

**FIRST AGREEMENT BETWEEN
THE VILLAGES OF BRIARCLIFF MANOR AND
TARRYTOWN CONCERNING WATER SUPPLY**

THIS AGREEMENT made this 16th day of July, 2004, by and between the Village of Briarcliff Manor ("Briarcliff Manor"), a municipal corporation of the State of New York, having its offices at 1111 Pleasantville Road, Briarcliff Manor, New York 10510 and the Village of Tarrytown ("Tarrytown"), a municipal corporation of the State of New York, having its offices at 21 Wildey Street, Tarrytown, New York 10591.

WHEREAS, the parties to this Agreement have undertaken to study the desirability and feasibility of jointly utilizing a water connection to the Catskill Aqueduct and existing water facilities and construction of new water facilities for the purpose of supplying a long term, adequate and potable water supply to the Villages of Briarcliff Manor, Tarrytown and the Village of Sleepy Hollow; and

WHEREAS, the parties to this Agreement believe that the benefits to be conferred by the joint utilization of an existing water connection to the Catskill Aqueduct and related water facilities will permit assurance of a long term, adequate and potable water supply for residents of Briarcliff Manor and Tarrytown and the Village of Sleepy Hollow; and

WHEREAS, as part of the joint use of the water facilities, construction of additional water facilities may be required; and

WHEREAS, Briarcliff Manor and the Village of Sleepy Hollow have entered into the First Agreement Between The Village of Briarcliff Manor and Sleepy Hollow Concerning Water Supply, dated December 22, 2000 (the "Briarcliff/Sleepy Hollow Agreement"), which agreement

provides, inter alia, for the joint utilization of various water facilities in connection with the Catskill Aqueduct for a long term, adequate and potable supply of water for residents of Briarcliff Manor, Sleepy Hollow and portions of the Town of Mount Pleasant within the Briarcliff Manor Water District, and the understanding as to the rights and obligations, benefits, costs and method of governance in connection with joint utilization of existing water facilities; and

WHEREAS, some of the terms contemplated by the Briarcliff/Sleepy Hollow Agreement are not consistent with the terms of this Agreement and Briarcliff Manor must undertake to amend and restate the Briarcliff/Sleepy Hollow Agreement to conform the inconsistent terms in the Briarcliff/Sleepy Hollow Agreement to the terms of this Agreement; and

WHEREAS, the parties to this Agreement desire to set forth their understanding as to the rights and obligations, benefits, costs and method of governance in connection with joint utilization of existing water facilities and construction and joint utilization of new water facilities, as set forth herein, and as may be modified, from time to time.

NOW, THEREFORE, in consideration of the premises and the provisions hereinafter set forth, the following constitutes a binding agreement by and between the parties.

1. **Definitions.**

Catskill Aqueduct Connection - The existing connection to the Catskill Aqueduct jointly owned, operated and maintained by the Villages of Tarrytown and Sleepy Hollow located at Executive Boulevard in the Town of Greenburgh which currently provides water supply from the Catskill Aqueduct to the Villages of Tarrytown and Sleepy Hollow.

30 Inch Main - An approximately 13,000 lineal foot long, approximately 30 inch diameter transmission main owned and maintained by Tarrytown and the Village of Sleepy Hollow from the Catskill Aqueduct Connection to the Sleepy Hollow Pump Station owned and maintained by the Village of Sleepy Hollow and the adjacent Tarrytown Pump Station owned and maintained by the Village of Tarrytown.

Low Lift Pump Station - The pump station which may be necessary to increase the capacity of the 30 Inch Main in the event the capacity of the 30 Inch Main is insufficient to provide additional water supply from the Catskill Aqueduct Connection to the Village of Briarcliff Manor as set forth in paragraph 5.B.

