

7/21/21

**SEWER EXTENSION AGREEMENT**  
**By and Between the Northern Moraine Wastewater Reclamation District**  
**and the Village of Holiday Hills, Illinois**

## SEWER EXTENSION AGREEMENT

This SEWER EXTENSION AGREEMENT ("**Agreement**") made and executed this 21 day of July, 2021, between the VILLAGE OF HOLIDAY HILLS, a municipal corporation located McHenry County, Illinois (the "**Village**"), and the NORTHERN MORAIN WASTEWATER RECLAMATION DISTRICT, an Illinois sanitary district and municipal corporation located in Lake and McHenry Counties, Illinois (the "**District**") (the Village and the District are collectively referred to as the "**Parties**").

### RECITALS:

1. Numerous parcels in the Village are currently served by "private sewage disposal systems" as defined in Section 8.04.360.B of the Code of Ordinances of McHenry Count, Illinois ("**Private Systems**"). Because of the Village's close proximity to the Fox River system, such parcels have high water tables, and septage frequently leaks from the Private Systems to create environmental hazards.
2. In addition, the failure of Private Systems on small zoning lots in the Village that lack sufficient space for construction of a new Private System may cause such lots to become uninhabitable, thereby creating blight in the community. Construction of a public wastewater collection system will provide a viable alternative to mitigate this concern.
3. The public health, safety, and welfare of the residents of the Village and surrounding areas therefore require the development of coordinated and adequate systems and methods for the collection and treatment of sewage so as to eliminate pollution of neighboring properties as well as lakes, rivers, and other waterways, which include sources for potable water for many residents within the region.
4. The District is a sanitary district pursuant to the Sanitary District Act of 1917, 70 ILCS 2405/0.1 *et seq.* The District provides sanitary sewerage services and is a designated management agency for providing sanitary sewage collection, transport, and treatment services within the approximately 16,700-acre Northern Moraine Facilities Planning Area (the "**FPA**"), which is located in Lake and McHenry Counties, Illinois.
5. The District owns and maintains a wastewater treatment facility fully permitted by the Illinois Environmental Protection Agency ("**IEPA**"), as well as over 70 miles of sanitary sewers and force mains, plus lift stations and other facilities and real property interests, necessary to provide sanitary sewer services within the FPA (the "**District System**").
6. The District has developed a facilities plan attached hereto as Exhibit A (the "**Extension Plan**") for extending the District System to the Village.
7. The Village lies within the FPA, but it is not currently within or contiguous to the corporate limits of the District.
8. The District has been awarded a grant through the IEPA's Unsewered Communities program (the "**Grant**") to defray in part the cost of implementing the Extension Plan. A condition of the Grant is that the District must implement a user fee structure with minimum annual user charges consistent with the terms of the Grant.
9. On the terms and conditions provided herein, the District is prepared to extend

sewers to the Village so that the Village's residents may connect to the District System.

10. The District and the Village are authorized to enter into an intergovernmental agreement providing for the extension of the District System to the Village pursuant to Article 7, Section 10 of the Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), as well as provisions of the Illinois Municipal Code (65 ILCS 5/1-1-1 *et. seq.*), and the Sanitary District Act of 1917 (70 ILCS 2405/0.1 *et. seq.*).

## **AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Agreement, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted by the Parties, the Parties agree as follows:

### **ARTICLE I**

#### **DEFINITIONS**

In addition to terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings ascribed to them, unless the context requires otherwise:

1. **Collection.**

The receipt of Sanitary Sewage directly from the service connection of an individual Customer and the delivery of such Sanitary Sewage to the District System for Transport and/or Treatment.

2. **Connection Charges.**

The charges from time-to-time imposed by the District on Customers newly connecting to the District System as a condition of such connections.

3. **Customer.**

Any dwelling, business, office, industrial, institutional, or other building, facility, or entity located in the corporate limits of the Village that discharges Sanitary Sewage, either directly or indirectly, into the District System.

4. **Force Majeure.**

Orders of the United States, State of Illinois, or other civil or military authority, changes in applicable law, strikes, lock-outs, acts of God, inability to obtain labor or materials, enemy action, civil commotion, fire, public health emergencies, epidemics, pandemics, unavoidable casualty, or other similar events or circumstances.

5. **Sanitary Sewage.**

Liquid and water-carried waste discharged from the plumbing fixtures of dwellings and other buildings.

6. **Sanitary Sewer.**

Any sewer that carries Sanitary Sewage.

7. **Sanitary Sewer Facilities.**

Any wastewater treatment plant and facilities related to the treatment of sanitary sewage, sanitary sewers, force mains, lift stations, pumps, manholes, or other facilities and real property interests necessary or convenient for the provision of sanitary sewer services.

8. **Sanitary Sewer Service.**

The Collection, Transport, and Treatment of Sanitary Sewage, or any combination of one or more of such activities.

9. **Transport.**

The conveyance of Sanitary Sewage from the point or points of discharge of a Customer to any provider of Treatment service.

10. **Treatment.**

The process, or any portion of the process, of changing the physical, chemical, or biological character or composition of Sanitary Sewage.

