

Town of Cape Vincent
Outside Water User Agreement

AGREEMENT (the "Agreement") made this ____ day of _____ 20__, by and between the **TOWN OF CAPE VINCENT as Water Commissioners** for Water District # __, offices located at 1964 New York State Route 12E, Cape Vincent, NY 13618-0680 ("District") and, _____, located at _____, Cape Vincent, New York 13618 (the "User")

RECITALS

- A. The District owns a water supply system (the "System") which it operates for the purpose of supplying the District and its inhabitants with water.
- B. The District has the capacity to produce and transport water in excess of its own needs.
- C. The User has requested the right to draw water from the District System.
- D. The District may, pursuant to Article 12 of the Town Law of the State of New York, enter into an agreement with the User to draw water from the District System and the Town may fix the prices, therefore, so long as such action will not render the supply of water for the Town or its inhabitants insufficient.
- E. The Town currently has sufficient capacity to provide water at the anticipated usage by the User for the term of this contract.
- F. Water rents will be charged based on the actual metered water usage of the User, in accordance with duly adopted regulations
- G. The User has agreed to pay the Town, for water drawn from the System, water rents calculated pursuant to this Agreement.

NOW, THEREFORE, in consideration of the mutual obligations hereinafter set forth, the parties covenant and agree as follows:

Section 1. - Definitions. For the purpose of this Agreement, the following terms shall have the meanings set forth below:

- A. "Site" shall mean the User's property located in the Town of Cape Vincent, being more particularly described as Town of Cape Vincent Tax Map Number _____
- B. "User" shall mean any individual or entity that is drawing water from the District System. There shall be a distinction between users inside the District and outside. The User shall be considered a user outside of the District.
- C. District shall mean the Town of Cape Vincent - Water District # __, Jefferson County, New York.
- D. Point of Delivery shall mean the connection between the District water distribution system and the User's water distribution system, which, for all practical purposes, shall be at the shut off meter at the boundary of the District.
- E. Point of Connection - shall mean the point at which the User and District systems connect to each other and shall further mean the point at which maintenance and repair responsibilities are distinguished and separated.

Section 2. - Term of Agreement.

- A. The term of this Agreement shall be one (1) year commencing upon signing, unless earlier terminated by creation of a water district for User in the Town of Cape Vincent .
- B. This agreement shall automatically renew each year on the same terms and conditions unless ninety (90) days notice is given by either party of their desire not to renew or to renegotiate terms.

Section 3. - Applicable Law. This Agreement shall in all respects be subject to Article 12 of the Town Law and all regulations of the Town of Cape Vincent as the same shall be adopted and from time to time amended.

Section 4. - Water to be Furnished.

- A. The District agrees to furnish and User agrees to purchase and take a supply of water from the same water supply as that used within the District.
- B. The District bears no degree of responsibility for the water quality at the point beyond the point of connection. The User bears the responsibility for maintaining the water quality at any point beyond point of connection. The User shall be responsible for compliance with any State or Federal regulation regarding the water quality and testing beyond the point of delivery.

Section 5. - Water Shortage. In event of any water emergency or shortage, the District agrees to notify the User promptly of such shortage or emergency in order that the User may have reasonable time to procure an alternate source of supply, and until such source may be procured by User, the District agrees to exercise reasonable diligence in continuing an adequate supply of water. The user agrees to be bound by the same conservation measures imposed on District residents in times of shortage. The User agrees that the District shall not be liable for consequential damage arising from an inability to provide water due to shortage or emergency.

Section 6. - Maintenance and Connection.

- A. The User shall be responsible for all costs associated with extending the existing District facilities to User's property and shall further be responsible to install a meter and pit/vault and shutoff device at the point of connection to the satisfaction of the District.
- B. The User shall provide and maintain all water mains and appurtenances on User's property beginning at the "point of connection", with the District's water distribution system, as set forth in Section 12 (B).

Section 7. Water Rent.

