

## CONSECUTIVE SEWER SYSTEM AGREEMENT

This **CONSECUTIVE SEWER SYSTEM AGREEMENT** (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2020 (“Effective Date”), by and between **Robert T. Reap and Joy Reap**, residents of Richmond, Vermont, individually and as members of Donahue Brook, LLC, a Vermont limited liability company of Richmond, Vermont (collectively, “Owners”) and the **Town of Richmond**, a Vermont municipality located in Chittenden County, Vermont (“Town”).

### RECITALS

**WHEREAS**, Robert T. Reap and Joy Reap Owners own a +/-8.91-acre property comprised of located on a private road known as Willis Farm Road in the Town of Richmond (the “Reap Subdivision”), ~~as depicted as “Lot 2” on a plan entitled “Plat of Survey Showing Two Lot Subdivision of Lands of Beverly F. Willis, Trustee, 840 West Main Street, Richmond, Vermont,” prepared by Button Professional Land Surveyors, PC, dated February 27, 2011, and recorded at Map Slide 136, Page 2 of the Richmond Land Records (“Lot 2”); and~~

WHEREAS, Robert T. Reap and Joy Reap have subdivided said parcel into five separate lots, with Donahue Brook, LLC being the owner of Lot 2, as depicted on a Plat of Land entitled “Lot 5 Subdivision Plat, Willis Farm” dated November 22, 2016 and recorded at Map Slide 154 of the Town of Richmond Land Records; and

**WHEREAS**, a private sewer (wastewater collection) system (the “PRIVATE SEWER SYSTEM”) is to be constructed on Lot 2 as depicted on the above Plat of Land entitled “Lot 5 Subdivision Plat, Willis Farm” dated November 22, 2016 and recorded at Map Slide 154 of the Town of Richmond Land Records ~~a plan entitled “\_\_\_\_\_,” prepared by \_\_\_\_\_, dated \_\_\_\_\_, and recorded at Map Book \_\_\_\_\_, Page \_\_\_\_\_ of the Richmond Land Records; and~~

**WHEREAS**, Lot 2 is benefitted by a fifty-foot (50’) wide easement and right-of-way for utilities extending across the adjacent parcel of land to the south owned by Richmond Land Trust and then continuing southerly or southeasterly to and through the parcel of land owned by the Chittenden East Supervisory Union School District located on School Street; and

**WHEREAS**, Owners desire that the PRIVATE SEWER SYSTEM be connected to and discharge into the Town’s public sewer (wastewater disposal and treatment) system (the “TOWN SEWER SYSTEM”) through a private 3-inch force main and pump station that connects to the TOWN SEWER SYSTEM in or proximate to the School Street (Town Highway #35) right-of-way; and

**WHEREAS**, the Town is willing to allow such connection and discharge subject to certain terms and conditions as set forth herein.

**NOW, THEREFORE**, based on the above stated premises and other good and valuable consideration, the parties hereto agree as follows:

1. Confirmation: The parties hereby confirm that the statements and facts set forth as Recitals hereinbefore are true and correct, in reliance upon which the parties are entering into this Agreement.
  
2. Duties and Responsibilities of the Town: The Town shall allow the PRIVATE SEWER SYSTEM to discharge into the TOWN SEWER SYSTEM as a consecutive sewer system to the TOWN SEWER SYSTEM. The Town shall have the following specific duties and responsibilities hereunder:
  - 2.1 Expand the boundaries of the Town's Water and Sewer District to include the PRIVATE SEWER SYSTEM in accordance with the Town's Policy for Providing Water and Wastewater Service to Future Public or Private Land Development Projects or Properties, dated June 17, 2019, and as hereafter amended or adopted (the "Policy");
  - 2.2 Allow the PRIVATE SEWER SYSTEM to connect to the TOWN SEWER SYSTEM in compliance with the requirements of Wastewater and Potable Water Supply Permit # \_\_\_\_\_, dated \_\_\_\_\_, and as amended from time to time;
  - 2.3 Charge Owners and other users of the PRIVATE SEWER SYSTEM for their connection to the PRIVATE SEWER SYSTEM and thus their connection to the TOWN SEWER SYSTEM;
  - 2.4 Charge Owners and other users of the PRIVATE SEWER SYSTEM all costs, fees, expenses and charges for use of the PRIVATE SEWER SYSTEM in the Town's sole discretion, including sewer use charges and fees, which shall be based on the PRIVATE SEWER SYSTEM's metered use, which measures flows at a meter to be installed in a metering vault on the PRIVATE SEWER SYSTEM force main prior to its connection to the TOWN SEWER SYSTEM and type of use (residential, commercial, etc.). The Town shall provide Owners with prior notice of such costs, fees, expenses and charges that are to be reimbursed;
  - 2.5 Authorize the expansion the PRIVATE SEWER SYSTEM for the uses approved and flows allocated by the Town, which authorization shall not be unreasonably withheld or delayed;

