

AGREEMENT
BETWEEN
VILLAGE OF EVANS MILLS
AND
TOWN OF LERAY
REGARDING
WATER SUPPLY
JUNE 2023 – MAY 2024

WATER SERVICE AGREEMENT

This WATER SERVICE AGREEMENT (the "**Agreement**") was made and entered into effect as of the 10th day of June 2023, by and between the VILLAGE OF EVANS MILLS, a municipal corporation of the State of New York having municipal offices at 8706 Noble Street, Evans Mills, New York (the "**Village**"), and the TOWN OF LERAY, a municipal corporation of the State of New York having municipal offices at 8650 LeRay Street, Evans Mills, New York, on behalf of the TOWN OF LERAY WATER DISTRICT #3 (the "**Purchaser**").

RECITALS

- A. The Village owns a water supply system (the "**System**") which it operates for the purpose of supplying the Village and its inhabitants with water.
- B. The Purchaser has requested the right to draw water from the System to supply water to its customers located in Purchaser's Water District #3, generally located at Steinhilber Road, Evans Mills, New York 13637, the boundaries of which district are more particularly described herein (the "**Site**").
- C. The Village may, pursuant to Article 11 of the Village Law of the State of New York, enter into an agreement with a corporation, individual or water district outside the Village to sell the right to make connections to the mains or reservoirs of the Village for the purpose of drawing water therefrom and the Village may fix the prices, therefore, so long as such action will not render the supply of water for the Village or its inhabitants insufficient.
- D. The Purchaser has previously installed protective devices and an appropriately sized meter at a location approved by the Village engineer for the purpose of metering the water drawn from the Village System.
- E. Upon approval by the Village Board of this Agreement, Purchaser may draw water from the Village System to the Site in accordance with the terms and conditions of this Agreement.
- F. Water rents will be charged based on the actual metered water usage at Purchaser's Site in accordance with the terms of this Agreement.
- G. Purchaser has agreed to pay to the Village, for water drawn from the Village System, water rents calculated pursuant to this Agreement, and the applicable provisions of the Village of Evans Mills Water Law.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties covenant and agree as follows:

SECTION 1 – DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

- (a) "**Board**" shall mean the Village Board of Trustees of the Village of Evans Mills.

(b) "**Purchaser's Customers**" shall mean those whose properties are located within the boundaries of Purchaser's Site, and which purchase water from Purchaser.

(c) "**Purchaser's Primary Line**" shall mean the water main outside the Village boundary to which Purchaser's Customers connect.

(d) "**Site**" shall mean the Purchaser's Water District #3 located on Steinhilber Road in the Town of LeRay, being more particularly described in Exhibit "A".

(e) "**User**" shall mean any individual or entity who is drawing water from the Village System.

(f) "**Water Rent Regulations**" shall mean the Village of Evans Mills Water Law and any resolution adopted pursuant to the authority of New York State Village Law or the aforementioned Water Law, as they have or may be amended from time to time by said Village Board.

(g) "**Water Line**" shall mean the water main of the Village System located within the Village boundary.

SECTION 2 - TERM OF AGREEMENT

The term of this Agreement shall be one (1) year from the date of execution hereof, unless earlier terminated as provided herein.

SECTION 3 - APPLICABLE LAW

This Agreement shall in all respects be subject to Article 11 of the Village Law and to the Water Rent Regulations of the Village. The Village shall not be liable for any act done by it pursuant to the provisions of such law or rules and regulations.

SECTION 4 - WATER TO BE FURNISHED

(a) The Village agrees to furnish and Purchaser agrees to purchase and take a supply of potable water from the Village System.

(b) The Village bears no degree of responsibility for the water quality at any point beyond said Village boundary. Purchaser bears the responsibility for maintaining the water quality at any point beyond said Village boundary.

SECTION 5 - WATER SHORTAGE

In the event of any water shortage that may be reasonably anticipated by the Village, the Village agrees to notify Purchaser promptly of such anticipated shortage in order that Purchaser may have reasonable time to procure an alternate source of supply, and until such source may be procured by Purchaser, the Village agrees to exercise reasonable diligence in continuing an adequate supply of water. However, the provisions of this Section 5 notwithstanding, the Village shall not be liable to Purchaser or Purchaser's Customers, for any termination of this Agreement due to water shortage. The Village will not be responsible for damages for any interruption or failure to supply

water and shall be saved and held harmless from all damage of any kind, nature and description which may arise in connection with this Agreement or related to the supplying of water as contemplated hereunder.

