

TEMPORARY ACCESS LICENSE

TEMPORARY ACCESS LICENSE AGREEMENT made as of this 25th day of February, 2016 by and between WILDBERRY LODGE LLC, C/O STEVEN TURK, 600 Route 44/55, Highland New York 12528, hereinafter referred to as “TURK” or “LICENSOR,” and the TOWN OF NEW PALTZ , hereinafter referred to as the “TOWN” or “LICENSEE,” a governmental subdivision of the State of New York with offices located at Clearwater Road, P.O. Box 550, New Paltz, New York 12561, hereinafter referred to as the “TOWN” or “LICENSEE,”

WHEREAS, Licensor is the owner of that parcel of land lying within the bounds designated as “Turk Property (formerly Plessler Property)” which form a portion of “Proposed Extension No. 1 of Town Water District No. 3” as shown generally on a map entitled “Proposed Extension No. 1 of Town Water District No. 3 – Water District Boundary Map,” dated 02/26/16 prepared by David Clouser & Associates, a copy of which is attached hereto and made a part hereof and marked “Exhibit-A,” hereinafter referred to as “the Property;” and

WHEREAS, the Town has undertaken a study to determine the availability of a viable water supply for incorporation into the community water supply system in the interests of the health, safety, and welfare of the Town of New Paltz and the incorporated Village of New Paltz and to determine the potential for the creation of an extension to the Town’s existing “Water District No. 3” which, if created, is anticipated to include the lands of the Licensor; and

WHEREAS, the significant expense of the completion of such study could be prohibitive without access to funding for such purpose, which funding commitment has been secured and must be acted upon within certain time limitations in order to be procured; and

WHEREAS, as part of the overall plan for determining the availability of such a water supply and for the potential for the creation of such extension of such existing water district, it is anticipated that the Town will acquire from the Licensor a small portion of the Property for the continued maintenance and operation of four (4) existing wells located in three (3) specific areas shown on the attached map as "Existing Developed Well (Typ)." and three (3) additional wells shown at two (2) additional locations (each location being marked with the letter "W" contained within a circle) that would ultimately service the area of the proposed district extension and the aforesaid community water supply;

NOW THEREFORE, in consideration of the sum of \$1.00 and other good and valuable consideration paid by the Licensee to the Licensor, the receipt of which is hereby acknowledged, the undersigned hereby agree as follows:

- 1) **LICENSE.** Licensor hereby grants to the Town of New Paltz, New York, acting by and through its consultant, David Clouser & Associates, and such consultant's sub-consultants, The Chazen Companies, and such sub-consultant's sub-agents for purposes of well testing (hereinafter collectively referred to as the "Town's consultants") a license to enter upon the Property for the purpose of providing necessary pumping and testing equipment to the site and conducting pump testing of the existing wells located upon the Property at the locations referred to above to determine potential well yield and for the purpose of sampling for water quality analysis.
- 2) **LICENSE TERM.** The term of this license shall be for a term of ninety (90) days from and after the date upon which this license is signed by all parties and, unless extended or renewed in writing by subsequent agreement of the parties, this license shall terminate at the end of such term.

- 3) **ACCESS.** The Town's consultants shall access the well areas only upon and along routes established by mutual agreement of the parties, in consultation with their respective engineers.
- 4) **LICENSEE'S RESPONSIBILITIES.** The Town, for itself, its consultants and sub-consultants, agrees that they shall:
- a) Provide the Owner at least 24 hours' notice prior to any entry upon the Property or work performed thereon, except that if emergency access is required to avoid damage to the Property or the study, such shorter notice as can reasonably be provided in light of the nature of the emergency shall be required.
 - b) Restore the Property to its condition prior to commencement of any access or work pursuant to this agreement. Access will avoid disturbance of all environmentally sensitive areas and will avoid any areas that the Owner directs the Town's consultants and sub-consultants not to disturb.
 - c) Indemnify and hold harmless the owner for any claims and/or damages that result from any access utilized or work performed pursuant to this Agreement.
 - d) Provide copies of all well yield testing data and water quality reports to the Owner promptly following receipt and review of such documents by the engineer for the Town;
 - e) Prior to entry upon the premises, each of Town's consultants and sub-consultants intending to perform work or provide services in furtherance of this license agreement shall obtain proof of liability insurance naming Owner, and Owner's successors, heirs, personal representatives and assigns, as additional insured and shall further deliver to Owner certificates of insurance which recite the same in the amounts as follows:

(a) Compensation Insurance: Worker's Compensation Insurance for employees assigned to work upon the subject premises.

