

**EXECUTED AGREEMENT WITH LAKE ZURICH
FOR UTILITY SERVICE**

1/19/2012

AGREEMENT FOR WATER AND SEWER SERVICES
By and Between
VILLAGE OF LAKE ZURICH
and
RK 123, LLC

This Agreement for Water and Sewer Services ("Agreement") is dated this day of November 1, 2011 by and between the **VILLAGE OF LAKE ZURICH**, a municipal corporation, ("Lake Zurich") and **RK 123, LLC**, a Florida limited liability company, registered to do business in the State of Illinois with the Illinois Secretary of State's Office as a foreign limited liability company ("Owner").

WHEREAS, Owner has requested Lake Zurich to provide water and sewer services to its Property which lies generally at the southeast and northeast corner of Old McHenry Road and Rand Road/U.S. Route 12 in unincorporated Lake County and is legally and pictorially described in attached Exhibit A. The Exhibit A property is herein referred to as the "Property"; and

WHEREAS, Lake Zurich desires to provide sewer and provide or allow water service to the Property which it deems to be in the furtherance of the best interests of Lake Zurich to use its planned-for capacity subject to certain obligations as may be applicable; and

WHEREAS, Lake Zurich and Owner have negotiated an agreement for the provision of water and sewer service to the Property; and

WHEREAS, providing that Owner receives approvals from Lake County in accordance with its application, Owner agrees to pay to Lake Zurich the amount of \$84,600 for the 705 population equivalent ("P.E.") allocated to the Property in its sanitary sewage system, and once paid by Owner, Lake Zurich following receipt of consent from Hawthorn Woods shall reserve such capacity exclusively to Owner in its sanitary sewage system in accordance with the terms of this Agreement; and

WHEREAS, provided the Owner taps into the Lake Zurich sewer system, prior to 23 years after the effective date of this Agreement (provision 10), Owner's right is no longer a reservation, but the right to permanently continue use of the sewer system; and

WHEREAS, Lake Zurich and North Barrington have entered into a 2009 agreement for sewage disposal ("North Barrington Sewage Agreement") that specifically contemplated and provided in Section 3.7 and Exhibit F of that Agreement (which is attached hereto as Exhibit B) that future sewer connections would be permitted to the existing North Barrington sewer force main and sewer gravity main (collectively referred to as "Route 12 Sewer Line"), and that the Route 12 Sewer Line was intended to be and would be a regional sanitary sewer and has been sized with capacity sufficient to serve adjoining properties (subject to payment of recapture) which properties explicitly include the Property; and

WHEREAS, in addition to the North Barrington Sewage Agreement, North Barrington, Lake Zurich, Lake County and the Wynstone Subdivision in North Barrington have also entered into an agreement ("Wynstone Subdivision Agreement") for sewage disposal services dated May 12, 2009 which agreement also specifically included acknowledgements that the Route 12 Sewer Line would be a regional sanitary sewer facility to which future customers situated on specifically identified properties including the Property (as referenced in Section 3.7 and Exhibit F of the Wynstone Subdivision Agreement) would be permitted to connect; and

WHEREAS, Lake Zurich shall provide sufficient sewer capacity to serve the Property up to a maximum of 705 P.E., Lake Zurich by this Agreement only commits to provide as much P.E. up to that maximum amount as may be reasonably needed to service the Property in a manner consistent with any final development plan(s) approved by the County for all of the Property; and

WHEREAS, Lake Zurich has entered into an agreement related to the Meadow Wood Subdivision for Certain Water Main and Sanitary Sewer Improvements (also referred to as the Pulte Subdivision) recorded with the Lake County Recorder as Document No. 6508311 on August 7, 2009 (the "Meadow Wood Agreement") which provides for recapture for certain improvements; and

WHEREAS, Lake Zurich and Hawthorn Woods entered into a twenty-year boundary agreement which expires on May 6, 2018 ("Boundary Agreement") under which, among other things, the parties agreed that neither municipality would provide or extend water service to the Property within the other's jurisdiction without consent, which consent has not been given by Hawthorn Woods; and

WHEREAS, Lake Zürich desires to provide Owner and the Property potable water service or to allow Owner to obtain such service by other means as set forth in this Agreement; and

WHEREAS, the Property is within Lake Zurich's Facilities Planning Area ("FPA").

NOW, THEREFORE, the parties agree as follows:

RECITALS: The above recitals are incorporated into and made a part of this Agreement.

1 **PROVISION OF WATER AND SEWER SERVICES.**

1.1 **Water Service**

(a) If the Property is not developed prior to the time Lake Zurich is no longer bound by the existing Lake Zurich/Hawthorn Woods Boundary Agreement, for instance because of an amendment to or the expiration of the Boundary Agreement or a written waiver by Hawthorn Woods of its right to provide water service to the Property according to prior agreements (collectively "Expiration"), the Owner shall accept, at the time potable water is

needed for the Property, and Lake Zurich shall make immediately available to the Property, the Lake Zürich potable water system.

At any time prior to the Expiration of the Boundary Agreement, (a) the Owner may receive for the Property temporary construction potable or non potable water service from an on-site private water system, and/or governmental entity (other than Hawthorn Woods), and/or (b) the Owner may construct a permanent on-site water system. In either case Owner and the Property shall not be bound by provision 7-5-1 (c) of the Lake Zurich Municipal Code. The water source for such water supply shall be known herein as "Alternative Sources", and the on-site improvements shall be known as "Alternative Improvements". The Owner shall be required to connect the Property to the Lake Zürich potable water system and disconnect Alternative Sources within one year after the Expiration of Boundary Agreement in accordance with the further terms hereof. The Owner may opt to pursue litigation against Hawthorn Woods to compel approval of a water services connection to Lake Zurich prior to the Expiration. To the extent Lake Zurich becomes a party to such litigation, Owner agrees to reimburse Lake Zurich for 100% of attorney's fees and costs incurred by Lake Zurich in such litigation, up to including any appeal proceedings. Lake Zurich acknowledges that Owner's reimbursement obligations in this paragraph are related to matters involving this Agreement and pertaining to, affecting, effecting and/or implementing water services to the Property

At the applicable time, Owner shall extend the water line to the Property at Owner's expense from the shorter or more convenient of: (a) the current terminus of the water line in Meadow Wood subdivision, (b) then current terminus of the water line along Rte 12 to which it may have been extended by others, or (c) at Owner's sole election, any other terminus that is not along Route 12 to which a properly sized water line has been extended. Any on-site wells or ponds may continue to be used to apply water to landscaping or other non potable uses. These provisions which require abandonment of the Alternative Sources shall

only apply as long as the Expiration of the Boundary Agreement is the sole impediment to Lake Zurich providing potable water to the Property.