## ARTICLE II

### **CONSTRUCTION OF SANITARY SEWER FACILITIES**

A. **In General.** The District plans to design, build, install, operate, and maintain all necessary sanitary sewer facilities to extend public sanitary sewer service to and within the Village (the "***Local Sewer Facilities***") at no cost to the Village, unless otherwise expressly provided herein. The District will prepare or cause to be prepared engineering plans and specifications for the Local Sewer Facilities (the "***Plans***"), solicit bids consistent with these Plans, select a successful bidder for the installation of the Local Sewer Facilities, and manage the installation of the Local Sewer Facilities. The District shall provide the Plans to the Village within a reasonable time after awarding the contract for the Local Sewer Facilities to the successful bidder. The Village hereby consents to the District's installation of the Local Sewer Facilities consistent with the Plans or plans that are substantially similar to the Plans.

B. **Manner of Proceeding.** The District shall cause the Local Sewer Facilities to be constructed and installed in accordance with this Agreement, other requirements of law, and sound engineering practices (including the 2016 Standard Specifications for Road and Bridge Construction issued by the Illinois Department of Transportation). In fulfilling its responsibilities, the District shall, at a minimum, undertake or cause to be undertaken, at no cost to the Village, the following:

1. Obtain engineering services, from a firm experienced in the design of public sewerage systems, for the design, plans and specifications, construction, and installation of the Local Sewer Facilities;
2. Obtain all easements, rights-of-way, licenses, and other property rights that are

necessary or convenient to construct, install, operate, and maintain the Local Sewer Facilities, including the preparation of appropriate surveys, agreements, and other relevant documents, subject to the Village's cooperation as set forth in Article III of this Agreement;

3. Enter into contracts with firms experienced in the construction and installation of the Local Sewer Facilities;
4. Secure all permits, approvals, and authorizations that may be necessary or appropriate to construct, install, and operate the Local Sewer Facilities; and
5. In cases where the Village is required to execute a permit application to the Illinois Environmental Protection Agency ("*IEPA*"), submit to the Village all preliminary and final engineering plans and specifications and all permit applications.

C. Force Majeure Events. The District shall not be responsible for any failure to perform or delay in performing the undertakings, obligations, and commitments assumed by it pursuant to this Agreement resulting from a Force Majeure event.

D. Additional Costs. The District shall not be responsible to pay any costs not specifically identified in this Agreement. In particular, the District shall bear no responsibility for costs of connecting a Customer to the Local Sewer Facilities, including without limitation costs associated with sewer service lateral, internal plumbing of a Customer, or the abandonment of any Private Systems.

### ARTICLE III

#### VILLAGE'S OBLIGATIONS

A. Village Cooperation. The Village shall cooperate with the District in connection with the District's planning, installation, and utilization of the Local Sewer Facilities. Such cooperation shall include without limitation the issuance of any necessary permits or approvals to permit the construction and operation of the Local Sewer Facilities, providing the District or its agents with reasonable access to and use of any Village property that may be necessary or desirable for the installation of the Local Sewer Facilities, and to promptly provide the District or its agents with the information or documents useful or necessary relating to the installation of the Local Sewer Facilities. The Village acknowledges and agrees that, notwithstanding any Village permits or approvals regarding the Local Sewer Facilities, the District shall have the sole right and responsibility to inspect the construction and installation of the Local Sewer Facilities.

B. Easements. The Village shall grant the District any easements on Village property, including on any Village street, highway, or other public way, that the District needs or desires relating to the construction, installation, repair, or operation of the Local Sewer Facilities (a "**Public Easement**"). The Village shall grant any Public Easement promptly upon the District's request and in a form consistent with the easement attached hereto as Exhibit B.

C. Eminent Domain. If the District needs or desires easements upon private property relating to the construction, installation, repair, or operation of the Local Sewer Facilities (a "**Private Easement**"), the District will make a good faith attempt to negotiate the acquisition of those Private Easements. If the District's negotiations for the Private Easements are unsuccessful, however, the Village shall, upon the District's request, exercise its eminent domain powers to acquire the Private Easement. The District shall assume on the Village's behalf the obligation and control over the prosecution of any such eminent domain action

(including selection of counsel), and the District shall be responsible for paying any fees, costs, and judgments relating to any eminent domain action for a Private Easement pursuant to this Section, including paying all awards to interested parties relating to such actions. The District's prosecution of any such eminent domain actions on behalf of the Village shall be at no cost or expense to the Village; provided that, if the Village chooses to engage counsel in addition to the District-selected counsel for the prosecution of any such eminent domain action, the Village shall be responsible for the fees, costs, and related charges incurred by or on behalf of the Village-selected counsel.

D. Village Connection Ordinance. The Village agrees to adopt within 60 days after the Effective Date, and keep in force throughout the term, of this Agreement an ordinance requiring connection to the Local Sewer Facilities in substantial conformity with the ordinance attached hereto as **Exhibit C** (the "**Ordinance**"). The Village's failure to adopt and keep in force the Ordinance shall provide the District the option to terminate this Agreement in its entirety. The Village acknowledges that the District shall have the right to enforce the Ordinance and prosecute any violation thereof on behalf of the Village, and any fines or penalties resulting from such prosecution shall be retained by the District.

## ARTICLE IV

### CONNECTIONS; RATES, CHARGES, AND FEES

A. In General. The District shall have the right to establish and impose Connection Charges, sewer user rates, surcharges, and other fees and charges with respect to the use of the Local Sewer Facilities and the provision of sanitary sewer service as the District determines in its legislative discretion.