- 2.6 Cooperate with Owners on the design and installation of a metering vault on the PRIVATE SEWER SYSTEM force main prior to connection to the TOWN SEWER SYSTEM;
- 2.7 Monitor the meter in the PRIVATE SEWER SYSTEM's metering vault to determine the amount of infiltration, if any, in the PRIVATE SEWER SYSTEM and bill users of the PRIVATE SEWER SYSTEM based on the meter in the metering vault;
- 2.8 Shut off the meter in the PRIVATE SEWER SYSTEM's metering vault if charges are delinquent, subject to the provisions of Chapter 129 of Title 24 Vermont Statutes Annotated and the Town's billing policy, both as amended from time-to-time;
- 2.9 Calibrate the meter in the PRIVATE SEWER SYSTEM's metering vault annually;
- 2.10 Monitor the PRIVATE SEWER SYSTEM to ensure compliance with all applicable rules and policies of the Town Water Resources Department, including but not limited to the Policy, and enforce said rules and policies in the event of a violation;
- 2.11 Maintain and renew operational permits and operator certifications for the TOWN SEWER SYSTEM; and

3. Duties and Responsibilities of Owners: Owners, [their successors, heirs and assigns](#), shall remain the Owners of the PRIVATE SEWER SYSTEM and shall be responsible to perform and fulfill all duties and responsibilities relating to the PRIVATE SEWER SYSTEM that are not expressly the responsibility the Town as set forth in Section 2 above, including, but not limited to, the following:

- 3.1 Owners, and their heirs, successors and assigns, shall be completely responsible for the PRIVATE SEWER SYSTEM, which shall remain a private wastewater disposal system, and shall jointly and severally indemnify, defend and hold the Town harmless of and from all suits, costs, fees, charges, damages and causes of action, including witness and attorneys' fees, which may be incurred by the Town as a result of a breach of any representation, warranty, covenant, agreement, term or provision contained in this Agreement or in connection with the PRIVATE SEWER SYSTEM, whether such breach shall be as a result of any act or omission of any of Owners or any invitee of Owners;
- 3.2 Owners shall notify and obtain approval from the Town before commencing any connection, repair, replacement, improvement,

modification and/or expansion of the PRIVATE SEWER SYSTEM and shall undertake the same under the general supervision of the Town;

- 3.3 Owners shall operate, repair, replace, or improve the PRIVATE SEWER SYSTEM, including but not limited to the force main, pump station, pipes, lines, valves and appurtenances thereto, as required to maintain compliance with all applicable federal, State and Town laws, rules, permits and policies, including the Policy, as the same are amended from time to time;
- 3.4 Owner shall maintain flow, protect from damage and prevent illicit discharges to and from the TOWN SEWER SYSTEM and/or the PRIVATE SEWER SYSTEM. Owners shall effectuate such repair, replacement, or improvement promptly and diligently upon receiving notice from the Town, or otherwise becoming aware that such work is required, so as to protect the public health, safety and welfare, including but not limited to preventing or abating an imminent and substantial public health hazard or mitigating a substantial significant public health risk,;
- 3.5 Owners shall make all payments on any existing or hereafter incurred indebtedness or other financial obligations and pay all expenses appurtenant to the ownership, operation, repair, replacement, or improvement of the PRIVATE SEWER SYSTEM;
- 3.6 Upon completion of construction, repair, replacement, improvement, modification and/or expansion of the PRIVATE SEWER SYSTEM, Owners shall submit a signed statement by a licensed engineer that the PRIVATE SEWER SYSTEM was designed, installed and tested in accordance with all applicable laws, rules, permits and Town Water Resource Department rules and policies;
- 3.7 Owners shall submit “as built” plans for the PRIVATE SEWER SYSTEM to the Town Water Resource Department after completion of construction and any repair, replacement, improvement, modification and/or expansion of the PRIVATE SEWER SYSTEM;
- 3.8 Owners shall only connect the PRIVATE SEWER SYSTEM directly to a Richmond Water Resource Department sewer main and not to any other private line or wastewater disposal system;
- 3.9 Owners shall cooperate with the Town on the design and installation of a metering vault on the PRIVATE SEWER SYSTEM force main prior to its connection to the TOWN SEWER SYSTEM and shall pay all costs, fees, expenses and charges associated with such design and installation,

including for the metering vault, meter and associated infrastructure. The Town shall provide Owners with prior notice of such costs, fees, expenses and charges that are to be reimbursed;

