 10018,

Friends of Saratoga Battlefield (“FOSB”), a New York not-for-profit organization chartered in 1990 under the State University of New York Education Department for the purpose, among other goals, to stimulate interest in, and to provide common meeting grounds, for those interested in the history of the Saratoga National Historical Park and to conduct fund raising projects for acquiring, but not to hold, objects appropriate to the Saratoga National Historical Park, with a mailing address of 648 Route 32, Stillwater, NY 12170, and

Historic Hudson-Hoosic Rivers Partnership (“HHP”), a corporate body established in 2012 by an act of the New York State Legislature as the successor body to the Historic Saratoga – Washington on the Hudson Partnership to address such matters as collaborative agriculture and open space protection, tourism development and revitalization of main street, recreational development, and protection of natural and cultural heritage, with a mailing address of Saratoga Town Hall, 12 Spring Street, Schuylerville NY 12871.

WHEREAS

A. OSILT is the owner in fee of approximately 18.894 acres of certain real property located in the Town of Saratoga, Saratoga County, New York, SBL No. 170-1-4.1, as more particularly described in the legal description attached as Exhibit A and incorporated herein and as depicted in the map attached as Exhibit B and incorporated herein (“**Premises**”).

B. OSILT is the holder of an agricultural use deed restriction encumbering certain real property adjacent to and running with the Premises dated November 9, 2006 and recorded in the Saratoga County Clerk’s Office on December 11, 2006 as Instrument No. 2006019799, the purpose of which deed restriction is to limit development of said adjacent real property in order to protect the scenic and historic integrity of the Premises.

C. The Premises is commonly considered to be a site of national historic significance as a Revolutionary War battlefield and the location of the British surrender at the conclusion of the Battle of Saratoga in 1777. OSILT and the National Park Service (“**NPS**”) are in discussions

regarding the transfer of the Premises, or a portion thereof, to the NPS to become part of the Saratoga National Historic Park (“SNHP”).

D. FOSB and HHP currently are engaged in fundraising and site planning to develop on the Premises a visitors site (“Saratoga Surrender Site” or “SSS”) and to provide interpretation of the historic significance and resources of the Premises as the site of surrender of the Battle of Saratoga.

E. The intent of this Agreement is to set forth and agree upon the roles and responsibilities of each of the Parties with respect to the collaborative goal of the development of the SSS on the Premises as follows:

(i) the development and management of the Premises to create an appropriate visitors site in accordance with Site Development and Cultural Landscape Treatment Plan attached as **Exhibit C**, and the Scope of Work attached as Exhibit D, each incorporated herein, or revisions thereof approved by NPS (“Site Plan”); and

(ii) upon completion, or substantial completion, of said development of the SSS on the Premises, OSILT and NPS intend that OSILT will transfer to NPS the Premises, or the portion of the Premises containing the SSS (cumulatively “Intended SSS Transfer”), as well as the intended transfer to NPS by FOSB and HHP of any personal property and improvements made on the Premises to NPS to be a part of SNHP upon the Intended SSS Transfer. The Intended SSS Transfer is dependent upon approval and funding of such transfer by the NPS.

F. FOSB, HHP, and NPS have been working cooperatively to develop the attached Site Plan for the SSS, which includes a memorial wall, interpretive displays and artwork, cannon, rail fencing, and nature trails, among other improvements and landscaping (see Exhibits C & D)

G. The Parties are positioned to have the development of the SSS commence and the Parties desire to enter into this Management Agreement to govern the development and management of the SSS on the Premises as outlined herein.

NOW THEREFORE, in consideration of the above, the mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which is acknowledged, OSILT, FOSB and HHP mutually enter into this Management Agreement upon the terms, covenants and conditions herein set forth.

PREMISES.

FOSB and HHP shall manage, develop, and maintain the Premises subject to the terms and conditions contained herein. OSILT will allow FOSB and HHP unrestricted access to the Premises for the sole purpose of developing and managing the Premises as described herein. OSILT is the sole owner of the Premises and retains and reserves for itself and its agents the right to enter upon the Premises without notice for any reason, including without limitation to verify compliance with this Management Agreement and to take actions necessary to secure the Premises, make the Premises safe or to remedy conditions constituting a breach of this

Management Agreement, as provided herein. FOSB and HHP shall ensure access by OSILT and its agents.

TERM.