2. **Project Description.**

A. Intent. The intent of the parties is to enter into a binding agreement in which (i) Briarcliff Manor and Tarrytown agree to provide for joint utilization and ownership of the Catskill Aqueduct Connection and the 30 Inch Main by Briarcliff Manor, Tarrytown and the Village of Sleepy Hollow and (ii) Briarcliff Manor constructs and conveys to Tarrytown joint ownership rights in any upgrades or additions to the Catskill Aqueduct Connection, the 30 Inch Main and any other water facilities used jointly by Tarrytown, the Village of Sleepy Hollow and by Briarcliff Manor.

B. Ownership, Maintenance and Utilization.

(1) Tarrytown, Briarcliff Manor and the Village of Sleepy Hollow shall jointly utilize and own the Catskill Aqueduct Connection, the 30 Inch Main and any other facilities determined

by engineering analysis to be necessary and which are constructed to maintain flow capacity, as defined in Section 5. B. hereof, and maintain chlorine contact time, generally referred to as "CT" (the "Three Village Project"). Tarrytown shall convey a 16.666% joint ownership interest in the Catskill Aqueduct Connection and the 30 Inch Main to Briarcliff Manor. Briarcliff Manor shall construct and convey to Tarrytown a one-third (1/3) joint ownership interest in any upgrades or additions to the Catskill Aqueduct Connection, the 30 Inch Main and any other water facilities used jointly by Tarrytown and Briarcliff Manor when same are constructed and operational, as more fully set forth in this Agreement. Such joint ownership shall be subject to Tarrytown's and Briarcliff Manor's non-exclusive right, respectively, to the shared use of the Catskill Aqueduct Connection and 30 Inch Main to supply water to its customers in accordance with the flows set forth in paragraph 5.B. herein, or as subsequently increased as provided for in this Agreement.

(2) The Village of Sleepy Hollow and Tarrytown shall be responsible for supplying the personnel and materials for the day-to-day operation and maintenance of the Three Village Project in accordance with the customary standards in the industry and further in accordance with the Agreement between the Village of Tarrytown and the Village of Sleepy Hollow (formerly known as the Village of North Tarrytown), dated November 2, 1964. All costs of operating, maintaining and repairing (collectively referred to in this Agreement as "Maintenance") of the Three Village Project shall be shared equally by the parties. However, Briarcliff Manor shall incur no costs for Maintenance until the Three Village Project is providing continuous and regular water supply for a period of thirty (30) consecutive days to Briarcliff Manor.

(3) In the event the Village responsible for Maintenance neglects or fails to properly undertake its obligations to maintain, operate and repair said water facilities, Briarcliff Manor shall so notify the appropriate party responsible for Maintenance, and the other Village not currently responsible for Maintenance. If within thirty (30) days, or a lesser period if an emergency condition exists, necessary and proper operation or Maintenance is not accomplished or provided for, then in that event, Briarcliff Manor shall have a right to undertake such operation and Maintenance for such occasions only.

3. **Purchase Price**

A. The Purchase Price to be paid by Briarcliff Manor to Tarrytown for the rights granted in this Agreement and for the purchase of the 16.666% joint ownership rights in the Catskill Aqueduct Connection and the 30 Inch Main shall be \$2,000,000.00, payable as follows:

(1) The amount of One Million (\$1,000,000.00) Dollars, payable within ninety (90) days of completion of the conditions precedent to this Agreement as set forth in Section 4. below (the "Initial Payment").

(2) (a) The sum of One Million (\$1,000,000.00) Dollars, payable in equal annual installments of Forty Thousand (\$40,000.00) Dollars each (hereinafter each referred to as an "Installment") for a term of 25 years, commencing one year from the Initial Payment (the "First Installment Date"). In addition to each Installment, Briarcliff Manor agrees to pay to Tarrytown, in each year commencing one year after the First Installment Date, increases in each Installment in accordance with changes in the Consumer Price Index for all Urban Consumers for selected areas, all items index relating to New York, Northern New Jersey and Long Island as

published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI"). The increase or decrease for the second Installment shall be determined on the date the second Installment is due by multiplying the Installment by the ratio of the CPI on the date the second Installment is due to the CPI on the date of the First Installment Date. Each Installment thereafter shall be subject to an increase or decrease to be determined for each Installment by multiplying the most recent Installment by the ratio of the CPI on the date such Installment is due bears to the CPI on the date of payment of the immediately previous Installment. Any such increase or decrease in an Installment shall be applied to the Installment when the same is due. Increases or decreases provided hereunder shall not exceed three (3%) percent per annum for any one year.