(b) Owner agrees that if and when installing the Alternative Improvements, it shall do so in a manner that makes Lake Zurich public water supply reasonably easy to connect to the Property water infrastructure, and in a manner that allows off-site improvements to connect to such system passing through the Property as contemplated by the recapture provisions of Section 5.2.

(c) All off-site water main extensions from Lake Zurich shall be within easements on properties contiguous to the east boundary of Route 12 from Meadow Wood subdivision to the Property with the exception of the Valentine Manor Subdivision where all utilities may be placed within the existing public right of ways. Lake Zurich and Owner shall work together in good faith and at Owner's expense to obtain the easements needed along the Route 12 right of way to complete the uninterrupted extension of the water main improvements along Route 12, in order to connect the Property with the source of water in Meadow Wood subdivision. If such easements cannot be obtained or the Valentine Manor public right of ways cannot be used, Owner and Lake Zurich shall use their best efforts to obtain alternate easements or locations.

1.2 Extension of Sanitary Sewer Service to the Property.

(a) 705 PE Reservation. Following execution of this Agreement, approvals from Lake County in accordance with Owner's petition and a written request by Lake Zurich for such payment (which last two conditions may be waived by Owner), Owner shall pay to Lake Zurich \$84,600. Owner understands and acknowledges that pursuant to the Boundary Agreement of 1998 and the Sewer Agreement of 2003, Lake Zurich is required to pursue and obtain consent from Hawthorn Woods to serve the Property. Because of the history between Hawthorn Woods and Lake Zurich as it pertains to the Boundary Agreement,

Owner acknowledges that such consent may not be readily obtained and that enforcement proceedings may have to be pursued by Lake Zurich and/or Owner to obtain Hawthorn Woods' consent. Owner shall reimburse Lake Zurich 100% of the attorney's fees and costs incurred by Lake Zurich in any action ("Action") to enforce the WHOLESale AGREEMENT FOR SEWAGE DISPOSAL dated October 13, 2009 and recorded as document no. 6534500, or any action (also "Action") the primary purpose of which is to compel and obtain consent from Hawthorn Woods to provide sewer service to the Property, up to and including any appeal proceedings irrespective of who initiated such proceedings. Owner's reimbursement obligation in this Agreement pertaining to sewer service is limited to the Action described above. Owner understands that contribution of such attorney's fees and costs are separate from the \$84,600 to be paid for the 705 PE Reservation. Upon payment of by Owner of the \$84,600 to Lake Zurich, Lake Zurich shall provide sufficient sewer capacity to serve the Property up to a maximum of 705 P.E., although Lake Zurich by this Agreement only commits to provide as much P.E. up to that maximum amount as may be reasonably needed to service the Property in a manner consistent with any final development plan(s) approved by the County for all of the Property. Any capacity that remains unused (less a reasonable margin to be mutually agreed between the parties to allow for changed uses in the future consistent with the County approved plan) five (5) years after the final plat or PUD County approval for all of the Property, shall be released back to Lake Zurich by Owner for Lake Zurich's unrestricted use. Lake Zurich agrees to reimburse to Owner a proportionate share of the funds paid to reserve P.E. for any released reservation, i.e. \$84,600/705 PE, or \$120 per PE times the number of PE released. No interest shall accrue or be payable to Owner by Lake Zurich for this reimbursement. The reservation fee for any such reduction in PE's shall be refunded only to RK 123, LLC or RK

123, LLC's personal successors and assigns, even though ownership of all or a portion of the Property may no longer be vested in RK 123, LLC or its personal successors and assigns.

(b) The parties agree that any unused P.E. reservation for the Property that the Owner does not use may not be sold by Owner to a third Party.

(c) Subject to the conditions in Section 1.2(a) Owner will construct a new lift station ("proposed new lift station") pursuant to the terms of Exhibit D and in accordance with communications between the Owner's and Lake Zurich's engineers.

The proposed new lift station property and improvements shall be conveyed to and accepted by Lake Zurich when (a) the County approves the first preliminary plat of subdivision or PUD, and (b) the first phase of proposed new lift station improvements necessary to serve the Property and Wynstone are complete. The Owner shall be responsible for maintenance of the proposed new lift station until Lake Zurich accepts the conveyance of the first phase of the proposed new lift station improvements.

At the time the proposed new lift station is certified operational by Lake Zurich, Owner will be required to connect the existing Wynstone gravity sewer to the proposed new lift station serving the Property to be built by Owner. Wynstone and/or North Barrington have provided at its/their cost the infrastructure to convey its sanitary sewage across Route 12 to the northern most location of the current force main on the east side of Rand Road ("Terminal Point"). Owner, at its cost, will install a gravity extension from the Terminal Point to the proposed new lift station, then back to the remainder of the existing force main proceeding southerly along Route 12, all as depicted in Exhibit C. Lake Zurich acknowledges that this will require work in the Route 12 right-of-way.

It shall be the responsibility of any other beneficiary using the proposed new lift station (other than Wynstone/North Barrington), to construct, at its expense, any further upgrades to the proposed new lift station is required to serve beneficiary. Owner and Lake Zurich will cooperate in good faith to the extent necessary to carry out the provisions of the North Barrington Sewage Agreement and/or Wynstone Subdivision Agreement to accommodate the foregoing. Owner shall dedicate to Lake Zurich the necessary land (generally within the southwest section of the Property) for the proposed new lift station in a location selected by the Owner and approved by the Lake Zurich engineer.

1.3 On-Site Improvements. The Owner, as part of and concurrently with its development of the Property, shall construct at Owner's sole expense, on-site sanitary sewer mains and water mains and shall grant to Lake Zurich easements and dedications as may be minimally necessary to install, use and maintain the on-site sewer and, in the case Lake Zurich provides water, water lines serving the Property. The Owner shall also grant on-site easements for Lake Zurich utilities for other current or future properties that benefit from Lake Zurich utilities, if any, as determined by the Lake Zurich Engineer, provided that the owners of such future benefiting properties shall install extensions of the water and/or sewer improvements in such easements within the Property and any upgrades needed to the lift station at their own expense. Any on-site improvements dedicated to Lake Zurich shall be located within easements that are dedicated to Lake Zurich as approved by the Lake Zurich Engineer, provided that such easements or dedications do not unreasonably interfere with the use and development of the Property. Any other on-site improvements not dedicated to Lake Zurich shall be in easements accessible to Lake Zurich but shall be maintained by Owner at Owner's expense. Any easements created

under this section, shall be granted by Owner to Lake Zurich at the time of recording of any final plat or final PUD development plan for the Property, or as amended for future service.