This Agreement shall be in effect upon the execution by each of the Parties and shall remain in effect for a term of three (3) years thereafter. If it appears that the three-year term might run prior to completion of the development of the SSS and/or the Intended SSS Transfer, beginning with the thirty-third month after the effective date of the Agreement the Parties shall enter into good faith negotiations to extend the term of this Agreement to reasonably allow for the completion and Intended SSS Transfer. This Agreement may be renewed upon the written agreement of each of the Parties. This Agreement may be terminated upon written agreement of each of the Parties or as provided below.

Notwithstanding the foregoing:

- a. this Agreement shall terminate upon the Intended SSS Transfer.
- b. OSILT may terminate this Agreement upon FOSB's or HHP's default of a material term or condition of the Agreement by sending written notice ("**Notice of Default**") to FOSB and HHP containing a notice to cure the identified default and if: (i) the identified default is not cured within sixty (60) days; or if (ii) actions reasonably intended to cure the default are not commenced within sixty (60) days, OSILT may terminate the Agreement by giving a thirty (30) day written "**Notice of Termination**".

Under this sub-section "b" the right to terminate under this Agreement shall not be exercised in the event that a provision of the Agreement cannot be performed due to force majeure including causes that are outside the control of the Parties, such as natural disasters, that could not be evaded through the exercise of due care but not including causes arising from delays in obtaining or lack of funding.

- c. OSILT may terminate this Agreement if in its reasonable judgment, OSILT deems progress of the SSS development to be materially non-compliant under the terms herein or deems completion of the SSS development contemplated by this Agreement to be improbable due to lack of funding or other identified impediment. In such an event, OSILT may give a written **Notice of Default** to FOSB and HHP identifying the facts and reasons and within sixty (60) days of the written Notice of Default FOSB or HHP shall give to OSILT written substantiation of the reasonableness of the progress or the likelihood of completion, and after consultation among OSILT, FOSB and HHP, if OSILT in its reasonable judgment continues to deems progress on the SSS development to be materially non-compliant under the terms herein or deems completion of the SSS development contemplated by this Agreement to be improbable due to lack of funding or other identified impediment, OSILT may give a thirty (30) day written **Notice of Termination** to FOSB and HHP.
- d. FOSB or HHP may terminate this Agreement if in the exercise of reasonable

judgment either deems completion of the SSS development as contemplated by this Agreement to be improbable due to lack of funding or other identified impediment. In such event, FOSB or HHP may give a written **Notice of Default** to OSILT and the other Party, identifying the specific facts and reasons and within sixty (60) days of the written Notice of Default OSILT or the other Party shall give to the noticing party written substantiation of the reasonableness of the progress or the likelihood of completion, and after consultation among OSILT, FOSB and HHP, if FOSB or HHP in its reasonable judgment continues to deems completion of the SSS development contemplated by this Agreement to be improbable due to lack of funding or other identified impediment, FOSB or HHP may give a thirty (30) day written **Notice of Termination** to OSILT and the other Party.

e. In the event of the termination of this Agreement prior to the Intended SSS Transfer, FOSB and HHP shall each have the right to enter upon the Premises to remove any personal property belonging to such Party, including historic artifacts and improvements installed pursuant to the Site Plan and Project Elements listed in Exhibit D, which pursuant to this Agreement shall be deemed not to constitute fixtures notwithstanding that such personal property or improvements may have become permanently affixed to the Premises. The Party removing said property shall repair all damage to the Premises caused by the removal of said property. FOSB or HHP shall provide written notice to OSILT thirty (30) days in advance of removing any such personal property or improvements.

f. During the SSS development, FOSB will provide for the installation of a bas-relief bronze plaque which was commissioned by, and is owned by, FOSB depicting the British surrender, after John Trumbull's painting *Surrender of General Burgoyne*. Title to the plaque will remain in FOSB until such time as OSILT conveys title of the Premises, or a portion thereof containing the SSS, to NPS, at which time FOSB will convey title of the plaque to NPS. In the event of the termination of this Agreement for any reason prior to the Intended SSS Transfer, FOSB shall have the right, upon thirty (30) days' written notice to OSILT, to enter upon the Premises to remove the plaque and shall repair all damage to the Premises caused by the removal of said plaque.

