



ORDINANCE NO. 2070-21

AN ORDINANCE AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT AND GENERAL MUTUAL RELEASE BETWEEN THE VILLAGE OF HAWTHORN WOODS, AQUA ILLINOIS INC. AND TOLL IL HWCC, L.P.

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Mayor and be, and the same, is hereby authorized and directed to execute a Settlement Agreement and General Mutual Release with Aqua Illinois, Inc. and Toll IL HWCC L.P., in substantially the form attached hereto as Exhibit "A", and, by this reference, made a part hereof. The agreement is subject to final review, modification and approval by the Village Attorney.

The foregoing Ordinance was adopted on February 22, 2021 by a roll call vote as follows:

AYES: Kaiser, Bosik, Riess, David, McCarty, Ryckle

NAYS: 0

ABSENT AND NOT VOTING: 0

APPROVED: _____

Dominick DiMaggio
Dominick DiMaggio, Mayor

ATTEST: _____

Donna Lobaito
Donna Lobaito, Village Clerk

ADOPTED: February 22, 2021

APPROVED: March 8, 2021

SETTLEMENT AGREEMENT AND GENERAL MUTUAL RELEASE

This Settlement Agreement and General Mutual Release (the "Agreement") is entered into by and among Aqua Illinois, Inc. f/k/a Consumers Illinois Water Company ("Aqua"), Toll IL HWCC, L.P. ("Toll"), and the Village of Hawthorn Woods (the "Village"), as of this 8th day of February, 2021.

March

RECITALS:

A. Aqua filed suit against Toll and the Village in the Circuit Court for the 19th Judicial Circuit under Case No. 18 MR 811 (the "Complaint"), alleging that Toll breached its obligation to Aqua under that certain Agreement Regarding The Construction, Sale, Acquisition And Operation Of The Wastewater Reclamation And Reuse System In The Hawthorn Woods Country Club dated June 2, 2002 (the "Toll-Aqua Contract") to construct by December 31, 2014 a second storage lagoon (the "Second Storage Lagoon") as part of the existing wastewater reclamation and reuse system (the "WRRR System") that Toll constructed at the Hawthorn Woods Country Club planned development in Hawthorn Woods, Illinois (the "Development").

B. The Village also asserted (the "Village's Assertions") that Toll had breached its obligation to the Village to construct the Second Storage Lagoon by December 31, 2014 pursuant to the terms of that certain Annexation and Development Agreement between the Village and Toll dated May 2, 2003 (the "Original Annexation Agreement").

C. Toll denied the allegations in the Complaint and the Village's Assertions and filed an affirmative defense (the "Affirmative Defense") (the Complaint, the Village's Assertions and the Affirmative Defense, collectively, the "Litigation") asserting that the deadline to construct the Second Storage Lagoon was not contained in the Toll-Aqua Contract, but was instead contained in the Annexation Agreement and that the deadline was validly extended by virtue of the Village's and Toll's execution of that certain Third Amendment to Annexation and Development Agreement dated April 2, 2007 (together with the Original Annexation Agreement and the first, second and fourth amendments thereto, the "Annexation Agreement") and their execution of that certain Hawthorn Woods Country Club Wastewater Reclamation and Reuse System Recapture Agreement between the Village and Toll dated December 20, 2004 and that certain First Amendment to Wastewater Reclamation and Reuse System Recapture Agreement dated October 19, 2009 (collectively, the "WRRR System Recapture Agreement").

D. To avoid the costs, expense and risk of the Litigation, Aqua, Toll and the Village, after communicating with their own freely-chosen counsel, wish to resolve and settle all claims or potential claims, allegations, assertions or causes of action, known or unknown, that Aqua, Toll and the Village may have against each other, in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference and the mutual promises, covenants and obligations hereinafter set forth, the parties hereto agree as follows:

1. Within fourteen (14) days of the execution and delivery of this Agreement by all parties, Toll shall pay Six Hundred Twenty-Five Thousand and no/100 Dollars (\$625,000.00) into an escrow account established by the Village pursuant to the Second Storage Lagoon Construction and Escrow Agreement attached hereto as Exhibit 1 ("Construction Agreement")(the "Escrow Account").

2. Within fourteen (14) days of the execution and delivery of this Agreement, the Construction Agreement, the Second Amendment and Assignment Agreement by all parties, Aqua shall dismiss the Complaint with prejudice to fully and finally dispose of the Litigation, each party to bear its own costs and attorneys' fees, with the court to retain jurisdiction to enforce the terms of this Agreement.