- 3.10 Owners shall pay any and all current and future costs, fees, expenses and charges of any kind or nature in connection with construction, operation, repair, replacement, improvement, modification and/or expansion of the PRIVATE SEWER SYSTEM. The Town shall provide Owners with prior notice of such costs, fees, expenses and charges that are to be reimbursed;
- 3.11 Owners shall be solely fully responsible for coordination and negotiations with potential new users and new connections to the PRIVATE SEWER SYSTEM;
- 3.12 Owners shall instruct all potential new users of the PRIVATE SEWER SYSTEM to, and all potential new users of the PRIVATE SEWER SYSTEM shall, obtain a State wastewater permit, obtain Town approval for expansion of the Town's Water and Sewer District so that the new users' properties that are proposed to be connected to the PRIVATE SEWER SYSTEM are within said District, obtain a sewer use allocation from the Town and pay a connection fee for connection to the PRIVATE SEWER SYSTEM and the TOWN SEWER SYSTEM;
- 3.13 Owners and all other users of the PRIVATE SEWER SYSTEM, including potential new users, shall pay sewer use charges and fees to the Town in amounts determined by the Town in its sole discretion, understanding that such sewer use charges and fees shall be based on flows measured at a meter to be installed in a metering vault on the PRIVATE SEWER SYSTEM force main prior to its connection to the TOWN SEWER SYSTEM;
- 3.14 By their execution of this Agreement, Owners for themselves and their heirs, successors and assigns, hereby irrevocably waive any and all rights they may have now or may acquire in the future to request that the Town accept ownership of, or responsibility for operation, maintenance, repair, replacement, improvement or expansion of, the PRIVATE SEWER SYSTEM;
- 3.15 Owners and other users of the PRIVATE SEWER SYSTEM expressly acknowledge and agree by virtue of their connection to the PRIVATE SEWER SYSTEM that the Town may disconnect the PRIVATE SEWER SYSTEM for non-payment of any costs, fees, expenses or charges billed by the Town in accordance with, and in compliance with, Chapter 129 of Title 24 Vermont Statutes Annotated and the Town's billing policy, both as

amended from time-to-time. The notice required by Chapter 129 of Title 24 Vermont Statutes Annotated shall be delivered to the Owners, as well as any delinquent user. Owners shall be entitled to cure any delinquency and obtain restoration of service in accordance with Chapter 129 of Title 24 Vermont Statutes Annotated;

- 3.16 Owners shall allow the Town to bill users of the PRIVATE SEWER SYSTEM based on the meter in the metering vault on the PRIVATE SEWER SYSTEM force main prior to its connection to the TOWN SEWER SYSTEM;
- 3.17 Owners shall adopt and enact a declaration and bylaws governing operation, use, repair, replacement, improvement, expansion, extension or termination of the PRIVATE SEWER SYSTEM, which declaration shall establish a homeowner's or similar association as successors to Owners in owning, operating, managing, controlling, repairing, replacing, improving, and expanding the PRIVATE SEWER SYSTEM and shall require all users of the PRIVATE SEWER SYSTEM to abide by this Agreement and said declaration and the bylaws;
- 3.18 Owners shall complete initial construction of the PRIVATE SEWER SYSTEM by September 30, 2023;
- 3.19 Owners shall reimburse the Town for all costs and expenses reasonably incurred by the Town in accordance with Section 2.4, above, within thirty (30) days of the date of any Town invoices sent to Owners for such cost and expenses; and
- 3.20 Owners shall obtain all required federal, state and Town permits and approvals prior to making or allowing any connection, alteration, or expansion of or to the PRIVATE SEWER SYSTEM.

