

AGREEMENT FOR WATER SERVICE INSTALLATION UNDER DRYDEN ROAD

THIS AGREEMENT is made \_\_\_\_\_, 2018, by and among the Town of Dryden, a municipal corporation located in Tompkins County, New York, with offices at 93 Dryden Road, Ithaca, NY 13053 (the "Town"); and Cornell TH, LLC, a corporation under the laws of the State of Pennsylvania, with principal offices at \_\_\_\_\_, registered to do business in New York as a Foreign Limited Liability Company ("Developer").

WITNESSETH:

WHEREAS, the Town owns and controls all facilities that operate the water supply system serving users within the Town; and

WHEREAS, NYSDOT owns and operates the highway known as NYS Route 366 (Dryden Road) that runs through the Town ("NYSDOT ROW"); and

WHEREAS, it is NYSDOT policy to discourage the installation and maintenance of privately-owned infrastructure in the NYSDOT ROW, favoring the ownership of such infrastructure only by public agencies and subdivisions of the State; and

WHEREAS, the Town deems it to be in the interest of the public safety and welfare to, in accordance with NYSDOT policy, to control water infrastructure in the NYSDOT ROW for the benefit of its residents; and

WHEREAS, pursuant to resolution number \_\_\_ of 2018, the Town approved a Special Use Permit for the planned construction of a residential multi-family complex at 802 Dryden Road ("Project") by Developer's predecessor in title, Modern Living Rentals, LLC, which planned Project has since been acquired by Maifyl Development; and

WHEREAS, Developer wishes to connect to the water supply system in the Town for purposes of providing water access to its townhouse development located at 802-812 Dryden Road, which connection requires passing piping and related infrastructure in the NYSDOT ROW; and

WHEREAS, the Developer is willing to construct the required water connection infrastructure in the NYSDOT ROW and bear the cost for such construction, after which Developer shall convey all interest in said infrastructure over to the Town;

WHEREAS, the parties wish to enter into an agreement for the provision of such water service by the Town to the Developer, whereby Developer shall be responsible for installing the required infrastructure and then convey the same to the Town which shall own the same as a public utility,

NOW THEREFORE, the parties agree as follows:

1. Water Service.

a. The Town shall take ownership and maintenance responsibility of new large water service connections (3" and larger) within the NYSDOT ROW more specifically outlined on drawings attached as **Exhibit A**, and made a part hereof.

b. Any existing large services connections with the curb valve located at the Town owned main will not be taken over by the Town unless the Town receives a request for transfer of ownership and a new demarcation valve is installed at the ROW.

c. Developer shall be responsible for the initial cost to install a new water service from the Town owned watermain to the edge of the NYSDOT ROW. A valve will be located at the NYSDOT ROW ("Demarcation Point"), in addition to any valve necessary for the connection to the Town main. The water service line and valves shall be maintained by the Town.

d. The Town shall bill Developer any costs associated with repair or replacement of the water service from the Demarcation Point to the NYSDOT ROW.

e. Developer shall be responsible for obtaining any required utility work permit as necessary from NYSDOT to perform the initial installation.

f. If Developer upgrades the water service in the future, a new agreement will be required at that time and the existing water service will need to be removed in accordance with the requirements of the Southern Cayuga Lake Intermunicipal Water Commission (aka "Bolton Point").

g. Developer shall provide record drawings per Bolton Point guidelines for the initial installation of the water service line and valves, which drawings shall be subject to approval by the Town.

2. Water Line to Developer's Project.

a. Developer shall construct a water line on property or easements of the Town from its existing water main to the NYSDOT ROW in accordance with specifications to be prepared by Developer's engineers based upon preliminary design, report and environmental mitigation design prepared by Developer.

b. The water line constructed by Developer shall be of appropriate size and capacity, and in accordance with the standards of the State of New York Department of Health and the applicable Code.

3. Developer.

a. Developer is hereby granted the right to be connected to the Town water line, inclusive of such reasonable access as Developer may require to the Demarcation Point or easement acquired for the purpose of the water supply service connection. This grant is permission for a water supply line connection only, and shall not be construed in any other way; nor is it

**Commented [DH1]:** This seems out of place since we are creating agreements just for new developments rather than addressing other existing conditions.