SITE PLAN; MANAGEMENT AND DEVELOPMENT OF THE PREMISES.

a. FOSB and HHP shall manage and develop the Premises in accordance with this Agreement, including the Site Plan and Scope of Work attached as Exhibit C & D.

b. It is acknowledged that FOSB's primary function shall be to manage the fundraising and financial aspects of the SSS development and that HHP's primary function shall be to manage the construction aspects of the SSS development, including contract preparation, acting as project construction manager, overseeing required permitting and construction inspection, among other related responsibilities.

c. The SSS development shall be designed, developed, and constructed as provided in the Site Plan and any changes and alterations to the Premises, including the erection or

installation of structures and facilities, shall be consistent with the Site Plan.

d. FOSB and HHP acknowledge the Intended SSS Transfer, and therefore FOSB and HHP shall obtain NPS review and approval of the Site Plan prior to initiation of work on the Premises and shall obtain NPS review and approval of any changes to the Site Plan.

e. While carrying out each of their respective obligations under the terms of this Agreement, FOSB and HHP shall each use customary and reasonable measures to maintain and manage the Premises in a safe and orderly manner.

f. FOSB and HHP shall keep OSILT informed of the progress of the development of the SSS on the Premises, including delays and any issue that may materially affect the development of the Premises as contemplated herein.

g. FOSB and HHP shall provide OSILT with written notice of the anticipated substantial completion date of development of the SSS on the Premises at least thirty (30) days in advance of the contemplated substantial completion date

h. The Premises are encumbered with a right-of-way in favor of the adjoining property at the southeast corner of the Premises. FOSB and HHP shall notify OSILT if either anticipates that its work on the Premises will interfere with the use of the right-of-way.

COMPLIANCE WITH LAWS

a. OSILT, FOSB and HHP shall comply with applicable laws and regulations, and HHP shall be solely responsible to ensure that FOSB's and HHP's contractors and consultants comply with applicable laws and regulations.

b. FOSB and HHP shall be severally responsible should the Premises or any part thereof, as a result of FOSB's or HHP's activities pursuant to this Management Agreement, be found out of compliance with any law or regulation and shall be severally responsible for remedying any such condition.

SCOPE OF WORK AND TIMELINE

FOSB and HHP anticipate that the SSS development will be completed in two phases as follows. Phase One will consist of: (i) site access development, including a graded driveway and parking area; (ii) a memorial wall; (iii) interpretive artwork; and (iv) pedestrian access from the parking area to the memorial wall. Phase Two will consist of (i) landscaping; and (ii) installation of supplemental amenities such as cannon, interpretive displays, nature trails and rail fencing. The Scope of Work and Timeline for each Phase are attached as **Exhibit D** and incorporated herein.

COSTS AND OVERSIGHT OF SSS DEVELOPMENT.

FOSB and HHP are jointly and severally responsible for all costs of developing the SSS on the

Premises and all site work, including site preparation. HHP shall be responsible for the oversight and management of all contractors, consultants, and construction. OSILT shall have no responsibility or liability for such costs. HHP shall give notice to OSILT and FOSB of the engagement of contractors and consultants for any work in developing the Premises.

INSURANCE; LOSS OR DAMAGE; LIABILITY; INDEMNIFICATION.

HHP and FOSB each shall, at its sole expense, procure and maintain a separate insurance policy, with carriers acceptable to OSILT and authorized to do business in New York. The HHP policy and the FOSB policy each shall insure that respective Party, the Premises, that Party's activities, as well as OSILT and Open Space Institute, Inc., against all claims arising with respect to the SSS development and all activities under this Agreement for injuries to persons (including death) and against all claims for damages to or loss of property. Each such insurance policy shall include the following coverages unless otherwise agreed to in writing by OSILT:

- a. Workers Compensation and Employer's Liability Insurance if required by the State of New York;
- b. Comprehensive General Liability and Commercial General Liability Insurance covering all activities and operations;
- c. Personal Property Coverage; and
- d. Automobile Liability Insurance; however, so long as FOSB or HHP do not own vehicles, such party shall not be required to obtain Automobile Liability Insurance.

Such insurance coverages shall be in effect for the duration of the Agreement and for no less than \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate, with each respective Party's deductible not exceeding \$5,000 without the advance written consent of OSILT.

Each such insurance policy shall name OSILT, Open Space Institute, Inc. ("OSI") and their officers, agents, employees and directors as additional insureds under the Comprehensive General Liability and Commercial General Liability Insurance. HHP and FOSB shall each provide certificates of insurance and copies of all additional insured endorsements to OSILT prior to commencement of the work on the Premises. The certificates of insurance shall provide that there can be no cancellation or reduction of coverage without thirty (30) days prior written notice to OSILT.