1.4 Phases. The Owner may construct all utility improvements in phases. The first phase of sewer construction may occur in Owner's discretion, at any time after approval of this Agreement upon approval of the plans for such phase, and shall at least consist of Owner's construction of the proposed new lift station on the Property in accordance with Section 1.2 connection of the Wynstone sewer system and the existing south extension of the Route 12 sewer force main to the proposed new lift station (so as to provide continuous sewer service to Wynstone), and construction of a stub for future sewer service to the Property ("Phase 1"). Once the Phase 1 improvements are accepted and placed in service, the 705 PE allocated to the Property shall no longer be a reservation but the right to permanent continued use of the sewer system for the Property, subject to Section 1.2 (b) hereof.

2. OMITTED

3. DEDICATIONS TO LAKE ZURICH.

3.1 Improvements. Those off-site and on-site water and sewer related improvements serving the Property from Lake Zurich and identified to be dedicated as described herein, shall become a part of the Lake Zurich water and sanitary sewer system maintained by Lake Zurich in accordance with Lake Zurich's regulations and subject to Lake Zurich's acceptance of same.

3.2 Easements. All off-site easements acquired by Owner in order to serve the Property with Lake Zurich water and sanitary sewer service shall also be dedicated by Owner to Lake Zurich in accordance with Lake Zurich's regulations and subject to Lake Zurich's acceptance of same, which shall not be unreasonably withheld.

3.3 Reservation of land for Utility Improvements.

The Owner agrees that upon written request of the Lake Zurich engineer, the Owner shall deed to Lake Zurich at such time as Lake Zurich sanitary sewer and Lake Zurich potable water service is extended to the Property, up to one (1) acre within the Property in a mutually agreeable location near or along the south Property line (the "Utility Parcel"). The Owner also shall dedicate any necessary and reasonable easements for access to utilities on the Utility Parcel (which may be via internal roads and/or the parking lot in any development on the Property and not directly from adjoining roadways). The Utility Parcel and associated easements shall be clearly depicted as an outlot on the first Lake County Board approved final plat or PUD development plan for the Property, provided however that its size shall be adjusted if less than 1 acre is required for Village use. Owner shall convey the Utility Parcel by Warranty Deed to Lake Zurich.

The Utility Parcel easement shall be conveyed and access and utility easements granted at no cost to Lake Zurich in consideration for Lake Zurich's agreement to provide sewer service to the Property. In like manner the Owner shall have no obligation to construct or pay for any improvements on the Utility Parcel, the access parcel thereto (which is not a portion of Owner's required improvements), engineering, design or needed infrastructure leading thereto. Easements to connect the Utility Parcel with on-site sewer and/or water mains shall be granted in areas which do not unreasonably interfere with Owner's development.

4. OMMITED.

5. RECAPTURE FEES.

5.1 Recapture Fees To Be Paid By Owner. Owner acknowledges and agrees to pay all applicable recapture fees related to water and sewer service for the Property, related to the Wynstone Subdivision Agreement, the North Barrington Sewage

Agreement, and the Meadow Wood Agreement. Proof of payment of all applicable recapture fees shall be a condition of any permission by Lake Zurich to finally tap-on to Lake Zurich's water and/or sewer system, as the case may be. Recapture for the Lake Zurich water or sewer service, as the case may be, shall be paid prior to any permit for construction of a building that requires Lake Zurich sanitary sewer and/or water service. No recapture shall be due for the construction of Alternative Improvements

5.2 Recapture Fees to be Paid to Owner. Lake Zurich shall have the right to require the Owner to construct sewer lines north of the south Property line and to connect the Wynstone gravity sewer, and all water mains to be constructed to increase their transmission capacity to benefited parcels other than the Property (including properties that may benefit in the future) prior to or during the Lake Zurich's review of the Owner's engineering plans. Owner shall not have the obligation to install such water and sewer mains until construction takes place on the Property. Following completion of such construction, after receiving the necessary financial documentation from the Owner, Lake Zurich shall adopt a reimbursement and recapture agreement in the manner provided by law providing for the recapture fee from each benefited property owner.

The recapture ordinance shall be filed by the Owner with the office of the Recorder of Deeds of Lake County, Illinois, providing for the reimbursement to the Owner by the owner or owners of all parcels of real estate not part of the Property, which are or will be serviced by such water, sewer mains, the proposed new lift station and any other necessary utility infrastructure plus interest at the rate described in the attached Exhibit C, from the date of acceptance by Lake Zurich of each of such water and sewer mains, as applicable. Recapture shall be calculated by multiplying a fraction, the numerator of which is the area of the benefited property and the denominator of which is the total area of all benefitted properties, including the Property, times the total cost of the improvements, plus

interest. The Owner shall not be required to pay recapture to itself, but the amount attributable to the Property shall be deducted from the total of all recapture due. The form of the recapture agreement shall be in substantially the same form as attached hereto as Exhibit C and incorporated herein by this reference. Recapture shall apply to all Owner sewer and water improvements, including without limitation, the proposed new lift station, if required. The improvement costs to be recaptured shall include, without limitation, all material and labor hard costs for the improvements, and all soft costs, including without limitation tap on fees, survey, engineering, legal, accounting and interest costs.

5.3 Ownership of Recapture. The recapture payment shall be made only to RK 123, LLC or RK 123, LLC's personal successors and assigns, even though ownership of all or a portion of the Property may no longer be vested in RK 123, LLC, provided however that if a third party constructs and pays for such recapture improvements, the recapture agreement shall be executed by and the recapture fees shall be payable to such third party.

6. **FEES FOR SERVICE.**

6.1 Service Fees. Owner shall pay Lake Zurich's rates for water and sewer service provided by Lake Zurich for non-residents as provided in Lake Zurich's municipal code, which code may be updated, revised and amended from time to time. The fee charged to the Owner shall be the same charged to other similarly situated non-resident users. In the event the Property is ever annexed to Lake Zurich, the Property shall be charged the rates for service to incorporated Properties.

6.2 Lake Zurich Tap-On or Connection Fees. All Lake Zurich water and sewer service to be provided under this Agreement is also subject to the payment by the Owner to Lake Zurich of applicable tap-on or connection fees in effect at the time of tap-on and shall be based upon approved development plans and the Village Code.

6.3 Lake County Tap-On or Connection Fees. All sewer service to be provided under this Agreement is also subject to the payment by Owner to Lake Zurich of applicable tap-on or connection fees payable to Lake County, which Lake Zurich will timely remit to the County for sewer service as provided in the Lake County Code which Code may be updated, revised and amended from time to time, at the rates in effect at the time Owner actually taps on or connects to the system. Lake Zurich represents that the County tap on fee is collected by Lake Zurich during payment of all tap on fees and is allocated by Lake Zurich between Lake Zurich and the County pursuant to its agreement with the County, and that the Owner does not have to pay separate tap on fees to both the County and to Lake Zurich. However, this practice may be subject to change in the future.