B. User Fee. The Parties acknowledge that no property in the Village shall be required to pay a user fee until connected to the Local Sewer Facilities and that:

1. The District by ordinance establishes uniform rates for different types of users throughout the District (the "**Standard User Fee**"). The District's Standard User Fee for basic residential users is currently set at \$41.50 per month.
2. As a condition of the Grant, the District must implement a user fee structure for Customers of the Local Sewer Facilities with annual user fees (the "**Base User Fee**") established to be at least 1.0% of the median household income in the Village ("**MHI**"), as approved by the IEPA pursuant to the terms of the Grant.
  - a. The Village shall have the right to undertake a survey of the area to be served by the Local Sewer Facilities to determine the MHI to be used for calculating the Base User Fee (the "**Survey**"). The District, in its reasonable discretion, will cooperate with the Village in undertaking such Survey.
  - b. The Village, with the cooperation of the District (as the District reasonably determines), shall seek to obtain the approval of the IEPA of a Base User Fee as close to the Standard User Fee as authorized by the IEPA pursuant to the Grant. In furtherance of this effort, the Village may advocate that the Grant conditions relating to the Base User Rate may be satisfied if the average amount paid by Customers of the Local Sewer Facilities (including "Connection Installments," as defined below) satisfies the 1% MHI standard of the Grant.

3. For as long as required under the Grant but in no event less than 30 years after the "Commencement Date" (as hereinafter defined), Customers within the Village shall pay the Base User Fee for Sanitary Sewer Services, but in no event shall the Base User Fee be less than the Standard User Fee.
4. Nothing in this Agreement shall limit the District's authority to increase the Standard User Fee or to modify the Base User Fee to conform with the requirements of the Grant and this Agreement.

C. Connection Charges. The Connection Fee for Customers of the Local Sewer Facilities shall be established by the District and shall be not less than \$10,822.00 per residential customer equivalent ("**RCE**"). Notwithstanding the District's authority to adjust its Connection Charges, after the Local Sewer Facilities become operational (the "**Commencement Date**") and for a three-year period following the Commencement Date (the "**Initial Period**"), the District agrees to the following for any Village Customer that (i) connects to the Local Sewer Facilities during the Initial Period, and (ii) will be de-commissioning a Private System serving a dwelling as a result of such connection to the Local Sewer Facilities:

1. To maintain the Connection Charge amount at not more than \$10,822.00, plus increases not to exceed changes in the Consumer Price Index (as defined in 35 ILCS 200/18-185) as of the Effective Date;
2. To offer such Customers the opportunity to finance the Connection Fee at 4% interest, compounded annually, over 30 years ("**Financing Option**"). Under the Financing Option, the Customer would pay installments of the Connection Charge ("**Connection Installments**") as part of their invoice for the Base User Fee, and the Connection Installments will be applied with Standard User Fee to satisfy the Base User Fee requirement of the Grant.

For Customers who do not qualify for or do not elect to utilize the Financing Option, the then-applicable Connection Fee must be paid to the District in a lump sum as a condition precedent to connection.

## ARTICLE V

### OWNERSHIP, MAINTENANCE, AND AUTHORIZATION OF DISTRICT SYSTEM

A. District Sewerage System. The District shall retain ownership of all sanitary sewer facilities of the District System (including the Local Sewer Facilities) that it now owns, or that it may in the future construct, purchase, accept dedication of, or otherwise acquire from any person or entity. The District shall maintain and operate the District System (including the Local Sewer Facilities) and shall bear all risk of loss or damage to each element of the District System, all at its sole cost.

B. FPA Amendments. To promote sound public sewer planning and the efficient and economical use of the District System and the Local Sewer Facilities being installed and maintained pursuant to this Agreement:

1. If the District determines in its reasonable discretion to file an application to amend the Illinois Water Quality Management Plan with respect to the development of the Local Sewer Facilities consistent with this Agreement, the Village agrees to support, such application.

2. Neither the Village nor the District shall file or support any application to amend, and the District and the Village shall undertake joint and cooperative action to oppose and object to any third-party petition to amend, the Illinois Water Quality Management Plan or the Areawide Water Quality Management Plan that would have the effect of preventing the Village and the District from providing sanitary sewer service to any lot, parcel, or tract within the Village, in the manner provided by this Agreement. Joint and cooperative action shall include, without limitation, filing written objections, providing staff support, and retaining such attorneys and consultants as the Parties mutually agree are necessary with respect to such objections.

## ARTICLE VI

### OTHER CONTRACTS AND SERVICE

A. In General. The District shall have the right to contract with other persons, natural or corporate, private or public, to construct and operate the Local Sewer Facilities pursuant to this Agreement. Nothing in this Agreement shall be construed to require the District to provide Sanitary Sewer Service to any area of the Village that cannot be connected to the Local Sewer Facilities depicted on the Extension Plan. Connections to the Local Sewer Facilities to prospective Customers in the Village shall be on a first-come, first-served basis, subject to: (i) available capacity in the District System, (ii) all regulations of the District (as they may be amended from time to time) regarding the provision of Sanitary Sewer Service, and (iii) payment of all required fees, charges, costs, and expenses as set forth in the ordinances, resolutions, and agreements of the District (the "***District Requirements***").