SECTION 6 - WATER LINE CONNECTION

(a) Purchaser shall provide and maintain equipment and related devices expressly requested by the Village engineer in order to connect the Site to the Village's System and for the purpose of protecting the Village's System. Plans and specifications for such equipment and related devices, as well as any necessary replacement thereof, must be submitted to and approved by the Village engineer prior to any installation. Purchaser shall place such equipment and related devices in locations acceptable to the Village engineer and keep the vicinity accessible and safe to work in at all times.

(b) Subject to the review and approval of the construction plans and specifications by the Village engineer, which approval shall not be unreasonably withheld, Purchaser shall be allowed to connect its Site to the Water Line for the purpose of drawing water from the Village's System. The Village shall have the right, throughout any construction period, to inspect all work being undertaken and to reject any work which is not in conformity with the approved construction plans or specifications.

(c) Upon completion of the connections and/or replacement of any equipment and related devices, the engineer for the Purchaser must certify to the Village engineer that all work has been completed in accordance with the approved plans and specifications and the Village engineer must approve of such work. Failure to comply with the provisions of this Section shall be deemed a default of this Agreement.

(d) The ownership of the Purchaser's Primary Line shall remain with the Purchaser.

SECTION 7 – WATER RENT

(a) The water rent payable by Purchaser shall be based on the actual metered amount of water used by Purchaser for the pertinent period, at such rates charged for Users outside of the Village, as established by and in accordance with the Village's Water Rent Regulations.

(b) Purchaser's water rent shall be paid to the Village at the times established in the Village's Water Rent Regulations.

(c) Late payments or failure to make payments will subject Purchaser to penalties as set forth in the Village's Water Rent Regulations and, at the election of the Village, termination of this Agreement.

(d) For purposes of clarification, the Purchaser shall be billed as One Unit as defined in the Village's Water Rent Regulations. As of the date of this Agreement and based on the current Water Rent Regulations, and in particular, Section 17 of the Village of Evans Mills Water Law, the Base Rate for a User outside the Village boundary is \$90.00 per quarter. The Usage Rate for a User outside the Village boundary for any water usage above 8,000 gallons per quarter is \$0.0075/gallon. Both the Base Rate and Usage Rate as reflected in this subparagraph are reflective of amounts at twice the rate charged for a User inside the Village. Such rates are subject

to change in accordance with the Village's Water Rent Regulations. In the event rates change under the Village's Water Regulations, the rates in this Agreement shall be adjusted as of the date the new rates become effective.

SECTION 8 – METER SYSTEM

(a) The Village requires and Purchaser has agreed to and has subsequently completed the installation of a meter to calculate the amount of water used by Purchaser.

(b) The Village reserves the right to inspect, test, repair and replace the water meter(s) as required. Such replacements or repairs shall be charged to and paid by Purchaser or completed by Purchaser in accordance with Section 6 herein.

SECTION 9 - ALLOWED USERS

Only Purchaser's Site as herein defined shall be connected to the Village's System under the authority of this Agreement.

SECTION 10 - ADDITIONAL USERS

No additional Users shall connect to the Water Line except subject to the following:

(a) the Village shall have the sole power and discretion to determine and permit the connection to the Water Line or Purchaser's Primary Line of any additional Users, other than Purchaser's Customers;

(b) no additional User will be connected to Purchaser's Primary Line, besides Purchaser's Customers, without having entered into an Agreement for the supply of Water with the Village; and

(c) unauthorized connection to the Water Line or Purchaser's Primary Line, if allowed by Purchaser, may, at the election of the Village, result in the termination of this Agreement.