3. Within fourteen (14) days of the later of: (i) the sixth (6th) month anniversary of the execution and delivery of this Agreement by all parties, or (ii) Aqua's presentation to Toll of: (a) a permit issued by the Village to Aqua or its contractor for the hauling away of the peat spoils from the area where the Second Storage Lagoon will be constructed (the "Spoils Removal"); and (b) an affidavit from Aqua attesting that Aqua or its contractor has commenced the Spoils Removal, Toll shall make a second and final payment of Six Hundred Twenty Five Thousand and no/100 Dollars (\$625,000.00) into the Aqua Escrow. In the event Toll fails to make the payment set forth in this paragraph 3 within the required time frame (the "Default"), Aqua shall provide written notice of the Default to Toll through its counsel, Jon Margolis, via email at jmargolis@tollbrothers.com, and fourteen (14) business days to cure the Default. In the event that Toll fails to cure the Default within fourteen (14) business days of the date of sending of such written notice, Aqua may draw upon the letter of credit described in paragraph 4 below.

4. Within fourteen (14) days of the execution and delivery of this Agreement by all parties, Toll shall post a letter of credit with the Village in the form attached hereto as Exhibit 2 in the amount of Six Hundred Twenty Five Thousand and no/100 Dollars (\$625,000.00) to secure Toll's payment as set forth in paragraph 3 above. The terms of the letter of credit shall provide that the Village can draw upon the letter of credit in the event Toll fails to make the payment set forth in paragraph 3 above in accordance with the time frame set forth therein.

5. Within fourteen (14) days of the execution and delivery of this Agreement by all parties, Toll shall convey to Aqua via special warranty claim deed the property needed to construct the Second Storage Lagoon and any surrounding berm and landscaping, and Toll shall execute any documents reasonably necessary to give title to the Property subject to existing exceptions of record. A copy of the Special Warranty Deed is attached hereto as Exhibit 3.

6. The parties acknowledge and agree that: (i) the Toll-Aqua Contract is hereby terminated with no further obligation or liability thereunder on the part of either Toll or Aqua; (ii) both the Village and Aqua release Toll from any obligation to construct the Second Storage Lagoon; (iii) Aqua hereby assumes full responsibility for the construction of the Second Storage Lagoon pursuant to the terms and conditions of the Construction Agreement (Exhibit 1); (iv) Toll's failure to construct the Second Storage Lagoon by December 31, 2014 shall not be deemed a default under either the Annexation Agreement or the WWRR System Recapture Agreement; and (v) the Annexation Agreement and the WWRR System Recapture Agreement continue in full force and effect after the execution and delivery of this Agreement.

7. Upon the execution and delivery of this Agreement, Toll shall execute: (i) Hawthorn Woods Country Club Second Amendment to Wastewater Reclamation and Reuse System Recapture Agreement attached hereto as Exhibit 4 ("Second Amendment"), and (ii) Assignment of Recapture Agreement attached hereto as Exhibit 5 ("Assignment Agreement") to Aqua in recordable form, and the Village shall execute the Second Amendment and shall consent to the Assignment Agreement and release Toll from and of all of its obligations to the Village under the WWRR System Recapture Agreement and Second Amendment.

8. The Village and Aqua acknowledge and agree that: (i) the Hawthorn Woods Country Club Potable Water System Recapture Agreement between the Village and Toll dated December 20, 2004 (the "Water System Recapture Agreement") continues in full force and effect after the execution and delivery of this Agreement; and (ii) Toll continues to have the right to collect recapture fees payable to it under the Water System Recapture Agreement for connections to Aqua's potable water system (the "Water System").

9. The Village and Aqua acknowledge and agree that: (i) Toll has existing reservations of sewer and water capacity for the Development under the Annexation Agreement; (ii) Toll has the absolute right under the Annexation Agreement to connect 189 single family dwelling units to the WRRR System and the Water System without payment of any recapture fees, connection fees or other fees (other than customary and standard usage fees) to either Aqua or the Village; and (iii) neither the Village nor Aqua will refuse to allow Toll to connect the 189 dwelling units to the WRRR System or the Water System on the basis that there is insufficient capacity in either system to allow such connections.