B. Municipal Acknowledgements. The Village acknowledges and agrees that: (i) the District does not by this Agreement, or its performance pursuant to this Agreement, hold itself out as offering to provide sanitary sewer service to any lot, tract, parcel, or area other than the lots, tracts, parcels, or areas located within the Village and contemplated by the Extension Plan and pursuant to the terms and conditions of this Agreement and the District Requirements; and (ii) except as otherwise expressly provided in this Agreement, the District shall have no obligation to amend the terms of this Agreement.

C. Other District Service. Nothing in this Agreement shall be construed or interpreted to prevent or limit the right of the District, or to require the consent of the Village, to provide sanitary sewer service to parties not identified in this Agreement on such terms and conditions as the District may, in its sole discretion, determine to be appropriate.

D. No Third-Party Beneficiaries. Nothing in this Agreement shall create, or be construed or interpreted to create, any third-party beneficiary rights, except as may be expressly provided herein.

## ARTICLE VII

### LEGAL RELATIONSHIPS AND REQUIREMENTS

A. Exhibits. Exhibits A through C attached to this Agreement are, by this reference, incorporated into and made fully a part of this Agreement.

B. Entire Agreement; Supersedence of Prior Agreements. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior



agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.

C. Amendments. This Agreement shall not be modified, changed, altered, amended, or terminated without the written and duly authorized consent of the District and the Village.

D. Waivers. No term or condition of this Agreement shall be deemed waived by either Party unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such Party. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

E. Interpretation and Severability. It is the intent of the District and the Village that this Agreement be construed and interpreted to preserve its validity and enforceability as a whole. In case of any conflict among the provisions of this Agreement, the provision that best promotes and reflects the intent of the parties shall control. If any provision of this Agreement is construed or held to be void, invalid, or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect. In addition, the Parties acknowledge that each Party had the opportunity to seek review of this Agreement by counsel prior to its execution and therefore this Agreement shall be deemed to have been drafted mutually by the District and the Village.

F. Regulatory Bodies. This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed and promulgated by the United States of America, the State of Illinois, or any other governmental body or agency having lawful jurisdiction, or any authorized representative or agent of any of them; provided, however, that this Section shall not be construed as waiving the right of any Party to challenge the validity of any such rules, regulations, or laws on any basis, including the impairment of this Agreement. The District reserves the right to adopt ordinances, rules, and regulations governing the design, installation, and use of the Local Sewer Facilities.

G. Successors; Assignment. This Agreement shall be binding on, and shall inure to the benefit of, the successors and permitted assigns of the District and the Village. No Party may assign this Agreement in whole or in part, or any of its rights or obligations under this Agreement, without the prior express written consent of the other Party.

H. Effective Date and Term.

1. Effective Date. This Agreement shall take effect as of the date last executed by the duly authorized representatives of the District and the Village, as indicated on the signature pages hereto.
2. Term. This Agreement shall be in full force and effect for a period of 40 years from and after the Commencement Date; provided, however, that the District reserves the right to abandon its installation of the Local Sewer Facilities at any time prior to the Commencement Date upon written notice to the Village, in which case this Agreement shall terminate upon delivery of such notice.

I. Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof when delivered either

personally, by courier service, by certified or registered mail (return receipt requested), or by e-mail to the following addresses:

For notices and communications to the District:

To the District:  
Northern Moraine Wastewater Reclamation Dist.  
113 Timber Trail  
P.O. Box 240  
Island Lake, IL 60042  
Attention: Mohammed Haque, District Manager  
e-mail: [haque@nmwr.org](mailto:haque@nmwr.org)

and

For notices and communications to the Village:

Village of Holiday Hills  
1304 Sunset Drive  
Holiday Hills, IL 60051  
Attn: Village Clerk  
E-Mail: [hhclerk@villageofholidayhills.com](mailto:hhclerk@villageofholidayhills.com)

By notice complying with the foregoing requirements of this Section, each Party shall have the right to change the addressees or addresses or both for all future notices and communications to such Party, but no notice of a change of address shall be effective until actually received.

J. Time for Action. Whenever any action is required pursuant to this Agreement, "days" shall be based on calendar days; provided, however, when the last day for action falls on a Saturday, Sunday, or Federal holiday, the time for action shall be the following calendar day.

K. Execution in Counterparts. This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute one and the same Agreement.

L. Enforcement and Remedies. The Parties hereto may in law or in equity enforce or compel the performance of this Agreement and shall otherwise have all remedies provided by applicable United States of America, State of Illinois, and local laws, ordinances, rules, and regulations. Venue for any court proceeding shall be in the Circuit Court of McHenry County, State of Illinois.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written.

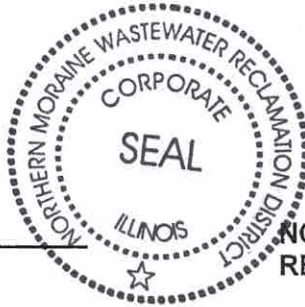
Date: 08/17/2021

VILLAGE OF HOLIDAY HILLS

By: [Signature]  
Village President

ATTEST:

[Signature: Marina Kirchner]  
Village Clerk



Date: 11-10-21

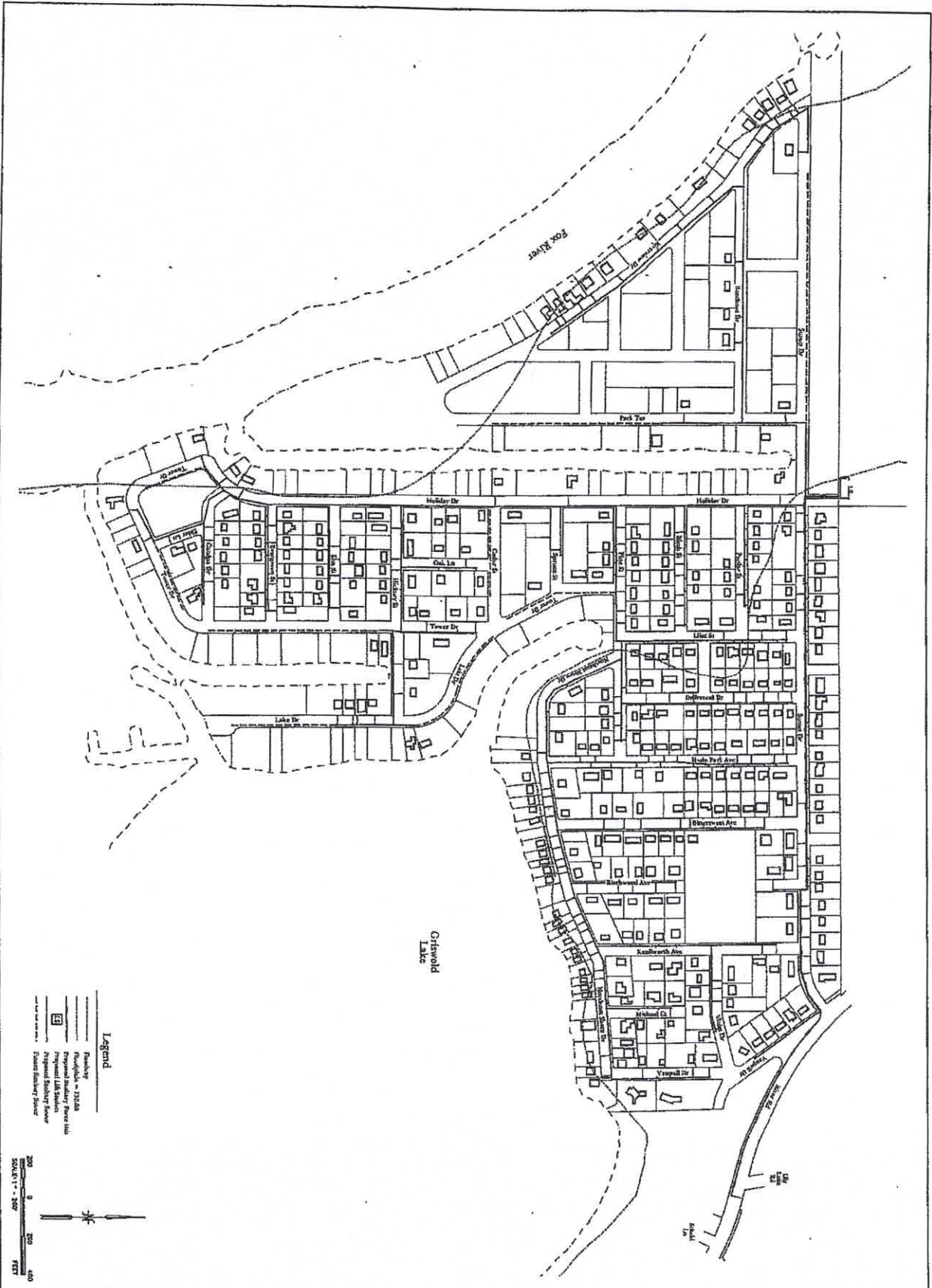
NORTHERN MORaine WASTEWATER RECLAMATION DISTRICT

By: [Signature]  
District President

ATTEST:

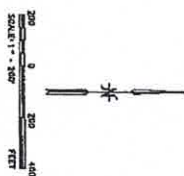
[Signature: Deborah Martin]  
District Clerk

**Exhibit A**  
**Extension Plan**



**Legend**

Existing Sewer Line  
 Proposed 15" Sanitary Sewer Line  
 Proposed 12" Sanitary Sewer Line  
 Existing Storm Sewer Line



Holiday Hills / Le Villa Vaupell Sewer Extension  
 Overall Proposed Sanitary Sewer System  
 Holiday Hills, McHenry County, Illinois

**TROTTER**  
 ASSOCIATES, INC.  
 ENGINEERS AND SURVEYORS  
 40125 E. River Road, Suite 20  
 St. Charles, IL 62253  
 P.O. BOX 200707 • ST. CHARLES, ILL. 62220-0707

NO.	DATE	DESCRIPTION	BY
1	11/15/11	PRELIMINARY DESIGN	JL
2	12/15/11	FINAL DESIGN	JL
3	01/15/12	CONSTRUCTION PERMITS	JL
4	02/15/12	CONSTRUCTION	JL
5	03/15/12	COMPLETION	JL

Exhibit A

**EXHIBIT B**  
**Easement Form**

**This instrument prepared by  
and after recording return to:**

Mohammed Haque  
Northern Moraine Wastewater  
Reclamation District  
113 Timber Trail  
P.O. Box 240  
Island Lake, IL 60042

This space reserved for Recorder's use.