HHP shall require all contractors to procure and maintain insurance with carriers acceptable to OSILT and authorized to do business in New York which shall insure against all claims for injuries to persons (including death) and against all claims for damages to or loss of property related to or resulting from contractor's activities. Such insurance shall include the following coverages unless otherwise agreed to in writing by OSILT:

- a. Workers Compensation and Employer's Liability Insurance as required by the State of New York;
- b. Comprehensive General Liability and Commercial General Liability Insurance covering all activities and operations;
- c. Personal Property Coverage; and

d. Automobile Liability Insurance

Insurance coverages shall be in effect for the duration of the Management Agreement and for no less than \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate. Contractor's deductible shall not exceed \$5,000 without the advance written consent of OSILT.

All contractors shall name OSILT, Open Space Institute, Inc. ("OSI") and their officers, agents, employees and directors as additional insureds under the Comprehensive General Liability and Commercial General Liability Insurance. All contractors shall provide certificates of insurance and copies of all additional insured endorsements to OSILT prior to commencement of the work on the Premises. The certificates of insurance shall provide that there can be no cancellation or reduction of coverage without thirty (30) days prior written notice to OSILT.

Unless caused by the negligence of OSILT, Open Space Institute, Inc. ("OSI") and their officers, agents, employees and directors, OSILT will not be liable for any loss, damage or theft of any property of FOSB, HHP or others kept or stored in or about the Premises, or for any injury to FOSB, HHP, their volunteers, employees, agents, contractors or invitees, or other persons, by reason of any existing or future condition or defect on the Premises. OSILT is not liable for the acts, omissions or negligence of FOSB, HHP, their volunteers, employees, agents, contractors or invitees or other persons on the Premises. FOSB and HHP shall indemnify and save OSILT, OSI and their officers, agents, employees and directors harmless from all claims and liability, except when caused by OSILT or OSI's willful acts or gross negligence, for losses of or damage to property, or injuries or death to persons occurring in or about the Premises prior to the Intended SSS Transfer or termination of this Agreement as to any Party or Parties to the Agreement.

PUBLIC ACCESS.

If the Premises has not been conveyed to NPS upon the completion of the SSS development and the Premises is ready for access by the public, HHP shall obtain OSILT's written approval prior to allowing public access. OSILT will not unreasonably withhold such approval. If OSILT approves such public access, HHP shall be solely responsible for management of such public access and shall abide by any additional reasonable terms and conditions that OSILT requires.

If OSILT approves public access, HHP shall procure and maintain insurance with carriers authorized to do business in New York which shall insure against all claims for injuries to persons (including death) and against all claims for damages to or loss of property related to public access prior to the Intended SSS Transfer or termination of this Agreement.

If OSILT approves public access, unless caused by the negligence of OSILT, OSILT will not be liable for any loss, damage or theft of any property of FOSB or HHP or others kept or stored in or about the Premises, or for any injury to FOSB, HHP, their volunteers, employees, agents, contractors or invitees, or other persons, by reason of any existing or future condition or defect on the Premises. OSILT is not liable for the acts, omissions or negligence of FOSB, HHP, their volunteers, employees, agents, contractors or invitees or other persons on the Premises. HHP shall indemnify and save OSILT, OSI and their officers, agents, employees and directors harmless from all claims and liability for losses of or damage to property, or injuries or death to

persons occurring in or about the Premises prior to the Intended SSS Transfer of the Premises, or a portion thereof, to NPS or termination of this Agreement.

LONG TERM MANAGEMENT OF THE PREMISES.

If the Premises, or a portion thereof containing the SSS, has not been conveyed to NPS upon the completion of the SSS development, HHP shall manage the Premises, including public access as provided herein. HHP's management shall be consistent with public educational and recreational use of the Premises, in accordance with any plans approved by OSILT and in accordance with this Management Agreement. Upon assumption of long term management by HHP, if FOSB has fulfilled all its obligations under this Agreement, the Parties shall each execute a written agreement which terminates FOSB's responsibilities under this Management Agreement. Until such time as the Intended SSS Transfer the personal property and improvements installed by FOSB and/or HHP shall remain the property of HHP, with the exception of the bas-relief bronze plaque described above, which shall remain the property of FOSB until the Intended SSS Transfer. Upon the Intended SSS Transfer, all personal property and improvements constructed, installed, or erected on the Premises shall become the property of the NPS, including the bas-relief bronze plaque.

SIGN / PUBLICITY.