(b) In the event that the CPI ceases to incorporate a significant number of items, or a substantial change is made in the method of establishing such CPI, then the CPI shall be adjusted to the figure that would have resulted had no change occurred in the manner of computing such CPI. In the event that such CPI (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information for use in determining the CPI, shall be used in lieu of such CPI.

(c) Concurrently with the delivery of the Initial Payment, Tarrytown shall deliver to Briarcliff Manor a bill of sale in form reasonably satisfactory to Briarcliff Manor Village Counsel transferring 16.666% joint ownership rights in the Catskill Aqueduct Connection and the 30 Inch Main as same presently exists.

4. **Conditions Precedent.**

The obligations of Briarcliff Manor hereunder are subject to Briarcliff Manor obtaining the consent of Sleepy Hollow to the items in this Agreement affecting and relating to the rights and obligations of Sleepy Hollow, including, but not limited to, the execution of an amended Briarcliff/Sleepy Hollow Agreement. Briarcliff Manor shall use its best efforts and due diligence to obtain such consent and amended Briarcliff/Sleepy Hollow Agreement. Tarrytown agrees to use its best efforts to assist Briarcliff Manor in obtaining such consent. The obligations of Briarcliff Manor hereunder are further subject to the Three Village Project providing continuous and regular water supply for a period of thirty (30) consecutive days to Briarcliff Manor.

5. **Connection to the Catskill Aqueduct Connection.**

A. (1) Briarcliff Manor, at its sole cost and expense, shall connect to the Catskill Aqueduct Connection via a connection to the 30 Inch Main in the vicinity of the existing Tarrytown Pump Station and the Sleepy Hollow Pump Station. Briarcliff Manor shall obtain all necessary governmental approvals and agreement with New York City Department of Environmental Protection ("DEP") for Briarcliff Manor to utilize the Catskill Aqueduct Connection and to purchase water directly from the DEP and/or the City of New York, or as a customer of Tarrytown and/or Sleepy Hollow, as the parties and the DEP shall ultimately agree. If it is determined that Briarcliff Manor shall be a customer of the Village of Sleepy Hollow and/or Tarrytown, all water shall be sold to Briarcliff Manor at the New York City rate as if Briarcliff Manor were a customer of New York City.

(2) Tarrytown will use its best efforts and enter into good faith negotiations with the DEP

to modify its existing Agreement with the DEP to the extent required by the DEP to conform its provisions to this Agreement, and to the extent necessary, will also use such efforts to obtain Sleepy Hollow's consent thereto.

(3) To the extent documentation or additional approvals are required from the DEP, or any other municipal department or agency, to increase the capacity at the Catskill Aqueduct Connection, Briarcliff Manor may undertake the necessary work to obtain such approvals with the cooperation and subject to the reasonable approval of Tarrytown.

B. The Catskill Aqueduct Connection supplies a maximum flow which is divided between Tarrytown and Sleepy Hollow pursuant to their water agreement dated November 2, 1964, wherein Tarrytown has a right to pump a maximum of 4.9 mgd from the Catskill Aqueduct Connection and the Village of Sleepy Hollow (formerly North Tarrytown) has a right to pump a maximum of 3.6 mgd. Briarcliff Manor is seeking to increase the maximum flow of the Catskill Aqueduct Connection for up to an additional 6.0 million gallons per day for its sole use. Briarcliff Manor shall undertake an engineering analysis, at the sole cost and expense of Briarcliff Manor, to study, design and construct the necessary improvements to, among other items, the Catskill Aqueduct Connection and the 30 Inch Main, to insure that there is sufficient water quantity, and to provide such additional maximum flow of up to 6.0 million gallons per day. The engineering analysis shall also confirm the current capacity of the said water supply system currently serving Sleepy Hollow and Tarrytown and shall provide the facilities specified in Section 6.D. To perform said study, design and construction inspection, an independent consultant engineer ("Consultant Engineer") shall be hired by Briarcliff Manor after consultation

with Tarrytown and Sleepy Hollow as set forth in Section 6.