(b) General Liability and Property Damage Insurance: General Liability and Property Damage Insurance as shall protect Licensor from claims from damages for personal injuries, including accidental death, as well as from claims from property damage which may arise from the operations under this Agreement, whether such operations are by Licensee or by any agent, licensee, invitee, contractor, subcontractor, or anyone directly or indirectly employed by Licensees.

c) The amounts of such insurance shall be as follows:

(i) General Liability Insurance in an amount not less than \$1,000,000.00 for any one occurrence for injuries including wrongful death, and \$2,000,000.00 aggregate

(ii) Property Damage Insurance in an amount no less than FIVE HUNDRED-THOUSAND and NO/100 dollars (\$100,000.00) for damages on account of all occurrences.

5) **REAL PROPERTY RIGHTS.** Nothing herein shall be construed to confer upon the Licensee, its consultants, agents and employees any real estate right, title or interest, or to bind the Licensor to any further or future course of action.

6) **NOTICES.** Except as otherwise provided, all notices provided for herein shall be deemed to have been duly given if sent by registered or certified mail, return receipt requested, to the following persons and addresses:

License Agreement are for convenience only and shall in no way modify or restrict the terms, covenants and conditions of this License Agreement.

11) **DEFAULT NOTICE.** Licensee shall not be deemed in default of this agreement unless Licensee fails to correct a default within ten (10) days after receipt by Licensee of a notice of such default.

12) **MERGER:** All understandings and agreements heretofore had between the parties hereto are merged in this License Agreement, which alone fully and completely expresses their agreement. This Agreement is being entered into after full investigation, neither party relying upon any statement or representation, not embodied in this Agreement, made by the other.

13) **GOVERNING LAW:** It is agreed that this License Agreement shall be governed by, construed, and enforced in accordance with the Laws of the State of New York and any action or other proceeding with respect to the rights and obligation of the respective parties to this Agreement shall be commenced and prosecuted solely in a court of competent jurisdiction within the County of Ulster, State of New York.

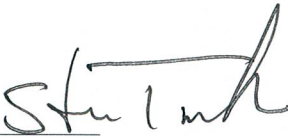
14) **COUNTERPARTS.** This Agreement may be executed in separate counterparts which together shall be considered to be a single document.

REMAINDER OF PAGE BLANK—SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date and year the first above written

OWNER/LICENSOR:

WILDBERRY LODGE, LLC

By: Steven Turk 
Print Name: Steven Turk
Print Title: Managing Member

TOWN OF NEW PALTZ

By: Neil Bettee
Print Name: Neil Bettee
Print Title: Supervisor

Notice to the Licensor shall be sent to: Wildberry Lodge LLC c/o Steve Turk
600 Rt 44/55
Highland, NY 12528

With a **copy sent to:** Jennifer L. Van Tuyl
Cuddy & Feder
300 Westage Business Center
Suite 380
Fishkill, NY 12524

Notice to the Licensee shall be sent to: Rosanna Mazzaccari, Town Clerk
Town of New Paltz
P.O. Box ~~915~~ 550
Highland, NY 12561
New Paltz,