6.4 Service Conditioned on Payment and Compliance. Notwithstanding any other provision of this Agreement, Lake Zurich shall have no obligation to provide, or to continue to provide, either water or sewer service to the Property unless all provisions of this Agreement have been met and the Property remains in compliance with the provisions for water and sewer service in the Lake Zurich Municipal Code including but not limited to Title 7, Chapter 5 as now or may be subsequently amended, provided however, if Lake Zurich municipal water is not available provision 7-5-1 (c) of the Municipal Code shall not apply.

7. **NO RESALE.** Owner agrees not to resell any sewer service provided for under this Agreement to any third parties outside the Property. The Owner may allocate, however, its ongoing user fees to users within the Property as part of CAM (common area maintenance requirements) as owner sees fit, with management fees applied to it.

8. **COOPERATION.** Owner and Lake Zurich agree to cooperate on the development of the Lake Zurich water and sewer infrastructure to ensure that all improvements made by Owner shall be consistent with Lake Zurich engineering standards for its water and sewer

systems. All Owner's plans related to Lake Zurich service under this Agreement are subject to review and approval by Lake Zurich.

9. **EFFECTIVE DATE AND TERM.**

9.1 **Effective Date.** This Agreement shall take effect as of the date first above written when executed by the last of the duly authorized representatives of Lake Zurich and Owner.

9.2 **Expiration.** This Agreement shall expire on August 3, 2033.

9.3 **Obligation of Lake Zurich.** Upon the termination of this Agreement, Lake Zurich shall have no further obligation to provide service to the Property nor shall it have any on-going obligations or liability under this Agreement. However, during the term of this Agreement, once any Lake Zurich sewer and/or water infrastructure has been completed, dedicated to and accepted by Lake Zurich, and Lake Zurich has commenced water and/or sewer service to this Property, as the case may be, Lake Zurich shall incorporate this Property into its sewer and/or water system, as the case may be, and will continue to provide water and sewer, and if applicable, water service to the Property on a permanent basis in a manner consistent with Lake Zurich ordinance.

9.4 **Indemnification And Reimbursement Of Costs.** Owner and its successors and assigns who succeed to any rights of the Owner under this Agreement, agree to fully indemnify Lake Zurich and its officials, officers, agents, employees and attorneys and to hold same harmless from and against any losses, costs, damages, liability, claims, suits, actions, causes of action and expenses (including without limitation reasonable attorneys' fees and costs up to and including appeals) associated with or arising from the execution and/or implementation of this Agreement including, but not limited to, the execution and/or implementation of any recapture provisions and any third party claims including any claim against Lake Zurich by Hawthorn Woods as a result of this Agreement. This provision shall

not affect Owner's rights under Sections 15 and 16. The provisions of this section do not apply to a loss or claim that arises out of willful or wanton misconduct on the part of the Lake Zurich, but only to the extent that such misconduct contributes to the loss.

Lake Zurich also agrees that prior to contracting with any consultants involving construction of the water or sewer service improvements for which Owner is responsible for reimbursing Lake Zurich, it shall submit to Owner any contract for services exceeding \$2,500 for review and comment by Owner, and Lake Zurich shall let such contracts in a manner consistent with state law and Lake Zurich ordinance. Failure to follow this procedure shall not be a breach of this Agreement.

10. **LAKE COUNTY SEWAGE AGREEMENT PREVAILS.** Owner acknowledges that Lake Zurich provides sewer service through an agreement with the County, and nothing in this Agreement is intended to conflict with the obligations undertaken by Lake Zurich and the County. Owner further agrees that in the event of any conflict with Lake Zurich and the County's operations or agreements related to Sewer Service, Owner will waive any objection to modifications or amendments made necessary by such conflict in order to permit Lake Zurich to comply with its obligations to the County related to sewer service.

11. **NO THIRD PARTY BENEFICIARIES.** Nothing in this Agreement shall create, or be interpreted to create, any third party beneficiary rights.

12. **WAIVER.** No term or condition of this Agreement shall be deemed waived by any 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. 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 different provisions of this Agreement.

13. **INTERPRETATION AND SEVERABILITY.** It is the intent of the parties that this Agreement be construed and interpreted so as to preserve its validity and enforceability as a whole. 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, and this Agreement shall be amended to the extent legally possible to conform to its original intent.

14. **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 no party to this Agreement waives the right to challenge the validity of any such rules, regulations, or laws on any basis, including the impairment of this Agreement.

15. **NOTICES AND REMEDIES.** Upon breach of this Agreement, either of the parties by any action or proceeding at law or in equity may exercise any remedy available at law or equity except punitive, special, indirect, incidental, consequential or lost profits are not recoverable for a breach of this Agreement by either party. Before any failure of either party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, by certified mail/return receipt requested or by overnight courier, the Party alleged to have failed to perform and the specific nature of the alleged default, and performance shall be demanded at least thirty (30) days before a breach may be claimed (provided, however, that said thirty (30) day period shall be extended if the party in breach has commenced to cure such breach and is diligently proceeding to cure the same). Such notice requirement shall not be required if a Party is in a bankruptcy-type proceeding. In the event of interruption of either Lake Zurich water or sewer service, Lake Zurich shall take immediate action to restore such

service and the 30 day notice to cure provision shall not apply. In such a case, Lake Zurich will take such action as they would for any other party within the Lake Zurich system similarly situated, and in accordance with all applicable laws and regulations. In the event either party successfully sues the other party in order to enforce or interpret the obligations or provisions herein, the losing party shall pay all costs and expenses incurred by the prevailing Party, including, but not limited to, attorneys' fees and court costs, as well as attorneys' fees and costs associated with any appeal.

16. **REMEDIES.** Subject to the notice and cure periods provided in this Agreement, if the Owner does not pay any fees provided for herein or is in breach of this Agreement or a Lake Zurich ordinance, regulation or other law, Lake Zurich may use any remedies available including refusal to provide service. Lake Zurich may use any remedies available to it to collect such fees and charges as are due or otherwise to enforce this Agreement. Owner shall have all remedies available at law and in equity.

17. **NOTICE.** Notice shall be provided at the following addresses:

Lake Zurich:

Bob Vitas, Village Administrator
Village of Lake Zurich
70 E. Main Street Lake
Zurich, IL 60047

Village Engineer
Village of Lake Zurich
505 Telser Road
Lake Zurich, IL 60047

Lake Zurich's Attorney:

Carlos S. Arévalo
Zukowski, Rogers, Flood & McArdle
50 Virginia Street
Crystal Lake, Illinois 60014

Owner:

RK 123, LLC
C/O Robert Dimucci
425 S. Creekside Drive
Palatine, IL 60074

Owner's Attorney:

Mark C. Eiden
Mark C. Eiden & Associates, PC
611 S. Milwaukee Ave., Suite 4
Libertyville, IL 60048

18. **AMENDMENT.** This Agreement may be amended only by the mutual consent of Owner and Lake Zurich, by adoption of an ordinance by Lake Zurich approving said amendment as provided by law, and by the execution of said amendment by Owner and Lake Zurich or their successors in interest.