6. **Selection of Consultant Engineer and Construction.**

A. Briarcliff Manor shall prepare and submit to consulting engineering firms a Request for Proposals (“RFP”) for the engineering analysis to be performed by a Consultant Engineer from a minimum of three (3) engineering firms. Each Village may submit names of consulting engineering firms to which an RFP will be sent. Briarcliff Manor shall forward each RFP received to Tarrytown and Sleepy Hollow. Within fifteen (15) days of the due date for the RFP’s, Briarcliff Manor, Tarrytown and Sleepy Hollow shall jointly meet at Briarcliff Manor Municipal Building at a mutually agreeable time to review the RFP’s and each Village shall separately rate the engineering firms according to the rating system specified in Section 6.B.

B. The following criteria shall be used for rating each engineering firm:

1. General hydraulic experience of the engineering firm.
2. Experience with the design of taps to the New York City Aqueducts.
3. Experience with water system design.
4. The engineering firm’s fees.

Each firm shall receive a rating for each criteria based on a scale from one (1) to the total number of RFP’s received, with one (1) designated as the lowest score on the scale. No two firms shall receive the same number rating for a particular criteria. Briarcliff Manor shall designate the engineering firm with the highest total score as the Consultant Engineer. In the event of a tie score for the highest ranking engineering firms, Briarcliff Manor shall select one of the engineering firms with the highest score to be the Consultant Engineer. C. If such

improvements to said existing facilities are required, Briarcliff Manor shall (i) prepare the design, plans, specifications and contract documents necessary for bidding, which shall include, but not be limited to, improvements to the Catskill Aqueduct Connection and the 30 Inch Main (collectively the "System Improvement Design") based upon the documentation and recommendations of the Consultant Engineer and (ii) the System Improvement Design containing the improvements to the Catskill Aqueduct Connection and the 30 Inch Main shall be subject to the consent and reasonable approval of Tarrytown and Sleepy Hollow.

D. The following improvements may need to be constructed as part of the System Improvement Design:

1. New tap to Catskill Aqueduct.
2. New tap building, including all mechanicals necessary to make tap operational, including, but not limited to, meter and priming equipment.
3. All facilities necessary to increase the capacity of the transmission main, which may include a Low Lift Pump Station.
4. All facilities necessary to provide booster disinfection.
5. Improvements, if any, to the storage facilities or construction of individual storage facilities for each municipality, if required, addressing chlorine contact time.
6. Improvements, if any, to the existing tap building.

All of the foregoing facilities which may be constructed as part of the System Improvement Design listed in this Section 6.D., shall be jointly owned by Briarcliff Manor, Tarrytown and Sleepy Hollow and constitute part of the Three Village Project, except that if

construction of individual storage facilities for each municipality are required, Briarcliff shall pay for the cost of constructing such tanks, and each municipality shall own and maintain their own separate tank and same shall not constitute part of the Three Village Project upon completion of such construction .

E. 1. Tarrytown may hire an engineer to review the System Improvement Design containing the improvements to the Catskill Aqueduct Connection and the 30 Inch Main where, as provided by this Agreement, Tarrytown's consent is required. Tarrytown shall obtain Briarcliff Manor's consent to the choice of engineer hired, which consent shall be based on an evaluation of the general hydraulic experience of the engineering firm and the engineering firm's fees, unless Tarrytown's current water consultant, PCI, Professional Consulting, LLC is the engineer hired, in which case Briarcliff Manor's consent shall be deemed given. Briarcliff Manor shall reimburse Tarrytown for its reasonable engineering costs on a monthly basis upon receipt of properly documented bills and invoices. Tarrytown will provide to Briarcliff Manor such other information as may reasonably be required to verify the engineering costs submitted.