The Parties agree that a sign shall be placed at the SSS which recognizes each of the three Parties as having collaborated to obtain, preserve, and develop the premises as the SSS. Prior to placement, the Parties shall agree upon the location, design, and content of such a sign. OSILT shall pay one-third of the cost of developing and installing the sign.

FOSB, HHP, and OSILT agree to work together in preparing a press release which is mutually agreeable to the Parties which announces the SSS development.

NOTICE OF ACCIDENTS / CLAIMS.

The Parties shall provide written notice to each other of any accidents and/or claims, including without limitation accidents or claims involving bodily injury (excluding injuries requiring only minimal first aid treatments), death or significant property damage, arising on or within the Premises. Such notice shall be made within seven (7) business days of the respective Parties' gaining knowledge of the accident or claim.

NO LIENS.

FOSB and HHP will take all reasonable and prudent actions to prevent their contractors or consultants from filing any lien, encumbrance or charge to be placed on the Premises. If any mechanics, laborers, public improvement or similar statutory or common law lien, judgement, encumbrance or charge caused or created by, or arising with respect to the SSS development or activities under this Agreement from the liability of OSILT, FOSB or HHP, their contractors or

consultants, is filed against the Premises, the Party against whom it is filed shall, within forty-five (45) days of notice of said lien, encumbrance, judgement, or charge, shall commence action to cause it to be vacated or discharged of record by payment, deposit, bond, court order, or otherwise. OSILT shall record a Memorandum of this Management Agreement upon execution. FOBS and HHP will cooperate with OSILT in signing appropriate documents at the termination of this Management Agreement to allow the recording of a Notice of Termination of Management Agreement.

At the time HHP is managing the completed SSS, and NPS has entered into an agreement with OSILT for the Intended SSS Transfer, if there is any statutory or common law lien, judgement, encumbrance or charge caused or created by through the claimed liability of OSILT arising from causes unrelated to the SSS development, within forty-five (45) days of notice of said lien, encumbrance, judgement, or charge, OSILT shall commence action to cause it to be vacated or discharged of record by payment, deposit, bond, court order, or otherwise

NO AGENCY.

This Agreement does not in any way constitute OSILT, FOSB or HHP, their employees, agents, officers, directors, volunteers, consultants or contractors as being the agents, employees, or legal representatives of each other for any purpose whatsoever and shall not be construed as creating a partnership between or among OSILT, FOSB and/or HHP.

NOTICES.

All notices and communications under this Agreement shall be in writing and addressed as follows and shall be deemed to be properly given when delivered personally or sent either by first class mail or by express mail.

FOSB

Larry Arnold, President
Friends of Saratoga Battlefield
648 Route 32
Stillwater, NY 12170
(518) 371-3152 (home)

OSILT

Katie Petronis
Open Space Institute, Inc.
291 Hudson Ave., Suite B
Albany, NY 12210
kpetronis@osi.org
518-427-1564, ext. 125

HHP

Joe Finan
Hudson Hoosic Partnership

Saratoga Town Hall
12 Spring Street
Schuylerville NY 12871
joe.finan111@gmail.com
518-461-2656

NO ASSIGNMENT.

This Management Agreement is personal to each of the Parties and is not assignable and does not inure to the benefit of OSILT's, FOSB's or HHP's successors or assigns.

EXHIBITS AND RECITALS.

The recitals listed above are incorporated and made a part of this Management Agreement by reference. All Exhibits are incorporated herein and made a part of this Management Agreement.

ENTIRE AGREEMENT.

This Management Agreement contains the entire agreement and understanding between and among OSILT, FOSB, and HHP regarding the Premises and the SSS development and is subject to no agreements, conditions or representations that are not set forth herein. This Management Agreement may only be amended in writing and signed by each of the Parties, OSILT, FOSB and HHP.

COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Management Agreement has been duly executed by the Parties hereto.

OPEN SPACE INSTITUTE LAND TRUST, INC.:

_____ Date: _____
By:
Title:

FRIENDS OF SARATOGA BATTLEFIELD:

By: Larry Arnold
Title: President`

Date: _____

HISTORIC HUDSON & HOOSIC RIVERS PARTNERSHIP:

By:
Title:

Date: _____

- Exhibit A: Legal Description
- Exhibit B: Survey Map
- Exhibit C: Site Development and Cultural Landscape Treatment Plan
- Exhibit D: Scope of Work and Timeline
- Exhibit E: Sign

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