**UTILITY EASEMENT AGREEMENT**

**THIS AGREEMENT**, dated as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "**Effective Date**"), by and between the **Village of Holiday Hills**, an Illinois municipality situated in McHenry County, Illinois (the "**Owner**"), and the **Northern Moraine Wastewater Reclamation District**, an Illinois unit of local government organized and existing under the Sanitary District Act of 1917, 70 ILCS 2405, situated in Lake and McHenry Counties, Illinois (the "**Grantee**");

**W I T N E S S E T H:**

**WHEREAS**, Owner is the legal owner of certain real property that is legally described in Exhibit A attached hereto and by this reference incorporated herein and made a part hereof ("**Easement Premises**"); and

**WHEREAS**, Grantee desires to locate various sanitary sewer facilities, including without limitation sanitary sewers, force mains, lift stations, pumps, or other facilities necessary or convenient for the provision of sanitary sewer services (collectively, the "**Utilities**") in, upon, over, under, through, along, and across the Easement Premises; and

**NOW, THEREFORE,** in consideration of the sum of Ten Dollars (\$10.00) and the mutual covenants and agreements set forth herein and other good and valuable consideration paid by Grantee to Owner, the receipt and sufficiency of which are hereby acknowledged, the parties thereto mutually agree as follows:

**SECTION ONE: Grant of Easement.** Owner hereby grants, conveys, warrants, and dedicates to Grantee, its successors and assigns, a perpetual easement and right of way to survey, construct, reconstruct, lay, use, own, operate, maintain, test, inspect, repair, replace, enlarge, renew, alter, remove, or abandon in place (said activities hereinafter collectively referred to as "***Installation***") Utilities of such size, material, and number, and with such attachments, equipment, and appurtenances thereto as Grantee may deem necessary or desirable for its needs (the Utilities' facilities and attachments, equipment, and appurtenances shall hereinafter collectively be referred to as the "***Facilities***"), subject to the terms and conditions hereinafter set forth, in, upon, over, under, through, along, and across the Easement Premises.

**SECTION TWO: Installation.** Grantee agrees that the Installation of the Facilities shall be done and completed in a good and workmanlike manner, all at the sole expense of Grantee.

**SECTION THREE: Restoration.** Upon completion of any Installation activity by Grantee, its authorized agents, servants, employees, or contractors, Grantee agrees to (a) replace and grade all topsoil removed by Grantee; (b) restore all fences, roads, plantings, landscaping, and improvements as nearly as practicable to the condition immediately preceding the Installation if damaged or removed by Grantee as a direct result of the Installation; (c) replace any and all sod removed by Grantee with sod of like quality; and (d) replace any and all natural grass removed by Grantee by seeding with a good quality seed.

**SECTION FOUR: Hold Harmless.** Grantee agrees to save and hold Owner harmless from all claims, causes of action, suits, damages, or demands that arise directly from the negligence of Grantee or its authorized agents, servants, employees, or contractors in the Installation of the Facilities on the Easement Premises.



**SECTION FIVE: Reservation of Rights.** Owner hereby reserves the right to use the Easement Premises and its adjacent property in any manner that will not prevent or interfere in any way with the exercise by Grantee of the rights granted hereunder; provided, however, that Owner shall not permanently or temporarily improve, disturb, damage, destroy, injure, or obstruct the Easement Premises, nor permit the Easement Premises to be permanently or temporarily improved, disturbed, damaged, destroyed, injured, or obstructed, at any time whatsoever, without the express prior written consent of Grantee. Owner shall have the right to grant other non-exclusive easements over, along, upon, or across the Easement Premises; provided, however, that any such other easements shall be subject to this Agreement and the rights granted hereby; and provided further, however, that Grantee shall have first consented in writing to the terms, nature, and location of any such other easements.

**SECTION SIX: Further Assurances.** Owner hereby represents and warrants that it shall take all necessary action so that the easements contemplated by this Agreement shall be released from all liens, including but not limited to, the lien of all mortgages, mechanics' lien claims, security agreements, assignments of rents and leases, and shall execute all such documents as may be reasonably necessary to perfect Grantee's right, title, and interest herein.

**SECTION SEVEN: Covenants Running with the Land.** The easements and rights granted in this Agreement, the restrictions imposed by this Agreement, and the agreements and covenants contained in this Agreement shall be easements, rights, restrictions, agreements, and covenants running with the land, shall be recorded against the Easement Premises and shall be binding upon and inure to the benefit of Owner and the Grantee and their respective heirs, executors, administrators, grantees, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Easement Premises, or any portion thereof, and all persons claiming under them. If any of the easements, rights, restrictions, agreements, or covenants created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the

rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, agreements, or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of any current or former President of the United States living as of the Effective Date of this Agreement.

**SECTION EIGHT: Assignment of Rights.** Owner agrees that Grantee may assign its rights or delegate its duties under this Agreement, in whole or in part, without the consent of Owner.

**SECTION NINE: Amendment.** This Agreement may be modified, amended, or annulled only by the written agreement of Owner and Grantee.

**SECTION TEN: Survival.** All representations and warranties contained herein shall survive the execution of this Agreement and the recordation thereof and shall not be merged.

***[Signature pages to follow.]***

IN WITNESS WHEREOF, the parties hereto have executed or have caused this instrument to be executed by their proper officers duly authorized to execute same.