2. Briarcliff Manor will establish a segregated account designated solely for the purpose of Briarcliff Manor making withdrawals to reimburse Tarrytown for its engineering costs as provided for in this paragraph. Briarcliff Manor shall deposit the sum of \$100,000.00 in the segregated account within thirty (30) days of designation of the Consultant Engineer. When the balance of the segregated account is reduced to \$20,000.00, Tarrytown may require Briarcliff Manor to deposit additional funds to bring the account balance up to the initial amount, upon submission of such proof that such refunding is needed. Briarcliff Manor may ask for such

documentation as it reasonably believes is required to establish the basis for such re-funding.

After all pertinent charges have been made, and on thirty (30) days written notice to Tarrytown, Briarcliff Manor shall close the segregated account and any funds remaining on hand returned to Briarcliff Manor.

F. Once Briarcliff Manor has decided to proceed with the System Improvement Design for the modifications for Briarcliff Manor to connect to the Catskill Aqueduct, and the consent and approval of the Village of Tarrytown and Village of Sleepy Hollow has been obtained as provided for in Section 6.C. above, the following procedure shall govern construction.

(1) Briarcliff Manor shall (i) competitively bid the construction contract pursuant to General Municipal Law, Section 103, (ii) consult with Sleepy Hollow and Tarrytown with regard to the designation of the lowest responsible bidder, (iii) designate the lowest responsible bidder(s) and execute contracts with the lowest responsible bidder(s) as owner of the System Improvement Design and (iv) cause the System Improvement Design to be constructed, at the sole cost and expense of Briarcliff Manor, subject to the reasonable review and on-site inspections of Sleepy Hollow and Tarrytown.

(2) Bi-weekly construction meetings shall be held at Briarcliff Manor Municipal Building, at a time designated by Briarcliff Manor, to update Tarrytown and Sleepy Hollow on the construction status of the System Improvement Design and obtain consents as required by this Agreement and the Briarcliff/Sleepy Hollow Agreement, as same may be amended. Additional special job site meetings, when deemed necessary by either the Village of Sleepy Hollow, Tarrytown or Briarcliff Manor, shall be held as required. Briarcliff Manor shall

reimburse Tarrytown for its engineers' attendance at all meetings for work reasonably related to preparation for those meetings in accordance with Section 6. E.(1) and (2). If a unanimous consensus cannot be reached at a meeting between Sleepy Hollow, Tarrytown and Briarcliff Manor, with the exception of financial decisions which shall be in the sole discretion of Briarcliff Manor, the dispute shall be brought to arbitration in accordance with Section 13 of this Agreement within five (5) days of such meeting. Briarcliff Manor shall additionally be responsible for any reasonable and customary incidental costs to construct the System Improvement Design, including, but not limited to insurance, permit fees, and application fees. Any construction disputes, extras or change orders, which would result in Briarcliff Manor expending monies other than as set forth in the construction contracts shall be in the sole discretion of Briarcliff Manor.

G. Tarrytown shall provide to Briarcliff Manor, at no cost and expense to Briarcliff Manor (except as provided in Section 3 of this Agreement), the permanent easements and licenses necessary for Briarcliff Manor to construct and maintain the System Improvement Design. Additionally, Tarrytown shall provide to Briarcliff Manor, at no cost and expense to Briarcliff Manor, the permanent easements and licenses necessary for Briarcliff Manor to construct and maintain the Briarcliff Manor Pump Station to be located on Tarrytown's property adjacent to the Sleepy Hollow Pump Station and Tarrytown Pump Station located off of Neperan Road. The exact location of the easement for the Briarcliff Manor Pump Station shall be based on an engineering analysis as to the best location and shall be agreed to by Briarcliff Manor and

Tarrytown.