**Commented [k2R1]:** If this is not required we can remove it. I do not recall who proposed that this be included. I defer to Ray and the engineers.

intended to convey any other right upon the surface of such property or under the ground except for the purposes of constructing, installing and maintaining access to the Town water supply system.

b. Developer shall comply with all applicable rules and regulations of the water supply system of the Town, County Department of Health, NYSDEC, the U.S. Environmental Protection Agency (USEPA), and Bolton Point as they relate to the Town water supply or provision of water service hereunder.

c.

4. Water Service Line Maintenance and Repair. Upon completion of construction by the Developer, the water line running from the Demarcation Point to the connection to Developer's property which lies in the NYSDOT ROW shall be maintained, repaired and when necessary replaced by the Town, with the full expense billed back to the Developer by the Town.

**Commented [DH3]:** I guess I'm confused by the Demarcation Point. I was thinking it is the valve at the DOT ROW, not the connection at the Town Main. Need to confirm.

5. Independent Contractor. The parties recognize that they are independent contractors pursuant to this Agreement and will conduct themselves as such; that they will neither hold themselves out as nor claim to be an officer or employee of any of them by reason hereof; and they will not by reason hereof make any claim, demand or application to, of, or for any right or privilege applicable to an officer or employee of any party.

**Commented [DH4]:** ...successors and assigns,

6. Insurance, Liability; Indemnification. Developer shall obtain the following insurance also naming the Town as an additional named insured, and provide the Town with proof of carriage thereof:

(a) Workers' Compensation insurance for any of Developers' employees to be assigned to the work hereunder, and if none, execution of New York Workers' Compensation Board Form CE-200 showing proof of exemption.

(b) Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence combined single limit Bodily Injury & Property Damage; \$500,000 General Aggregate Limit; \$500,000 Products Completed Operations Aggregate.

(c) Medical expense in an amount not less than \$10,000 per person.

(d) Each party, as to work it performs under this Agreement, if it performs work with its own forces, shall be responsible for all damage to person or property arising from any act or negligence performed by or on its behalf, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The parties specifically agree that their agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

**Commented [DMH5]:** Should this be recorded with Tompkins County?

7. Assignment. Other than contracting for the performance of their respective responsibilities as contemplated herein, the Developer covenants and agrees not to assign, transfer, sublet or otherwise

**Commented [k6R5]:** I do not think it has to be but it can be.. At the time when the Developer conveys the infrastructure (with the necessary easements then yes it should be recorded).

dispose of this Agreement or any part thereof, or any of its right, title or interest therein, or its power to execute this Agreement without the prior written consent of the Town.

8. Exhibit B, provisions required by law, is incorporated as if fully set forth herein.

9. Exhibit C, the Bolton Point Rules and Regulations are attached. All installations and work performed by Developer under this Agreement shall be performed in accordance with these rules and regulations as amended from time to time, and shall be subject to any special conditions that may be deemed necessary

10. Term of Agreement. This Agreement takes effect as of the date of this Agreement as first above written and shall terminate at midnight preceding the anniversary of such date.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officials.

**Commented [DH7]:** Why not include the whole document and "as may be amended from time to time".

**Commented [DMH8]:** Bolton Point Rules and Regulations may be contradicting so this agreement should trump rules and Regulations. We will need to work with Bolton Point to modify the rules and Regulations to accommodate Dryden's requirements. See Bolton Point summary below.

**5. Water Service Line Maintenance**

a. Water Service Line Responsibility

...The municipality is responsible for the maintenance of the service connection from, to and including the curb valve. In the Village of Cayuga Heights, the customer is responsible for the entire service line from the main tap to the house.

**Commented [DH9]:** What about 'special conditions' that may be recommended by the Town Engineer or DPW?

Town of Dryden

By: \_\_\_\_\_  
Title: Supervisor

Date: \_\_\_\_\_

Maifly Development

By: \_\_\_\_\_  
Print Name/Title

Date: \_\_\_\_\_

Approved as to Form:

NYS Attorney General

By: Assistant Attorney General

Approved:

For the State Comptroller

Commented [DMH10]: Is this required?