19. **COVENANTS RUNNING WITH THE LAND AND LIMITATIONS ON ASSIGNMENT.** All obligations of the Owner in this Agreement shall constitute covenants running with the land and such monetary obligations shall also be liens upon the land. Upon notice to the Owner, the Owner hereby consents to the filing of a lien on the Property for which the obligations are owed when any obligations are more than 90 days overdue. Both parties agree that a memorandum of this Agreement may be filed in the land records of the County. This Agreement applies to the development and final platting of the Property as a whole by Owner or its successors and assigns as the case may be. If the Property is subdivided or any part of it is sold to an unrelated third party, the Owner will notify Lake Zurich of such sale and shall make any assignment subject to the terms of provision 24. A breach of this provision shall not be deemed material.

20. **ENTIRE AGREEMENT.** This Agreement (with the exhibits attached hereto) sets forth all agreements, understandings and covenants between and among the Parties in connection with this transaction and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction which are not expressly set forth herein and covered hereby. This Agreement may not be modified except by a written agreement signed by all of the parties hereto or their

successors in interest, and by adoption of an ordinance by Lake Zurich approving said amendment as provided by law. This Agreement shall not be construed for or against Lake Zurich or Owner on the basis of which party actually drafted or prepared this Agreement. This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement

21. **VENUE.** Any proceeding pursuant to or in connection with this Agreement or amendment hereto shall be brought in the 19th Judicial Circuit, Lake County, Illinois, and Lake Zurich and the Owner hereby consent to jurisdiction and venue in that Court. This Agreement has been negotiated, executed and delivered at and shall be deemed to have been made in the Village of Lake Zurich, Lake County, Illinois. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, regardless of any present or future domicile or principal place of business of the Owner. The Owner and Lake Zurich hereby consent and agree that the Circuit Court of Lake County, Illinois, shall have exclusive jurisdiction to hear and determine any claims or disputes between Lake Zurich and the Owner pertaining to this Agreement or to any matter arising out of or related to this Agreement. The Owner and Lake Zurich expressly submit and consent in advance to such jurisdiction in any action or suit commenced in such court, and the Owner and Lake Zurich hereby waive any objection which the Owner and Lake Zurich may have based upon improper venue or forum non conveniens.


22. **SUCCESSORS AND ASSIGNS.** This Agreement and all the terms and provisions hereof shall be binding upon the parties hereto and their respective legal representatives, heirs, successors and assigns. Owner shall have the right to assign, sell or otherwise dispose of all or a portion of the Property to a third party owner, and upon such assignment or sale, Owner shall be released from any future financial, performance or other obligations of this Agreement as to the portion sold, provided that notice of the assignment,

sale or other disposition of the Property is given to Lake Zurich, and any obligations required to be performed by Owner under this Agreement prior to sale or which were already due and owing prior to sale, are fully paid and/or performed.

23. **CORPORATE ACTION.** The person executing this Agreement on behalf of the Owner acknowledges that all necessary action has been taken and authority given in order for such person to execute this Agreement under the provisions of any applicable bylaws and formation documents for corporate or limited liability company authorities or trusts, and certifies that any corporate entity or limited liability company is in good standing with the Secretary of State for the State of Florida and lawfully registered as a foreign corporation in Illinois. Lake Zurich acknowledges that all necessary action has been taken and authority given in order for the Lake Zurich Village President to execute this Agreement by ordinance, resolution or other appropriate document.

LAKE ZURICH:
Village of Lake Zurich,
a municipal corporation

By: 
Suzanne K. Branding, Village President

Attest 
Kathleen Johnson, Village Clerk

OWNER:
RK 123, LLC

By: 

Its: Manager

EXHIBIT A

Legal Description of the Property

Development Parcel

All that part of the Northeast $\frac{1}{4}$ and the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 6 and a small part of the Southwest $\frac{1}{4}$ of Section 5, both in Township 43 North, Range 10 East of the 3rd Principal Meridian which lies Southwesterly of the Southwesterly line of the right of way of Old McHenry Road, South of the Southerly right of way line of Old McHenry Road as relocated as per the Plat of Highway thereof recorded on March 4, 1986 as Document No. 2424076 and lying East of the East right of way line of Rand Road (U.S. Route 12) bounded by a line described as follows:

Commencing at the intersection of the center line of Old McHenry Road (SAR 32) as per the Plat of the Survey thereof recorded February 13, 1943 as Document No. 524179 with the West line of the Northeast $\frac{1}{4}$ of said Section 6; thence South 54 degrees 26 minutes 52 seconds East along the center line of said Old McHenry Road, a distance of 1077.35 feet to a point, thence South 35 degrees 33 minutes 08 seconds West, a distance of 40.0 feet to a point on the Southwesterly right of way line of Old McHenry Road and the Place of Beginning of that Tract of land to be described:

thence Northwesterly along a curved line, convex to the Northeast, tangent with the Southwesterly line of Old McHenry Road, heretofore described with a radius of 1105.92 feet, a central angle of 01 degree 11 minutes 27 seconds, a distance of 22.97 feet, arc measure, to a point:

thence South 34 degrees 21 minutes 43 seconds West along a radial line of the last described curved line, a distance of 10.0 feet to a point:

thence Northwesterly along a curved line, convex to the Northeast, having a radius of 1095.92 feet, concentric with the last described curved line, having a central angle of 23 degrees 00 minutes 00 seconds, a distance of 439.93 feet, arc measure, to a point;

thence South 11 degrees 21 minutes 43 seconds West along a radial line of said curved line a distance of 10.0 feet to a point;

thence Westerly along a curved line, convex to the North, having a radius of 1085.92 feet, concentric with the last described curved line, having a central angle of 11 degrees 55 minutes 04 seconds, a distance of 225.88 feet, arc measure, to a point;

thence South 89 degrees 26 minutes 38 seconds West along a line tangent with the last described curved line, a distance of 140.19 feet to a point;

thence South 04 degrees 55 minutes 10 seconds West, a distance of 136.23 feet to a point in the Easterly line of Milton Road (SAR 8), distant 46.47 feet East from the West line of the Northeast $\frac{1}{4}$ of said Section 6;

thence South 01 degree 02 minutes 10 seconds West along the East line of Milton Road (SAR 8), a distance of 242.59 feet to a point on the Easterly line of Rand Road and the Easterly line of the Palatine, Lake Zurich and Wauconda Railroad as shown on the Plat of Dedication thereof recorded August 24, 1937 as Document No. 440543, being a curved line, convex Easterly and having a radius of 1592.80 feet;