H. (1) The Briarcliff Manor Pump Station and associated equipment and installations will be separately owned and maintained by Briarcliff Manor. Adjacent to the Briarcliff Manor Pump Station, Sleepy Hollow and Tarrytown shall continue to separately own and operate its respective pump station. Separate pumping units and equipment, separate electric meters for the electricity consumed by its pumping unit, and separate water meter for the water pumped by the same, shall be installed and maintained by Briarcliff Manor and continued to be maintained by Sleepy Hollow and Tarrytown. Each Village shall operate, maintain and repair its own such separate equipment, at its own expense, and shall pay separately for its own consumption of electricity and water.

(2) To the extent that the improvements constructed as part of the System Improvement Design cause the Tarrytown pump station to fail to operate at its current level and condition of operation, Tarrytown shall provide written notice to Briarcliff Manor of such impact. Upon clearly demonstrating such impact to the satisfaction of Briarcliff Manor, Briarcliff Manor shall be required to reimburse Tarrytown for one-half (1/2) of the cost of construction to remedy the impact so that the Tarrytown pump station is operable consistent with its current level and condition of operation, up to the maximum amount of \$500,000.00. Briarcliff Manor shall reimburse Tarrytown upon receipt of properly documented bills and invoices. Tarrytown will provide to Briarcliff Manor such other information as may reasonably be required to verify the costs submitted.

If required by law, Tarrytown shall competitively bid the construction contract pursuant

to General Municipal Law, Section 103. Tarrytown shall consult with Briarcliff Manor with regard to the designation of the lowest responsible bidder.

Any claim by Tarrytown of an impact made in accordance with this paragraph H. (2) shall be made by Tarrytown within one (1) year of the Three Village Project providing continuous and regular water supply for a period of thirty (30) consecutive days to Briarcliff Manor. No claims shall be brought after this one (1) year period.

I. Upon completion of construction of the System Improvement Design for the Three Village Project, Briarcliff Manor shall convey a one-third (1/3) joint ownership interest in the System Improvement Design for all additions and improvements constructed that are to be jointly utilized by Briarcliff Manor, the Village of Sleepy Hollow and Tarrytown to Tarrytown and shall deliver to Tarrytown a bill of sale in form reasonably satisfactory to Tarrytown Village Counsel.

J. If the Low Lift Pump Station is constructed as part of the System Improvement Design and used to supply water from the Catskill Aqueduct, Tarrytown shall have no obligation to pay for any electricity consumed in connection with the Low Lift Pump Station, and all obligations for the maintenance, repair and operation of the Low Lift Pump Station shall be borne by Briarcliff Manor. If the Low Lift Pump Station is utilized for purposes other than supplying water from the Catskill Aqueduct (i.e. for use with a Delaware Aqueduct connection), then Tarrytown, Briarcliff Manor and the Village of Sleepy Hollow shall have an equal share in the costs of maintenance, repair and operation of the Low Lift Pump Station.

K. Briarcliff Manor shall have no tax liability to the Village of Tarrytown as a result of System Improvement Design and Briarcliff Manor's existing water assets located within Tarrytown. Upon signing this Agreement, Tarrytown shall take all steps necessary to remove Briarcliff Manor's existing water assets from the next tax assessment roll.

L. If either Briarcliff Manor or Tarrytown requires an increase in its current maximum flow, in excess of the additional maximum flow designed and constructed for Briarcliff Manor, such municipality shall undertake to provide for such increase at its sole cost and expense.

7. **Governing Body.**

A. The Village Administrator from Sleepy Hollow, the Village Administrator from Tarrytown and the Village Manager from Briarcliff Manor shall serve as the administrative body (the "Members"), which shall be known as the "Three Village Agency", who shall be responsible for the administration of the Three Village Project after its completion. The Three Village project shall include the facilities that are part of the System Improvement Design as set forth in paragraph 6. D., except as otherwise provided for the Low Lift Pump Station in paragraph 6. J., and the following existing facilities: Catskill Aqueduct Connection and the 30 Inch Main.

B. At the first meeting of the Three Village Agency, the Members shall appoint one Member to serve as the Chairperson and shall appoint one Member serve as the Treasurer of the Three Village Agency. Annually, the Members shall appoint a new Chairperson and new Treasurer. Each Village shall be represented in each of the positions of Chairperson and Treasurer at least once every three years. The Three Village Agency shall meet annually for the purpose of developing a budget for the operation and maintenance of the Three Village Project. Other meetings may be

called by any members at a mutually convenient date, time and place. All members must be present for business to be conducted. Affirmative votes of a majority of the members of the Three Village Agency shall be necessary for any action.

