

SEWER CONNECTION AGREEMENT

In and for the mutual covenants and conditions stated herein and other good and valuable consideration, it is hereby mutually agreed between the parties herein, the Village of Poplar Grove and Concept Development Partners, as follows:

I. PARTIES. The parties to this Sewer Connection Agreement (“Agreement”) are as follows:

A. The Village of Poplar Grove, an Illinois Municipal Corporation of the State of Illinois, hereinafter referred to as the “Village”.

Name: The Village of Poplar Grove
Contact: Donald Sattler, Village President
Address: 200 North Hill Street
Poplar Grove, IL 61065
Phone: 815-765-3201
Direct: 815-494-0702
Fax: 815-765-3571

B. Concept Development Partners, an Illinois partnership, hereinafter referred to as “Concept”.

Name: Concept Development Partners
Contact: Samuel J. Diamond, General Partner
Address: 3431 W. Elm Street
McHenry, IL 60050
Phone: 815-385-6840
Direct: 815-245-4661
Fax: 815-385-6875
E-mail: sam@dlfirm.com

AND

Name: Concept Development Partners
Contact: James R. Schaid, General Partner
Address: 4005 N. Kane, Suite H
McHenry, IL 60050
Phone: 815-363-2454
Email: jrs@schaid.net

II. RECITALS. The terms and conditions of this Agreement apply to sewer connections for the Village of Poplar Grove South Waste Water Treatment Plant, (hereinafter the “SWWTP”).

WHEREAS, Concept is the owner of 999 sewer connections as described on Exhibit A attached hereto and incorporated herein; and

WHEREAS, pursuant to the Sewer Service Agreement dated May 9, 2005, Concept purchased these sewer connections at a rate of \$4,200 per single family residential connection; and

WHEREAS, the total amount paid for the 999 sewer connections at \$4,200 per connection owned by Concept is \$4,195,800; and

WHEREAS, to the extent Concept developed real estate that was to be connected to the SWWTP, the Village would not charge Concept a sewer connection fee as Concept had already pre-paid for 999 sewer connections; and

WHEREAS, Concept is no longer developing real estate in the Village but still owns the 999 sewer connections; and

WHEREAS, Concept and the Village desire to set forth herein the terms and conditions upon which Concept's 999 sewer connections can be sold to third parties desiring to connect to the SWWTP.

NOW THEREFORE, the parties hereto agree as follows:

- A. While Concept previously paid \$4,200 per connection, Concept now agrees to a reduction in the connection fee to be paid to Concept for any of Concept's 999 sewer connections which are now sold to third parties from \$4,200 per sewer connection to \$3,800 per connection.
 - i. To the extent the Village receives a request from a third party to purchase a bulk quantity of connections, the Village and Concept agree to negotiate in good faith a further discounted connection fee.
- B. The Village shall be entitled to keep any amounts over the \$3,800 connection fee paid to Concept (e.g. the sewer connection fee is currently \$5,000 per connection and based on this rate, the Village would keep the additional \$1,200 over the amount paid to Concept).
- C. The Village agrees to put the sale of any sewer connections it owns behind Concept (i.e., the Village will not sell its connections prior to Concept's connections being sold). The sale of Concepts 999 connections contemplated in this Agreement shall only apply to connections to the SWWTP that are made after the effective date of this Agreement.
- D. The Village will have full control over who connections are sold to and the amount charged per connection.
- E. Concept will not have any right to withhold the sale of any of its connections.
- F. Commercial/industrial and non-single family residential connections will be based on an ERU calculation and shall be in accordance with the methodology for calculating connection fees for commercial/industrial uses set forth in the Village Code of

Ordinances as may be amended from time to time. See Village Code of Ordinance Section 6-2-2-3b, copy attached hereto and made a part hereof as Exhibit B.