thence Southerly along the Easterly line of said right of way, a distance of 517.69 feet, arc measure, the chord of said curved line bearing South 09 degrees 37 minutes 47 seconds East, a distance of 515.42 feet to a point of tangent;

thence South 00 degrees 19 minutes 07 seconds East along the East line of said Rand Road, a distance of 317.57 feet to a point on the South line of the Northeast $\frac{1}{4}$ of said Section 6, 133.0 feet East of the Southwest corner thereof;

thence continuing South 00 degrees 19 minutes 07 seconds East, parallel with the West line of said Northeast $\frac{1}{4}$, a distance of 741.18 feet to a point of curve;

thence Southeasterly along a curved line, convex to the West and having a radius of 1388.69 feet, a distance of 428.19 feet, arc measure, to a point of tangent, the chord of said curved line bearing South 09 degrees 09 minutes 07 seconds East, a distance of 426.49 feet, to a point of tangent;

thence continuing South along the East right of way line, South 17 degrees 59 minutes 07 seconds East, a distance of 174.03 feet to a point on the South line of the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of said Section 6, at a point 163.79 feet East of the intersection of said line with the east line of Rand Road, as per Valentine Manor Subdivision, the Plat of which was recorded November 18, 1957 as Document No. 972308;

thence South 89 degrees 46 minutes 55 seconds East along the South line of the North $\frac{1}{2}$ of said Southeast $\frac{1}{4}$ being also the North line of Valentine Manor Subdivision, aforesaid, as said line is staked and occupied, a distance of 2391.82 feet to the Southeast corner of the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of said Section 6;

thence North 00 degrees 20 minutes 52 seconds West along the East line of the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of said Section 6, being also the West line of the Southwest $\frac{1}{4}$ of said Section 5 and the West line of Lakewood Estates of Hawthorne Woods – Phase One, the Plat of which was recorded June 3, 1987 as Document No. 2574083, a distance of 395.50 feet to an angle point at a corner of Lot 28 in said subdivision;

thence North 23 degrees 07 minutes 41 seconds East, along the line of said Lot 28 in said subdivision, being the previous location of an old fence line, a distance of 354.04 feet to a point on the Southwesterly line of the right of way of Old McHenry Road as per the Plat of Survey thereof, Recorded February 13, 1943 as Document No. 524178, 40.0 feet Southwesterly of the center line thereof;

thence Northwesterly along the Southwesterly line of said right of way, being a curved line, convex to the Southwest, having a radius of 5769.65 feet, a distance of 778.63

feet, arc measure, the chord of said curved line bearing North 49 degrees 47 minutes 27 seconds West a distance of 778.04 feet, to a point of tangent;

thence North 45 degrees 55 minutes 29 seconds West along the Southwesterly line of said Old McHenry Road, 40.0 feet Southwesterly of the centerline thereof, a distance of 502.99 feet to a point of curve,

thence continuing Northwesterly along the Southwesterly line of Old McHenry Road, being a curved line, convex to the Northwest and having a radius 5724.65 feet, a distance of 845.62 feet, arc measure, the chord of said curved line bearing North 50 degrees 11 minutes 10 seconds West, a distance of 844.84 feet, to a point of tangent;

thence continuing along the Southwesterly line of said right of way, North 54 degrees 26 minutes 52 seconds West, a distance of 416.37 feet to the Place of Beginning, all in Lake County, Illinois.

Address	PIN
25275 N. Old McHenry Road Lake Zurich, IL	14-06-400-004
25770 N. Old McHenry Road Lake Zurich, IL	14-06-200-011
25435 N. US Highway 12 Lake Zurich, IL	14-06-400-001
25442 N. Old McHenry Road Lake Zurich, IL	14-05-300-003
26475 N. Old McHenry Road Lake Zurich, IL	14-06-400-007
26479 N. Old McHenry Road Lake Zurich, IL	14-06-400-006

Triangle parcel

That part of the north half of the southeast quarter of section 6, township 43 north, range 10, east of the third principal meridian, lying west of the westerly line of premises conveyed to Waukegan, Rockford and Elgin Traction Company right of way, in Lake County Illinois

PIN: 14-06-400-003

Address: 25255 North Highway 12, Lake Zurich, IL

North parcel

That part of the Northeast 1/4 of section 6, Township 43 North, Range 10 East of the 3rd Principal Meridian bounded by a line described as follows:

Commencing at the intersection of the center line of Old McHenry Road (SAR 32) as per the Plat of Survey thereof recorded February 13, 1943 as Document No. 524179 with the West line of Northeast 1/4 of said Section 6;

thence South 54 degrees 26 minutes 32 seconds East along the center line of said Old Mc Henry Road and the center line of said road as Vacated as per the Plat of Vacation thereof recorded July 9, 1991 as Document No. 3037852, a distance of 310.0 feet to a Point of Beginning of that Tract of land to be described;

thence continuing south 54 degrees 26 minutes 32 seconds East along said center, a distance of 391.70 feet to a point on the Northerly line of Relocated Old Mc Henry Road as per the Plat of Highway recorded March 4, 1986 as Document No. 2424076;

thence Westerly along the Northerly line of relocated right of way, aforesaid, being a curved line, convex to the North and having a radius of 1205.92 feet, a distance 377.98 feet, arc measure, the chord of said curved line bearing North 81 degrees 34 minutes 37 seconds West, 376.43 feet, to a point of tangent;

thence South 89 degrees 26 minutes 36 seconds West along a line tangent to the last described curved line, a distance of 107.28 feet to a point;

thence North 45 degrees 36 minutes 23 seconds West, a distance of 61.80 feet to a point;