C. The Three Village Agency, insofar as is permitted by law, shall have the following powers and duties:

(1) The overall responsibility for and supervision of any additional construction of improvements beyond that specified for the System Improvement Design and which shall affect the Three Village Project, which may include the following: (i) from time to time to arrange for engineering services, acquisition of necessary lands and rights of way, preparation of bid specifications, letting of bids, arranging and supervising construction, hiring of appropriate personnel to service and operate the Three Village Project, assessing the portion of costs allocable to each of the Villages for the costs of operation and maintenance in the manner hereinafter set forth, prepare budgets from which the foregoing assessments can be made, and provide for the acquisition of supplies, materials and labor necessary to operate and maintain the project.

(2) In lieu of hiring its own personnel, to arrange with Sleepy Hollow or Tarrytown, as appropriate, for provision of personnel services, use of equipment, use of supplies, among other things, and the costs of such arrangements shall be included in the cost of the operation of the project that shall be assessable against the Villages in the manner set forth.

(3) To make capital improvements to the Three Village Project, subject to the approval and authorization of the Villages in accordance with law and applicable regulations of any federal, state or local governmental agencies as may be required.

The Village Boards of each of the Villages may at any time delegate such other duties and

responsibilities to the Three Village Agency as permitted by law and as mutually agreed to by all three Villages. If required by law, the parties hereto agree to designate one of their Village Boards to implement this agreement by executing documents, paying personnel, formally letting bids, and any actions that by law must be conducted by a village board of a village and by law may not be conducted by or delegated to Three Village Agency.

8. Financing of the Maintenance and Operation Costs of the Three Village Project. Upon or after completion of the Three Village Project and every year thereafter, the Three Village Agency shall prepare an annual budget for the operation and maintenance costs of each project. The Three Village Agency shall also ascertain average day water demand in each of the Villages during the latest twelve-month period for which figures are available. The Three Village Agency shall allocate the costs for the next year between the respective Villages based upon such average day water demands during said preceding twelve-month period. The Three Village Agency shall complete the budget and allocation of costs by December 31 of each year and shall include these amounts in the Water Fund budget of the respective Village for the fiscal year to commence the following June 1. Each of the Village's allocable share of such expense shall be paid to the Treasurer, who's Village shall maintain a segregated account for the purposes set forth herein, and such Treasurer shall cause the operation and maintenance costs to be paid out of the funds so received.

9. Surplus or Deficits. If the total revenues received by the Three Village Agency results in a surplus over and above a reasonable amount reserved for contingencies, the surplus shall be refunded at the end of the fiscal year to each of the Villages in proportion to the amounts paid to such agency by each of the Villages during the fiscal year. If the amounts collected from each of the Villages

result in a deficit, such deficit shall be paid by each of the parties hereto in proportion to the quantity of water furnished by the project to each of the Villages during the preceding fiscal year. The Three Village Agency shall provide notice to the Village Boards as soon as is practicable that the Agency anticipates a deficit in that fiscal year. The Villages agree to raise the funds required for their respective shares as determined by the Three Village Agency and to pay the same in timely fashion. If one of the Villages contests the allocation of a deficit to it, each party agrees to pay the amount so allocated at the time determined. The Village so paying may reserve its rights to challenge such allocation by stating at the time of payment, in writing to the Treasurer, that such payment is made under protest and the basis for the protest.

10. **Assignment of Personnel.** If the Three Village Agency shall arrange with any of the Villages for personnel services, any personnel assigned to perform such services shall continue to be employees of the Villages from which they are assigned. All personnel so assigned and engaged in the operation or maintenance of the Three Village Project shall possess the same powers, duties, immunities and privileges they would ordinarily possess if they performed their duties for and in the Village by which they are employed. To the extent required by law, the applicable Civil Service Rules and Regulations shall be observed.