**NORTHERN MORaine  
WASTEWATER RECLAMATION  
DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the same person(s) whose name is/are subscribed to the foregoing instrument, appeared before me this day and acknowledged that he/she/they signed and delivered said instrument as his/her/their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

**VILLAGE OF HOLIDAY HILLS**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the same person(s) whose name is/are subscribed to the foregoing instrument, appeared before me this day and acknowledged that he/she/they signed and delivered said instrument as his/her/their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

**Exhibit C**

**Ordinance**

VILLAGE OF HOLIDAY HILLS

ORDINANCE NO. 2021-\_\_

**AN ORDINANCE REQUIRING SANITARY SEWER CONNECTIONS**

Adopted by the  
President and Board of Trustees  
of  
the Village of Holiday Hills  
this \_\_\_\_ day of \_\_\_\_\_, 2021

Published in pamphlet form by direction  
and authority of the Village of Holiday Hills,  
McHenry County, Illinois  
this \_\_\_\_ day of \_\_\_\_\_, 2021

VILLAGE OF HOLIDAY HILLS

ORDINANCE NO. 2021-\_\_\_\_\_

AN ORDINANCE REQUIRING SANITARY SEWER CONNECTIONS

**WHEREAS**, the Village of Holiday Hills (the "**Village**") has authority to establish requirements and regulations related to sewage and sewage disposal in the Village; and

**WHEREAS**, the Village has entered into an intergovernmental agreement (the "**IGA**") with the Northern Moraine Wastewater Reclamation District (the "**District**") for the extension of the District's sanitary sewer system (the "**District System**") within the Village; and

**WHEREAS**, pursuant to and in accordance with the IGA, the Village has agreed to establish certain requirements for connections to the District System; and

**WHEREAS**, the President and Board of Trustees of the Village (the "**Village Board**") have determined that it is in the best interests of the Village and its residents to amend adopt this Ordinance and establish regulations for properties within the Village to connect to public sanitary sewers as hereinafter set forth herein;

**NOW, THEREFORE**, be it ordained by the President and Board of Trustees of the Village of Holiday Hills, County of McHenry, State of Illinois, as follows:

**Section 1: Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Ordinance as the findings of the Village Board as if fully set forth.

**SECTION TWO: Amendment to Section XXX of the Village Code.** Section \_\_\_\_\_ of the Holiday Hills Village Code is hereby amended to add a new Section \_\_\_\_\_, which new Section \_\_\_\_\_ shall hereafter be and read as follows:

**Section \_\_\_\_\_: SEWAGE AND SEWAGE DISPOSAL.**

A. **In General.** Each zoning lot (as defined in the Holiday Hills Zoning Ordinance) or other parcel or structure requiring sanitary sewer service (a "**Premises**") shall be connected either to a public sanitary sewer or a private sewage treatment system (i.e., the property owner's septic system approved by McHenry County) in accordance with this Section.

1. Except as otherwise provided in this Section, in areas where a public sanitary sewer is available and accessible, each Premises shall have a separate and independent connection to such public sanitary sewer. For purposes of this Section, "available and accessible" shall mean that the public sanitary sewer:
  - a. has capacity legally available to serve a Premises, and
  - b. such sewer is located (i) within 300 feet from any of the property lines of a Premises with an existing dwelling that is served by private sewage treatment systems, (ii) within 300 feet from any of the property lines of Premises on which residential development is to be established or (iii) within 1,000 feet of any of the property lines of Premises used or to be used for non-residential purposes.
2. For Premises used for residential purposes, the owner of such Premises shall connect such Premises to the public sanitary sewer in the manner provided by the then-applicable rules and requirements of the Northern Moraine Wastewater Reclamation District (the "***District***") on the earlier of:
  - a. within 120 days after the McHenry County Health Department determining that the Premises may no longer continue to utilize a private sewage treatment system for sewage disposal purposes, or
  - b. December 31, 2038.
3. For Premises used for non-residential purposes, the owner of such Premises shall, within thirty-six months after the completion of a public sanitary sewer, connect such Premises to the public sanitary sewer in the manner provided by the then-applicable rules and requirements of the District.
4. Any Premises currently utilizing a private sewage treatment system shall be required to discontinue the use of such system and take any and all actions required by the McHenry County Health Department to de-commission such system.

B. Exemptions. Notwithstanding the general requirements set forth herein, for any Premises served by private sewage treatment system that would otherwise be required to connect to a public sanitary sewer, the owner of such Premises may request a temporary exemption from such connection requirement in accordance with this Section. Only one (1) request may be made for a temporary exemption for any Premises, and a temporary exemption shall only be granted by the Village Board (i) upon a finding of practical difficulty or particular hardship in making the connection to the public sanitary sewer, and (ii) for a period not to exceed five (5) years. Any Premises for which a temporary exemption is granted shall be permitted to continue use of a private sewage treatment system for the duration and in accordance with the terms and conditions set forth in the Village Board's approval of such temporary exemption. In no case shall an exemption extend beyond December 1, 2038.