SECTION 11 - INDEMNIFICATION

Purchaser hereby agrees to indemnify and hold harmless the Village, its officers, agents, employees, and persons acting by, through, under, or in concert with any of its heirs, successors, personal representatives, and assigns (collectively the "Indemnities") from and against any liability or expense (including, without limitation, attorneys' fees) which the Village incurs in connection with any claim, suit, or proceeding arising out of, or relating to, or in connection with this Agreement or any actions by the Village or any of the Indemnities to enforce this Agreement.

SECTION 12 - VILLAGE REPRESENTATIONS AND WARRANTIES

The Village represents and covenants that:

(a) it has the full power and authority to execute and deliver this Agreement and to perform its obligations hereunder and its governing body has, by necessary and appropriate resolutions, authorized the execution and delivery of the Agreement by the officer or representative so

executing the same;

(b) this Agreement constitutes a legal, valid and binding obligation of the Village and is enforceable in accordance with its terms; and

(c) it will, at all times, make reasonable efforts to comply with all local, state and federal laws and regulations necessary to operate the System and it will make reasonable efforts to secure and maintain all necessary local, state and federal permits required to operate the System. However, failure to so comply with applicable laws and regulations or to so secure necessary permits will in no way subject it to any liability under this Agreement.

SECTION 13 - PURCHASER'S REPRESENTATIONS AND WARRANTIES

Purchaser represents and warrants that:

(a) it has jurisdiction over the property located at LeRay Water District #3 Steinhilber Road, Evans Mills in the Town of LeRay, County of Jefferson, State of New York for the purpose of supplying water to Purchaser's Customers;

(b) it has the full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;

(c) this Agreement constitutes a legal, valid and binding obligation of Purchaser and is enforceable in accordance with its terms;

(d) Purchaser shall comply with the terms and conditions established for Users connected to the Village System as set forth in the Water Rent Regulations of the Village;

(e) Purchaser shall immediately notify the Village of any emergency or condition which may affect the quality of water in either party's system and will assist in all reasonable efforts to mitigate and correct any harm resulting from such occurrence;

(f) Failure to comply with provisions (d) or (e) will subject Purchaser to penalties set forth in the Village's Water Regulations and shall be cause for the assessment of damages, as set forth in Section 14(d) below, and termination of this Agreement by the Village, as set forth in Section 15 below.

SECTION 14 – REPAIRS

(a) The Village shall be solely responsible for all maintenance and repair necessary to those portions of the System located entirely within the Village boundaries, except as set forth in Section 14(e) below.

(b) Purchaser shall perform all maintenance and repair necessary to Purchaser's Primary Line.

(c) The Village reserves the right to make repairs to Purchaser's Primary Line, if necessary, to protect the Village System. In such event, the cost of any repairs shall be at Purchaser's sole cost

and expense.

(d) The Village reserves the right to make inspections of those facilities which may affect the quality of the water supplied to Purchaser or the Village System and may perform any tests in connection therewith.

(e) All other provisions of this Section 14 notwithstanding, if any User of the Water Line engages or allows others to engage in any activity which causes damage resulting in the need for repair to any portion of the Water Line or the Village's System, the costs of such repair, if undertaken at the Village's expense, shall be borne solely and entirely by the offending User.

SECTION 15 – TERMINATION

The breach by Purchaser of any covenant, condition or limitation herein may, at the sole discretion of the Village Board, result in the termination of this Agreement. Termination shall be decided by a majority vote of the members of the Village Board. The Village reserves the right to shut off the water and terminate this Agreement after giving Purchaser five (5) days' notice, in writing, of its intention to do so because of Purchaser's refusal to fulfill any obligation or condition contained herein or Purchaser's default of its obligations hereunder. The discontinuance of service for such cause shall not release Purchaser from its obligation to pay all amounts due in accordance with the terms of this Agreement.

SECTION 16 – ASSIGNMENT

Purchaser may not assign, transfer, or otherwise dispose of this Agreement or its right, title or interest herein, without the previous written consent of the Village.

SECTION 17 – ENTIRE AGREEMENT

This Agreement is the entire agreement of the parties concerning the subject hereof and supersedes all previous and contemporaneous agreements, understandings and communications.

SECTION 18 – WAIVER AND MODIFICATION

No waiver or modification of this Agreement or of any covenant, condition or limitation herein shall be valid unless in writing and duly executed by the individual party to be charged therewith. The failure of either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy provided for in this Agreement shall not constitute a waiver of performance of any such covenant, agreement, term or condition.