11. **Financing of Future Capital Improvements for the Three Village Project.** Upon or after completion of the Three Village Project, the Three Village Agency shall allocate the costs for future capital improvements for the Three Village Project on a pro rata basis, which shall be determined based upon the maximum flows as set forth in Section 5 (B). If either Briarcliff Manor, Tarrytown or the Village of Sleepy Hollow increases its maximum flow from that amount set forth in Section 5 (B), or such maximum allocation otherwise changes, such municipality shall pay an increase in its pro rata share of capital improvements based on the full

amount of such increased maximum flow.

12. **Responsibility for Damage Claims.** In the event any liability is asserted against one or more of the Villages arising out of any operation or maintenance of the Three Village Project, the parties shall be severally liable for the defense and payment of such claims, the proportions being in the same proportion as the their respective interests in such project. The Three Village Agency or any of the Villages shall place or take out appropriate insurance against any such possible liability for protection and benefit of the project and each of the Villages and the premiums for any such insurance coverage shall be an obligation chargeable against the Three Village Project, the cost to be included in the costs of the operation and maintenance of such project and included in the budget assessed against each of the Villages each year in the manner set forth above.

13. **Arbitration.** Any controversy or dispute arising out of or relating to this intermunicipal agreement, or the breach thereof, shall be settled by arbitration. Such arbitration shall be conducted in Westchester County, in accordance with the rules of the American Arbitration Association in effect at the time of such arbitration. Any arbitrator selected shall be an engineer with experience in water systems. Judgment may be entered on any decision rendered by the arbitrator(s) in any federal or state court having the requisite jurisdiction. Each Village shall share equally the costs of the fees and expenses of the arbitrator selected.

14. **Authority to Enter Into Agreement.** Each of the signatories to this Agreement warrants and represents that each has the power and authority to enter into this Agreement and that the

Board of Trustees of the Village of Briarcliff Manor and the Board of Trustees of the Village of Tarrytown have authorized execution of this Agreement.

15. **Waiver.** Any waiver of any provision of this Agreement or any right hereunder shall not be deemed a continuing waiver and shall not prevent or stop such party from thereafter enforcing such provision or right. The failure to any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement by the other shall not be construed as a waiver or relinquishment for the future of any such terms or provisions, but the same shall continue in full force and effect.

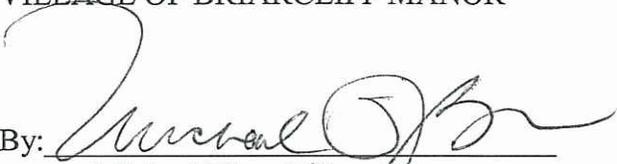
16. **Modification.** This Agreement contains the entire agreement between the parties and it can be modified or changed only by writing executed on behalf of the Village of Briarcliff Manor and Village of Tarrytown.

17. **Notices.** All notices required hereunder shall be sent by certified mail, return receipt requested or via overnight mail or hand delivery, or by facsimile with original copy forwarded by first class mail to the respective parties at the addresses here and above set forth or to such other addresses as each may hereafter designate in writing. Notices shall be addressed to the attention of the Village Manager or Administrator and to the Mayor of the Village receiving the Notice.

18. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

VILLAGE OF BRIARCLIFF MANOR

By: 
Michael Blau, Village Manager

VILLAGE OF TARRYTOWN

By: 
Paul Janos, Mayor

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

On the 16 day of July, in the year 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL BLAU, 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.

Rose L. Gadonniex
Notary Public

ROSE L. GADONNIEX
NOTARY PUBLIC, State of New York
No. 01GA5015601
Qualified in Westchester Cty.
Commission Expires July 25, 2005

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

On the 2nd day of July, in the year 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared PAUL JANOS, 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.

Jean A. Buzanski
Notary Public

JEAN A. BUZANSKI
Notary Public, State of New York
No. 4907408
Qualified in Westchester County
Commission Expires September 28, 2005