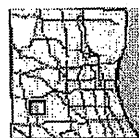
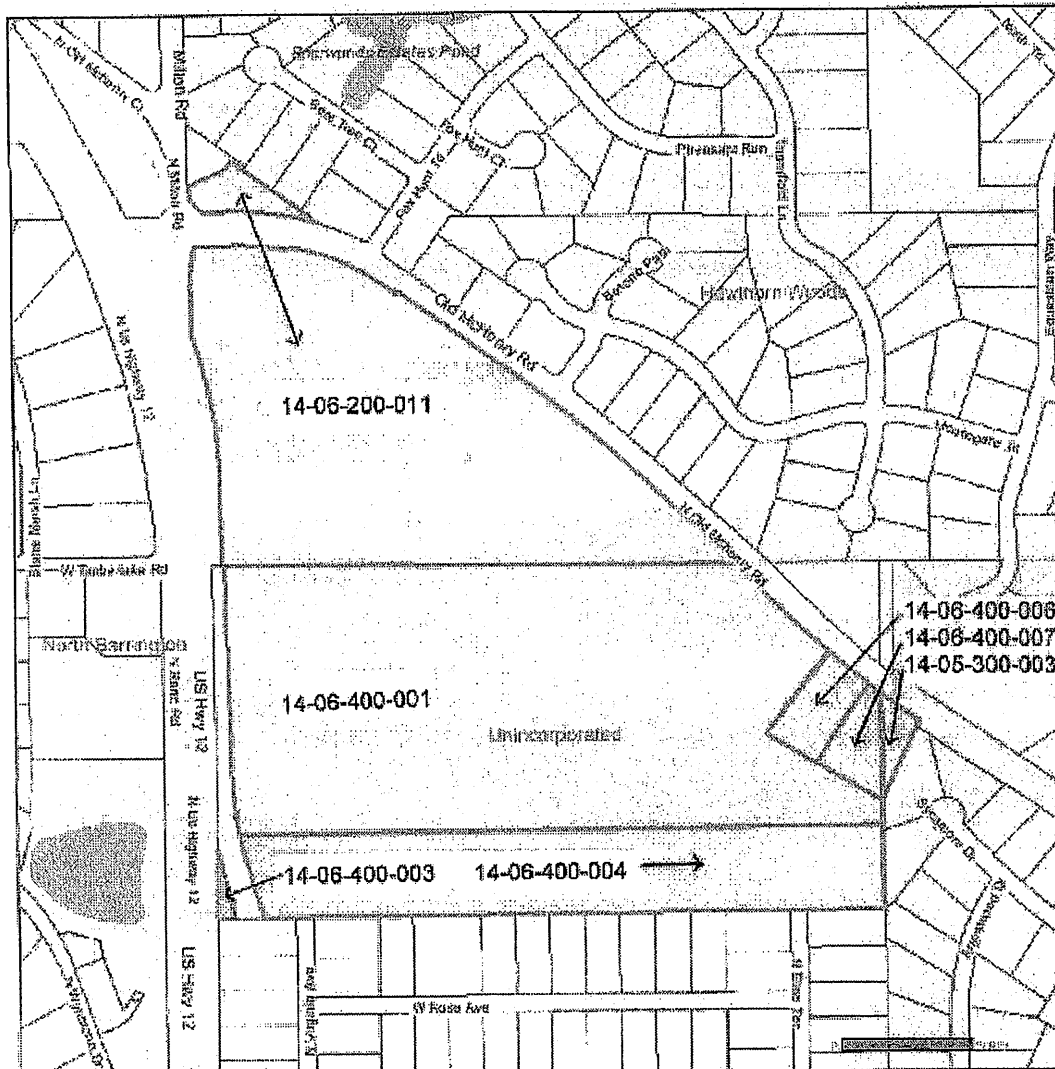
thence North 10 degrees 11 minutes 37 seconds West, a distance of 54.40 feet to an Intersection with a line drawn from a point on the West line of the Northeast 1/4 of said Section 6, 270.0 feet South of the Intersection of said West line with the center line of said (SAR 32) at the Point of commencement and running to a point on the center line of said vacated right of way which is 310.0 feet southeasterly thereof, being the Point of Beginning;

thence North 70 degrees 18 minutes 14 seconds East along the last described line, a distance of 288.10 feet to the Point of Beginning, In Lake County, Illinois.

PIN: 14-06-200-011

Address: 25770 Old McHenry Road (and Milton) Road, Lake Zurich, IL

Lake County Tax Parcel Map



LakeCounty
Geographic Information System

Lake County Department of
Information Technology
10 N County St
Waukegan IL 60085

Map Printed on 2/3/2011
Parcel 1406200011 is shaded.



- Major Roads
- Highways
- Major Water
- Parcels
- Waterbodies

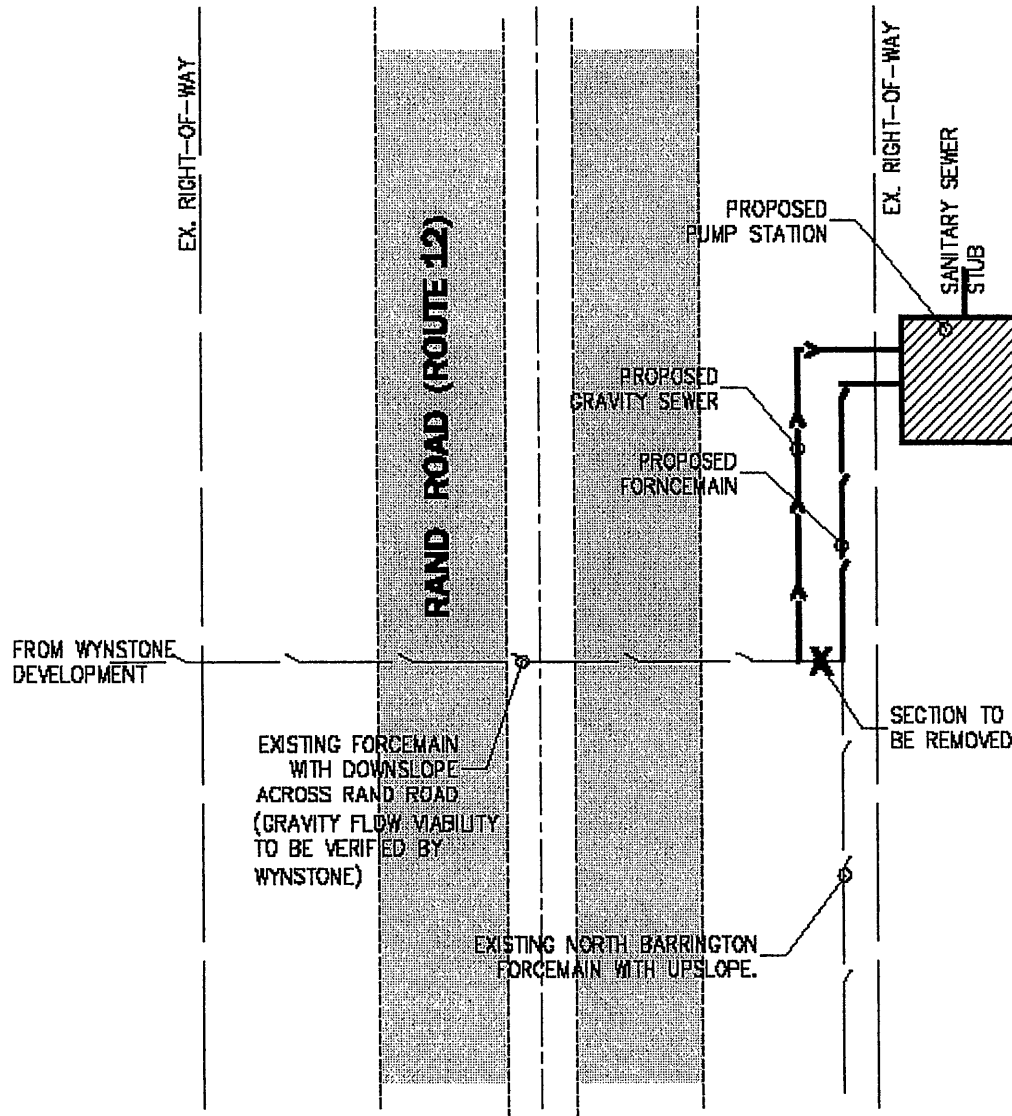
Disclaimer:

This map is for general information purposes only. A Registered Land Surveyor should be consulted to determine the precise location of property boundaries on the ground. This map does not constitute a warranty or endorsement for any engineering design. The map is provided as is, without any liability.