4. Rights for Operations, Maintenance, Repair, Replacement, and Improvements:

- 4.1 Owners hereby grant to Town rights of access to the PRIVATE SEWER SYSTEM as may be reasonably necessary for the operation, maintenance, repair, replacement and improvement of the PRIVATE SEWER SYSTEM. The aforesaid right of access shall include a right to exercise Owners' reserved easements with respect to lands and premises owned by others in or abutting the Lot 2, including the rights of access granted or reserved to Owners in the Warranty Deed of Beverly F. Willis, Trustee of the Beverly F. Willis Family Trust dated April 10, 1996, dated June 25, 2014, and recorded at Book 225, Page 67 of the Town Land Records.

4.2 Prior to connection of the PRIVATE SEWER SYSTEM to the TOWN SEWER SYSTEM, Owners shall grant an easement and right-of-way to the Town to access the metering vault on the PRIVATE SEWER SYSTEM force main.

4.3 The Town and its agents shall have the right but not the obligation to enter upon any land or property on which the PRIVATE SEWER SYSTEM is located, with or without prior notice to Owners, for the purpose of operation, inspection, testing, maintenance, repair, replacement, or improvement of the PRIVATE SEWER SYSTEM. [Nevertheless, the Town agrees that to the extent it is reasonably practicable, it shall endeavor to give the Owners prior notice.](#)

4.4. If Owners have failed to perform any repair, replacement, or improvement obligations or, if there is an emergency that requires an immediate response, the Town shall have the right, with or without the prior notice or approval of Owners, to take such measures as the Town, in its sole discretion, determines are necessary to: (a) maintain the TOWN SEWER SYSTEM's or PRIVATE SEWER SYSTEM's compliance with all applicable laws, rules, policies and permits, (b) protect the TOWN SEWER SYSTEM or PRIVATE SEWER SYSTEM from damage or infiltration, and (c) protect the public health, safety, welfare and the environment. [Nevertheless, the Town agrees that to the extent it is reasonably practicable, it shall endeavor to give the Owners prior notice.](#)

5. Customers, Sewer Rates, Billing and Collections:

5.1 All connections to the PRIVATE SEWER SYSTEM shall be customers of the Town Water Resources Department, and the Town shall enforce the payment of sewer rates, charges and fees established by the Town and compliance with all laws, rules, ordinances and regulations applicable to customers of the Town Water Resources Department. All such connections and the sewer use charges and fees shall be billed based on the flow measured at the meter in the metering vault on the PRIVATE SEWER SYSTEM force main.

5.2 If any payments for costs and expenses incurred by the Town under Section 3.19 remain unpaid for more than thirty (30) days after the Town invoices Owners for reimbursement of such costs and expenses, the Town shall be entitled to charge Owners in the same manner and amounts it charges customers of the TOWN SEWER SYSTEM consistent with the Town's rules, policies and procedures for the same.

6. Breach of Agreement.

- 6.1 Should either party to this Agreement commit a breach of the Agreement, the non-breaching party shall provide written notice of the breach to the breaching party. The breaching party shall have thirty (30) days to cure any claimed breach or, in the event that a cure cannot be accomplished within thirty (30) days, to initiate those actions necessary to cure any claimed breach within thirty (30) days and thereafter complete such actions with reasonable promptness.
- 6.2 If a claimed breach is not cured within the times set forth above, the non-breaching party may commence a civil action and may, in such action, request an order compelling the breaching party to cure the breach, as well as any other appropriate relief. In addition, the substantially prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees and other costs of litigation, including expert witness fees. As used in this Section, the "substantially prevailing party" is the party that is afforded the greater relief (whether affirmatively or by means of a successful defense) with respect to claims having the greatest value or importance as determined by the court or a third-party neutral, as applicable, after allowing for all of the claims, counterclaims, and defenses asserted under the contract. In claims for money damages, the total amount of recoverable attorney's fees and other costs shall not exceed the net monetary award of the prevailing party.

7. General Provisions:

- 7.1 Recording; Binding Agreement. This Agreement will be recorded by the Town in the Richmond Land Records and shall run with the land and be binding upon Owners and their heirs, administrators, successors, assigns, and transferees, and references in this Agreement to Owners shall be construed to include their heirs, administrators, successors, assigns, and transferees. Any assignment, transfer or conveyance of the lands or any rights in the lands of Owners upon which the PRIVATE SEWER SYSTEM is located shall specifically reference this Agreement and shall bind the heir, administrator, successor, assignee or transferee to faithful performance of this Agreement as an heir, administrator, successor or assign of Owners. Notwithstanding the foregoing, there is excepted and released from the operation of this Section any lands of the Owners upon which no portion(s) of the PRIVATE SEWER SYSTEM is located, specifically excluding all service lines connecting users to the PRIVATE SEWER SYSTEM.