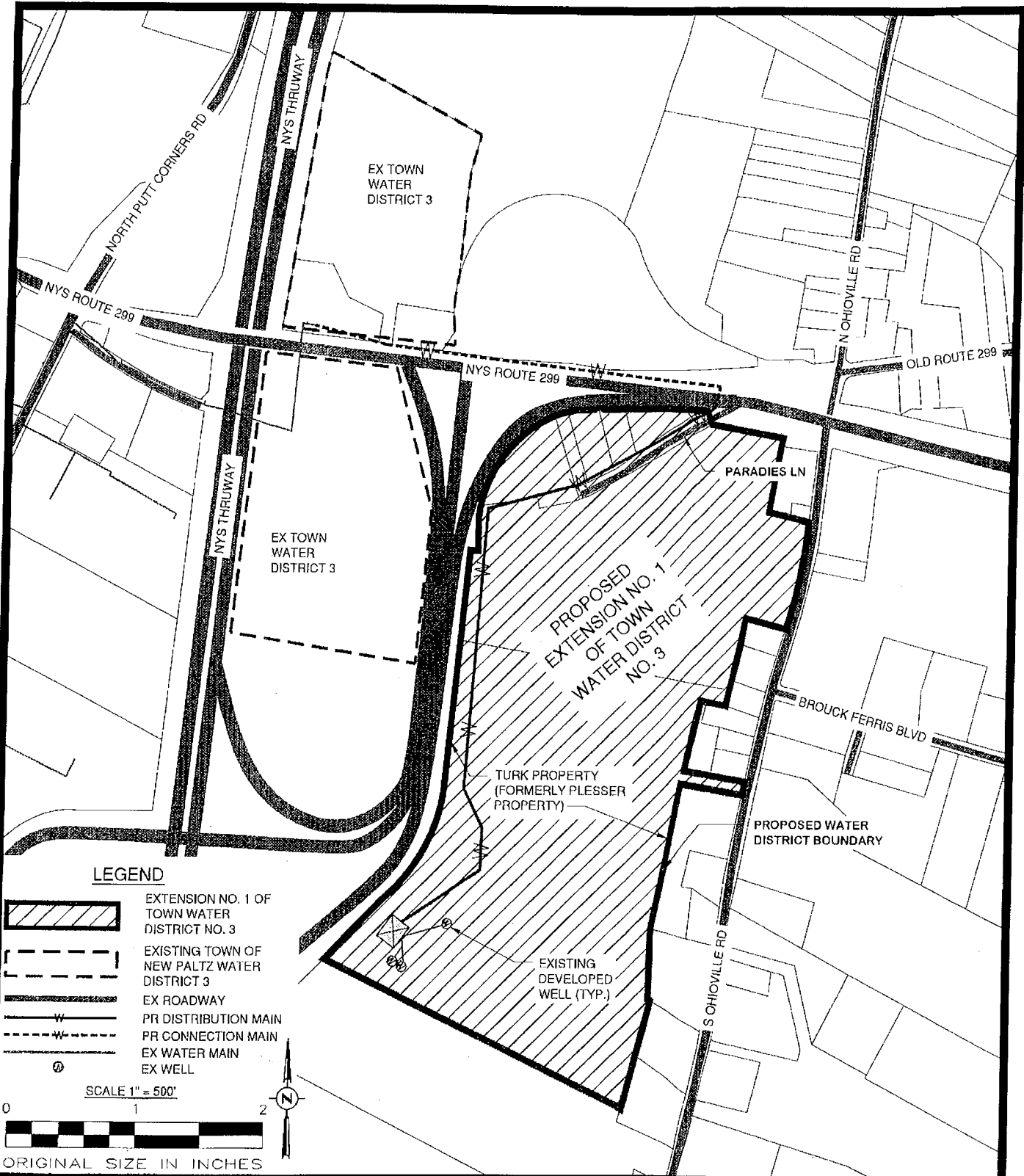
With a **copy sent to:** Joseph M. Moriello, Esq.
Di Stasi Moriello & Murphy Law PLLC
P.O. Box 915
Highland, NY 12528

7) **CHANGES IN WRITING.** This Agreement may not be changed, modified or terminated orally. All changes, modifications, or notices of termination are to be made in writing and signed by the party against whom enforcement is sought.


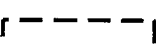

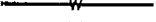
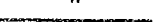


8) **BINDING EFFECT.** Except as otherwise provided herein, this Agreement shall bind or inure to the benefit of the respective heirs, executors, personal representatives, administrators, successors, and assigns of the parties.

9) **NO WAIVER:** Failure of either party to this License Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but these shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

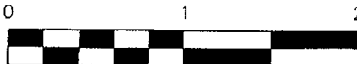
10) **CAPTIONS:** The captions and headings and titles of the paragraphs contained in this



LEGEND

-  EXTENSION NO. 1 OF TOWN WATER DISTRICT NO. 3
-  EXISTING TOWN OF NEW PALTZ WATER DISTRICT 3
-  EX ROADWAY
-  PR DISTRIBUTION MAIN
-  PR CONNECTION MAIN
-  EX WATER MAIN
-  EX WELL

SCALE 1" = 500'



ORIGINAL SIZE IN INCHES



**PROPOSED EXTENSION NO. 1 OF
WATER DISTRICT NO. 3**

WATER DISTRICT BOUNDARY MAP

TOWN OF NEW PALTZ
ULSTER COUNTY, NEW YORK

DATE DRAWN BY

02/26/16 MLT

PROJECT NO.

55008

SHEET NO.

EXHIBIT-A



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