- A. The water rent payable by the User shall be based on the actual metered amount of water used by the User for the pertinent period. There shall be an advance of six (6) months water rent estimated at \$_____. The rate per unit of water shall be as established by the District from time to time for inside and outside Users as provided by the Town Law. The rate for outside users shall be 1.50 times the inside user rate.
- B. Late payments or failure to make payments within thirty (30) days of rendering of a bill will subject the User to a penalties as contained within the Common Water Law #1 of 2016 of the Town of Cape Vincent.
- C. The User acknowledges the continuing nature of the services provided by the District under the Agreement and that the quarterly billing of the District does not affect the User's obligations to pay for water provided during the term of this agreement. The District billing

shall not be construed as an accrual of causes of action.

D. Water services shall be shut off if payment is 60 days in arrears.

Section 8. - Meter System and Service Pipes.

- A. The District shall require that the User install a metering device acceptable to the District to calculate the amount of water used by the User.
- B. The District reserves the right to inspect, test, repair and replace the water meter as required.
- C. The District shall require the User to install approved back flow devices at the point of delivery.
- D. The User shall be responsible for safeguarding the meter, which shall be housed at the expense of the User in a meter pit or other structure approved by the District and suitable for housing of a meter. The meter shall be accessible to the District and its authorized employees at all times. Expenses incurred as a result of failure to protect the meter will be the responsibility of the User.
- E. Meters shall not be interfered with or removed by any person except an authorized employee of the District or its contractor. Seals placed on the meters, valves, or other fittings shall not be tampered with or broken. If a seal is broken, the meter will be removed, tested, and replaced, if necessary, at the expense of the User.

Section 9. - Allowed Users. Only the User's Site shall be connected to the District's system under the authority of this agreement.

Section 10. District's Representations and Warranties. The District 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 District 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 a Water Supply System and it will make reasonable efforts to secure and maintain all necessary local, state and federal permits required to operate a Water Supply System.
- D. The District shall make every good effort to require all outside users to go through the same permitting process as the User for new connections or transfer of existing accounts to new Users.
- E. The District has sufficient facilities and sources to provide water to the User, but makes no representation as to facilities and source for additional allocations at the time of contract renewal.

Section 11. - The User's Representations and Warranties. The User represents and warrants that:

- A. It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- B. This Agreement constitutes a legal, valid and binding obligation of User and is enforceable in accordance with its terms;
- C. The User shall immediately notify the District of any emergency or condition which may

affect the quality or quantity of water in either party's System and will take all reasonable efforts to mitigate and correct any harm resulting from such occurrence;

- D. The User shall fully comply with any state or federal regulations regarding water quality and testing beyond the point of connection.
- E. The User shall immediately comply with any direction from the Town to shut off service on emergency basis if required to prevent contamination of the District system, failure of any back flow device, or other justifiable cause.

Section 12. - Repairs.

- A. The District shall be solely responsible for all maintenance and repair necessary to those portions of the System located entirely within the boundaries and to the point of delivery.
- B. The User shall provide for and perform repairs on all line and appurtenances located within and/or serving the User's property from the "point of connection" with the District's water distribution system.
- C. All other provisions of this Section notwithstanding, if the User engages or allows others to engage in any activity which causes damage resulting in the need for repair to any portion of the District's System, the costs of such repair, if undertaken at District expense, shall be borne 100% by the User.

Section 13. - Penalties. The breach by the User of any covenant, condition or limitation may, at the discretion of the District result in the imposition of penalty of \$100.00 per day.

Section 14. - Assignment. The User may not assign, transfer, or otherwise dispose of this Agreement or its right, title or interest herein, without the previous written consent of the Town.

Section 15. - Terms to be Exclusive. This Agreement contains the sole and entire understanding between the parties.

Section 16. - 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 both parties. 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 17. - New York State Law Applies. 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 18. - Severability. All provisions contained in this Agreement are mutual, related and non-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 require immediate re-negotiation of this Agreement.

Section 19. - Notices. Any notice under this Agreement shall be in writing registered on certified paper, or hand delivered 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.

Party
Town of Cape Vincent

Address
1964 NYS Route 12E
Cape Vincent, New York 13618

Cape Vincent, New York 13618

Section 20. - 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, shall not, absent an express contrary provision, be deemed to excuse compliance with any or all other covenants contained herein.

Section 21. - 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.

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

TOWN OF CAPE VINCENT

By: _____
Supervisor

By: _____
USER

ACKNOWLEDGEMENTS

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

On the ___ day of _____ in the year ___ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ___ day of _____ in the year ___ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT "A"

Location Map of