7.2 Entire Agreement. This Agreement is a complete and entire agreement with respect to the subject matter hereof, and there are no representations, understandings, reliances, commitments, or agreements other than those set forth or referred to herein. This Agreement may only be amended, modified, or terminated by a written instrument duly executed by the parties.

7.3 Counterparts. This Agreement may be executed in any number of duplicate original counterparts, and each such counterpart is to be considered a duplicate original, each and all of which shall constitute one and the same Agreement.

7.4 Severability. In case any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of the remaining provisions hereof.

7.5 Notices. Any notice required by this Agreement shall be sent by [e-mail](#) and United States first class mail, postage prepaid:

To Owners:  
Joy Reap  
P.O. Box 442  
Richmond, VT 05477

To the Town:  
Town Manager  
Town of Richmond  
P.O. Box 285  
Richmond, VT 05477

[Bob Reap](#)  
[robertreap@vermontcontractor.com](mailto:robertreap@vermontcontractor.com)

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\_\_\_\_\_  
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7.6 Choice of Law and Forum; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont. Any suit, action or proceeding against any party with respect to this Agreement or any judgment entered by any court in respect thereof, may be brought in the courts of the State of Vermont, or in the United States Courts located in the State of Vermont, and each party hereby irrevocably submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding.

7.7 No Waiver. No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the parties

hereto may have, nor shall any such delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any party hereunder be deemed a waiver of any default or breach subsequently occurring.

7.8 Reviewed by Attorneys. Each party represents and warrants to the other party that it (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and document executed in connection herewith with, such attorneys and other persons as such party may wish, and (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its/his own free will and accord and without threat, duress or other coercion of any kind by any person.

7.9 Waiver of Jury Trial. To the extent allowed by law, the parties hereto waive all rights to trial by jury in any action, suit or proceeding brought to resolve any dispute, whether arising in contract, tort or otherwise between the parties arising out of, connected with, related or incidental to this agreement or transactions related thereto.

7.10 Interpretation Presumption. This Agreement has been negotiated by the parties hereto. The parties represent and warrant to one another that each has individually, or through legal counsel, actively participated in the finalization of this Agreement, and in the event of a dispute concerning the interpretation of this Agreement, each of the parties hereby waives the doctrine that an ambiguity should be interpreted against the party that has drafted the document.

This Agreement is approved and executed by the parties hereto on the dates set forth below.

DATE:

\_\_\_\_\_

\_\_\_\_\_  
Robert T. Reap

\_\_\_\_\_  
Joy Reap

STATE OF VERMONT  
CHITTENDEN COUNTY ss.

At Richmond, this \_\_\_ day of \_\_\_\_\_ 2020, personally appeared Robert T. Reap and Joy Reap, and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed.

Before me,

\_\_\_\_\_  
Notary Public  
My Commission Expires: 1/31/21  
My Commission #:

DATE: \_\_\_\_\_ DONAHUE BROOK, LLC

\_\_\_\_\_  
Robert Reap, Member and Duly  
Authorized Agent

STATE OF VERMONT  
CHITTENDEN COUNTY ss.

At Richmond, this \_\_\_ day of \_\_\_\_\_ 2020, personally appeared Robert Reap,  
and he acknowledged this instrument, by him sealed and subscribed, to be his free  
act and deed.

Before me,

\_\_\_\_\_  
Notary Public  
My Commission Expires: 1/31/21  
My Commission #:

DATE:

TOWN OF RICHMOND

\_\_\_\_\_  
Josh Arneson, Town Manager and  
Duly Authorized Agent

STATE OF VERMONT  
CHITTENDEN COUNTY ss.

At Richmond, this \_\_ day of \_\_\_\_\_ 2020, personally appeared Josh Arneson, Town Manager and Duly Authorized Agent of the Town of Richmond, and he acknowledged he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of the Town of Richmond.

Before me,

\_\_\_\_\_  
Notary Public  
My Commission Expires: 1/31/21  
My Commission #:

DRAFT