(1) *Application for Exemption.*



- (a) An application or written request for temporary exemption shall be filed with the Village President or the Village President's designee. Such request shall be filed by or on behalf of the legal or beneficial owner of the Premises for which a temporary exemption is sought.
- (b) A complete application shall include all of the following unless an item is specifically waived by the Village President or the Village President's designee.
  - 1. A completed application form for temporary exemption;
  - 2. Disclosure of beneficial interests;
    - a. If the applicant is a corporation, the application must be accompanied by a resolution of the corporation authorizing the execution and submittal of the application. In addition, the application shall indicate on its face the names of all directors and corporate officers of the corporation and also the names of all shareholders who own individually or beneficially 5% or more of the outstanding stock of the corporation.
    - b. If the applicant is a general partnership, the application shall contain a list of all general partners who have a 5% or greater individual or beneficial interest in the partnership.
    - c. If the applicant is a limited partnership, the application shall contain a list of all the names of general partners and the names of all limited partners having a 5% or greater individual or beneficial interest in the partnership.
  - 3. Title report, warranty deed, or similar documentation satisfactory to the Village President to establish ownership in the Premises;
  - 4. Legal description of the Premises and plat of survey;
  - 5. Statement of intent addressing the standards for temporary exemption;
  - 6. Site plan depicting distance from or obstructions impairing access to the sewer and/or elevations illustrating requested temporary exemption; and
  - 7. Any other materials determined to be necessary by the Village President or the Village President's designee.
- (2) *Transmission of Report and Recommendation.* Prior to the scheduling of a hearing before the Village Board, the Village President or the Village President's designee shall transmit to the Village Board a report,

recommendation, and background material upon which said report and recommendation are based.

- (3) *Hearing on Exemption Request.* The Village Board shall conduct a hearing on any request for temporary exemption. Written notice of such hearing shall be provided to the owner of the Premises at least 15 days before the hearing date. At the hearing, the owner of the Premises may present such additional evidence or testimony in support of the temporary exemption request, and the owner (and any consultant on whom the owner bases the application for temporary exemption) shall also be available for questioning by the Village Board. The Village Board may also hear testimony or receive information from the Village staff or other persons interested in the temporary exemption (as determined by the Village Board). Within 45 days after the conclusion of the hearing, the Village Board shall issue a decision regarding the temporary exemption request based on the standards for granting a temporary exemption. No temporary exemption shall be granted except by resolution of the Village Board, which resolution shall set forth the duration of the temporary exemption and may include such other conditions upon which the temporary exemption is granted. Any such resolution must be approved by a concurrence of a majority of the members of the Village Board then holding office, and no such temporary exemption shall be effective unless and until the owner accepts in writing to the satisfaction of the Village President or the Village President's designee the terms of the resolution approving such temporary exemption.
  
- (4) *Standards and Conditions for Granting a Temporary Exemption.*
  - (a) The Village Board may grant a temporary exemption only upon a finding in the reasonable discretion of the Village Board that the application of the regulations of this Section will present a practical difficulty or particular hardship and that such temporary exemption is in harmony with the general purpose and intent of this section.
  
  - (b) In reviewing a case, the Village Board shall require evidence to the effect that:
    - i. The existing private sewage treatment system has been tested and certified by the McHenry County Health Department to be in satisfactory working condition;
  
    - ii. The building to be served shall require a service line of more than 300 feet for a residence and more than 1,000 feet for any other building;
  
    - iii. The property does not have reasonable access to the public sewer;
  
    - iv. The conditions upon which a request for temporary exemption is based are unique to the Premises for which the temporary exemption is sought, and are not applicable, generally, to other

Premises within the area and/or that have access to the sanitary sewer in question;

- v. The difficulty or hardship in conforming with the requirements of this section has not been created by the actions of any persons presently or formerly having an interest in the Premises; and
  - vi. The proposed temporary exemption will not substantially impair the health and welfare, endanger public or personal safety, or substantially diminish or impair property values within the neighborhood.
- (c) *Conditions on Exemptions.* Whether or not expressly set forth in the resolution approving an exemption, each exemption shall be limited by and conditioned upon the following:
- i. Such temporary exemption shall expire upon the approval of a subdivision of the owned premises.
  - ii. Such temporary exemption shall expire at any time that it is determined that a private sewage treatment system can no longer function in a manner satisfactory to the McHenry County Health Department.
  - iii. Such temporary exemption shall expire five (5) years after the exemption is granted or on December 1, 2038, whichever first occurs.
  - iv. The owner of the Premises for which a temporary exemption has been granted shall execute a covenant, to be recorded with the County Recorder of Deeds,
    - (A) agreeing to connect the building to the public sanitary sewer at the time of any demolition and new development on the Premises, or any alteration or addition to the existing building that would increase the square footage of the dwelling unit by more than 300 square feet; and
    - (B) agreeing not to object to any future Village-initiated or resident-initiated sanitary sewer project that would make a public sanitary sewer accessible within 300 feet from its Premises.

Such covenant shall be in a form approved by the Village President and recorded with the County Recorder of Deeds within sixty (60) days of the date a resolution is passed granting a temporary exemption.

- C. Enforcement; Penalties. This Section may be enforced by the Village directly, or on behalf of the Village by an agent of the District. Any person or Premises found in

violation of any provision of this Section shall be subject to a fine of not less than \$250.00 nor more than \$750.00 for each violation. Each provision of this Section shall be deemed a separate requirement, and a violation of multiple provisions shall constitute multiple separate violations hereunder. Each day that a violation continues shall be deemed a separate violation.

**SECTION THREE: Effective Date.** This ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law.

PASSED THIS \_\_\_ DAY OF \_\_\_\_\_, 2021.

AYES: ( )

NAYS: ( )

ABSENT: ( )

ABSTAIN: ( )

PASSED THIS \_\_\_ DAY OF \_\_\_\_\_, 2021.

\_\_\_\_\_  
Village President

ATTEST:

\_\_\_\_\_  
Village Clerk