EXHIBIT B

North Barrington Sewage Agreement

EXHIBIT C



FORCEMAIN SCHEMATIC

EXHIBIT D

It is understood that the ultimate future capacity of the sanitary sewer facility would be roughly +/- 2,000 PE. This would include +/- 700 PE for the DiMucci Commercial site, +/- 300 PE for Valentine Manor, and +/- 1,000 PE for the Wynstone Development.

Presently the existing force main is designed to handle 2,000 PE but only a maximum of 100,000 gpd (1,000 PE) of gray water is currently being pumped through the force main from the Wynstone site (at off peak times). The existing booster pumps may not have the required capability to pump sewerage solids from the Wynstone development.

When a new facility on the east side of Rand Road is constructed, a three phase approach is considered to be the best way to serve the related properties. This phased approach can be summarized as follows:

- **Phase One.** Construct a wet well with a capacity of 2,000 PE. The wet well structure will have a capability to contain up to three submersible centrifugal pumps. Stainless steel control panels will be installed. The control panels will have the space available for the controllers needed for the full build out of the facility. Appropriate SCADA capability for connection into the Lake Zurich system will be installed. A sanitary sewer stub will be installed to allow for the connection of the Property. The pumps will be installed as part of phase one and will have the capacity to pump the current 100,000 gpd gray water flow from Wynstone. The Owner shall not be required to install a back up generator for phase One. However, the lift station does need to be equipped with a connection adaptor for a portable generator to plug into an appropriate transfer switch.
- **Phase Two.** Upgrade the pumps and/or install a comminuter if needed when the Property comes online. It is understood that the flows from Wynstone will still be discharged to the pump station during the late PM and early AM hours when the flows from the Property are anticipated to be minimal or non-existent. The parties shall evaluate the need for a permanent emergency generator in phase II at that time as system reliability may be much more of a factor depending on the type of development that occurs. If the Owner's generator requirements are minimal, no on-site generator will be required by the Village. Emergency power, will then be supplied to the facility by use of the Village's portable generator.
- **Phase Three.** If and when the flows from Valentine Manor are brought online or the flows from Wynstone are upgraded to include daytime hour flows, and if a permanent generator is not installed in phase three when Valentine is connected to the system, then any additions or upgrades required by Lake Zurich are to be the responsibility of either Valentine Manor or Wynstone and not the Owner's and/or the Property.

EXHIBIT E

Form of Recapture Agreement

THIS RECAPTURE AGREEMENT is made and entered into this _____ day of _____, 201__ by and between the Village of Lake Zurich, a municipal corporation of the State of Illinois, Lake County ("Village") and _____ - ("Owner").

WHEREAS, the Owner has extended municipal facilities, including _____, _____ as part of the Village requirements in connection with the **[WATER/SEWER PROJECT]** known as _____ (**"[WATER/SEWER PROJECT]"**); and

WHEREAS, the installation of said facilities has benefited other properties and property owners identified on Annex B; and

WHEREAS, it is the desire of the Owner to be reimbursed by the owners of the properties benefited directly or indirectly by the installation of the facilities on an equitable basis for the cost.

NOW, THEREFORE, in consideration of mutual promises and agreements contained herein, the Village and the Owner agree as follows:

1. The Owner has or will pay all of the costs of construction of _____ that are depicted on Annex A attached hereto.

2. Properties that may be reasonably expected to benefit directly or indirectly from the facilities constructed under this Agreement are described and are depicted on Annex B attached hereto and made a part hereof.

3. The parties agree that the Village will endeavor to collect the portion of the costs of the facilities to the [WATER/SEWER PROJECT] including interest payments from the owners of benefited properties prior to the time that said benefited property connects to said facilities. The costs allocated to the Property and the benefitted properties are to be set forth in Annex B, which allocation shall be calculated in the same manner utilized for Meadow Wood Subdivision pursuant to Ordinance 2009-08-648 and recorded as document number 6508311. The improvement costs to be recaptured shall include, without limitation, all material and labor hard costs for the improvements, and all soft costs, including without limitation tap on fees, survey, engineering, legal, accounting and interest costs. The Village will use a good faith effort to prohibit access to the improvements installed by the Owner until reimbursement is made in accordance with this Agreement.

4. The parties agree that the Owner shall be entitled to receive interest on the amount due from each benefited property at a floating rate equal to one percent (1%) in excess of the prime rate announced from time to time in the Wall Street Journal or, if discontinued, a comparable publication. In the event that any State statute shall determine the rate other than set forth here, the State requirement shall prevail. Interest shall commence from the date that the facilities are accepted by the Village.

5. The parties agree that the Village will attempt to collect the costs provided herein from benefited properties but shall not be liable to the Owner if the Village is, for any reason, unable to collect said costs. The Village's responsibility to reimburse the Owner shall be limited to payments from funds actually collected from benefited property owners. The Village shall not be responsible in the event there is no development of the properties contemplated to be benefited by such improvements.

6. The Owner shall reimburse and indemnify the Village for all costs, fees and liabilities incurred by the Village in attempting to collect those recapture fees provided. The Village may require the Owner to post a cash bond for such costs before the Village will proceed with enforcement. If such bond is posted, the Parties agree that the Village will utilize a good faith effort to restrict connection to the oversized utilities by those parcel owners subject to the recapture agreement as the first means of enforcing such recapture agreement. As long as the Owner pays the costs thereof, at Owners request, the Village shall enforce collection by litigation, or, at the Village's sole option and to the extent provided by law, assign to Owner the right to enforce this agreement against any defaulting benefited Owner.

7. This Recapture Agreement shall be recorded with the Recorder of Deeds of Lake County, Illinois.

WHEREFORE, the parties hereto have set their hands this ____day of _____,201__.

VILLAGE OF LAKE ZURICH

OWNER:

By _____
Village President
Name: _____
Its: _____

ATTEST:

Village Clerk

Annex A: Costs of Construction
Annex B: Benefiting Properties