SECTION 19 – GOVERNING LAW

This Agreement, the performance hereunder, and all actions and special proceedings relating hereto shall be construed in accordance with, under and pursuant to the laws of the State of New York.

SECTION 20 – SEVERABILITY

All provisions contained in this Agreement are severable. In the event any provision of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect,

such determination shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

SECTION 21 – NOTICES

Any notice under this Agreement shall be in writing and shall be deemed to have been duly given when mailed, postage pre-paid, to the parties at the address set forth below or at such other address as either party may designate from time to time by notice hereunder.

Village of Evans Mills

Taylor Scheer
Village of Evans Mills
Post Office Box 176
Evans Mills, New York 13637

With a copy to:

Brody D. Smith, Esq.
c/o Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, New York 13202-1355

Town of LeRay

Town of LeRay
8650 LeRay Street
Evans Mills, New York 13637

SECTION 22 – HEADINGS AND CONSTRUCTION

The paragraph headings of the sections in this Agreement are inserted only as a matter of convenience, are not a part of this Agreement, and in no way define, limit or affect this Agreement or any provision thereof. Each covenant and agreement binding the parties shall be construed, absent an express contrary provision, as being independent of each and every other covenant contained herein, and compliance with any one covenant, shall not, absent an express contrary provision, be deemed to excuse compliance with any or all other covenants contained herein.

SECTION 23 – NUMBER AND GENDER

Words of gender and number used in this Agreement shall be deemed to mean any other gender or number when the sense requires.

SECTION 24 – EXHIBITS

Exhibit A which is attached herein, is intended to be a part hereof, as if set forth herein at length.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first set forth above.

VILLAGE OF EVANS MILLS

By: _____
Robert E. Boucher, Mayor

TOWN OF LERAY

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENTS

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

On the _____ day of _____ in the year 2023 before me, personally came **Robert E. Boucher**, who being by me duly sworn, did depose and say that he resides at **8553 LeRay Street, Evans Mills, New York**; that he is the Mayor of the Village of Evans Mills, the Village described in, and which executed the foregoing instrument; and that he signed his name thereby by order of said Village Board of Trustees.

Notary Public

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

On the _____ day of _____ in the year 2023 before me, personally came _____, who being by me duly sworn, did depose and say that he/she resides in the Town of LeRay, New York; that he/she is the person described in, and who executed the foregoing instrument on behalf of the Town of LeRay, and that by his/her signature on the instrument, the individual or the person on behalf the individual acted executed the instrument.

Notary Public

EXHIBIT A

DESCRIPTION

WATER DISTRICT NO. 3
PLEASANT CREEK MEADOWS
TOWN OF LERAY, JEFFERSON COUNTY, NEW YORK

Beginning at a point on the centerline of Steinhilber Road and the easterly line of Tax Map Parcel 13 (as shown on Block 2 of Map 65.00);

Thence southerly, then easterly, then southerly; along the easterly line of Parcel 13 to a point on the easterly and southerly lines of Parcel 13;

Thence westerly along the southerly line of Parcel 13 to a point on the easterly line of "Conrail" Parcel 19 and westerly border of Parcel 13;

Thence northerly along westerly line of Parcel 13 to a point on the easterly line of Conrail, westerly line of Parcel 13 and southerly line of Village of Evans Mills;

Thence easterly, then northerly, then easterly then northeasterly along the easterly border of the Village of Evans Mills to a point to the northerly boundary of Parcel 3.21;

Thence southeasterly along the northerly boundary of Parcels 3.21 and 3.22 to a point on the easterly boundary of Parcel 3.22 and westerly line of Parcel 13;

Thence northerly along the westerly line of parcel 13 to a point on the northerly line of Parcel 13 and southerly boundary of Parcel 3.1;

Thence easterly along the northerly line of Parcel 13 to a point on the easterly line of Parcel 13 and westerly line of Parcel 12;

Thence southerly along easterly line of Parcel 13 to a centerline point in Steinhilber Road, thereby closing the District boundary.