- G. The term of this Agreement will be twenty (20) years so long as there is no breach of this Agreement. If after twenty (20) years Concept still has connections that have not been sold, Concept shall have the option to extend the term of this Agreement for an additional ten (10) years, however, Concept will forfeit half of the remaining connections (and the capacity they represent). If after thirty (30) years Concept still has connections that have not been sold, those remaining connections (and the capacity they represent) are forfeited by Concept.
- H. This Agreement does not apply to any other developers or entities that have their own pre-paid connections to the SWWTP or have allocated but unpaid connections to the SWWTP.
- I. The Village shall remit payment for sold sewer connections to Concept within sixty (60) days of Village's receipt of funds with such payment to be made payable to Diamond Legal Trust Account and mailed to 3431 W. Elm Street, McHenry, IL 60050.
- J. On or before January 30 of each year, the Village will provide Concept with an annual accounting in writing of all applicable sewer connections to the SWWTP issued by the Village in the previous year, with the first accounting due on or before March 31, 2023.

III. GENERAL PROVISIONS.

- A. **BREACH.** In the event of a breach or default of any provision of this Agreement, the not breaching party shall have any and all remedies available to it at law or in equity. In action to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable costs and expenses, including attorneys' fees. A "prevailing party" shall be a party who has obtained affirmative relief from another or other parties either by injunctive relief or a monetary award.
- B. **WAIVER.** The failure of any party to insist upon strict performance of any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any party of any default under this Agreement shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver.
- C. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts each of which in the aggregate shall constitute one and the same instrument.

- D. SEVERABILITY. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, of the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- E. NOTICE. Notice to any one of a multiple person party shall be sufficient notice to all. All notices pursuant to this Agreement shall be in writing and shall be served by one party to the other party in the following manner:
1. By personal delivery; or
 2. By mailing to the addresses recited herein by regular mail and by certified mail, return receipt requested. Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or
 3. By facsimile transmission. Notice shall be effective as of date and time of the transmission, provided that the Notice transmitted shall be sent on Business Days during Business Hours. In the event Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or
 4. By commercial overnight delivery (e.g., FedEx, UPS, etc.). Such Notice shall be effective on the next Business Day following deposit with the overnight delivery company.
- F. VENUE. In any action or proceeding among the parties herein arising out of or in connection with this Agreement or the breach or enforcement thereof, venue shall properly lie in the 17th Judicial Circuit of Boone County, Illinois and each of the parties herein waives any objection to the commencement or transfer of any such action in or to said venue.
- G. PERFORMANCE. Time is of the essence of this Agreement.
- H. SUCCESSORS AND ASSIGNS. The terms and provisions of this Agreement shall inure to the parties herein and their successors and assigns.
- I. AMENDMENTS. This Agreement may not be amended, modified, or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination, or waiver shall be effective for any purpose unless it is in writing, and bears the signatures of all of the Parties hereto.
- J. ENTIRETY OF THE AGREEMENT. This Agreement is the agreement between the Parties hereto as it now exists at the execution hereof and it is expressly understood, agreed and distinctly acknowledged that all previous communications and negotiation between the Parties, either written or oral, that are not contained herein are hereby withdrawn, nullified, and void.

K. CONFLICT. To the extent that any provisions of this Agreement conflicts with any term or condition set forth in any other documents or agreements, including, but not limited to, the Sewer Service Agreement dated May 9, 2005 or any applicable annexation agreement, the provisions of this Agreement shall supersede and control to the extent of such conflict. All other provisions of these other documents or agreements not in conflict with this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties have executed this document this ____ day of _____, 2022.

THE VILLAGE OF POPLAR GROVE,
an Illinois municipal corporation

By: _____

As Its: _____

CONCEPT DEVELOPMENT PARTNERS,
an Illinois partnership

By: _____

Samuel J. Diamond

As Its: General Partner

By: _____

James R. Schaid

As Its: General Partner

By: _____

Kenneth Koreba

As Its: General Partner

By: _____

Robert Young

As Its: General Partner

EXHIBIT A

EXHIBIT B