10. Upon the execution and delivery of this Agreement, and except as set forth herein, Aqua, on behalf of itself, its parents, subsidiaries, and affiliates and their respective officers, directors, stockholders, agents, employees, attorneys, servants, insurers, representatives, successors and assigns (the "Aqua Releasing Parties"), does hereby remise, release and forever discharge Toll and its parents, subsidiaries, and affiliates and their respective officers, directors, stockholders, agents, employees, attorneys, servants, insurers, representatives, successors and assigns (the "Toll Released Parties"), from all claims, demands, rights and causes of action (inchoate or otherwise), which the Aqua Releasing Parties now have or may have against the Toll Released Parties, whether known or unknown, as of the date of this Agreement, which were or could have been asserted in the Litigation or with respect to the Annexation Agreement or the Toll-Aqua Contract.

11. Upon the execution and delivery of this Agreement, and except as set forth herein, Aqua, on behalf of itself and the Aqua Releasing Parties, does hereby remise, release and forever discharge the Village and its officers, agents, elected officials, employees, attorneys, servants, insurers, representatives, successors and assigns (the "Village Released Parties"), from all claims, demands, rights and causes of action (inchoate or otherwise), which the Aqua Releasing Parties now have or may have against the Village Released Parties, whether known or unknown, as of the date of this Agreement, which were or could have been asserted in the Litigation or with respect to the Annexation Agreement or the Toll-Aqua Contract.

12. Upon the execution and delivery of this Agreement, and except as set forth herein, Toll, on behalf of itself, its parents, subsidiaries, and affiliates and their respective officers, directors, stockholders, agents, employees, attorneys, servants, insurers, representatives, successors and assigns (the "Toll Releasing Parties"), does hereby remise, release and forever discharge Aqua and its parents, subsidiaries, and affiliates and their respective officers, directors, stockholders, agents, employees, attorneys, servants, insurers, representatives, successors and assigns (the "Aqua Released Parties"), from all claims, demands, rights and causes of action (inchoate or otherwise), which the Toll Releasing Parties now have or may have against the Aqua Released Parties, whether known or unknown, as of the date of this Agreement, which were or could have been asserted in the Litigation or with respect to the Annexation Agreement or the Toll-Aqua Contract.

13. Upon the execution and delivery of this Agreement, and except as set forth herein, Toll, on behalf of itself and the Toll Releasing Parties, does hereby remise, release and forever discharge the Village Released Parties from all claims, demands, rights and causes of action (inchoate or otherwise), which the Toll Releasing Parties now have or may have against the Village Released Parties, whether known or unknown, as of the date of this Agreement, which were or could have been asserted in the Litigation or with respect to the Annexation Agreement or the Toll-Aqua Contract.

14. Upon the execution and delivery of this Agreement, and except as set forth herein, the Village on behalf of itself, and its officers, agents, elected officials, employees, attorneys, servants, insurers, representatives, successors and assigns (the "Village Releasing Parties"), does hereby remise, release and forever discharge the Aqua Released Parties from all claims, demands, rights and causes of action (inchoate or otherwise), which the Village Releasing Parties now have or may have against Aqua Released Parties, whether known or unknown, as of the date of this Agreement which were or could have been asserted in the Litigation or with respect to the Annexation Agreement or the Toll-Aqua Contract.

15. Upon the execution and delivery of this Agreement, and except as set forth herein, the Village on behalf of itself, and the Village Releasing Parties, does hereby remise, release and forever discharge the Toll Released Parties from all claims, demands, rights and causes of action (inchoate or otherwise), which the Village Releasing Parties now have or may have against Toll Released Parties, whether known or unknown, as of the date of this Agreement, which were or could have been asserted in the Litigation or with respect to the Annexation Agreement or the Toll-Aqua Contract.

16. Notwithstanding the releases contained in paragraphs 10 – 15 above, nothing in this Agreement shall release Toll or the Village from any ongoing obligations they may have to each other under the Annexation Agreement or the Water System Recapture Agreement or release Aqua or the Village from any ongoing obligations they may have to each other under the Construction Agreement and the WWR System Recapture Agreement and Second Amendment, as assigned by Toll to Aqua.

17. Except as set forth herein and in the Exhibits attached hereto, this Agreement constitutes the entire agreement between the parties hereto relative to the subject matter hereof and supersedes all prior agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter of this Agreement. No party hereto has in any way relied, nor shall in any way rely, upon any oral or written agreements, representations, warranties, statements, promises or understandings made by any other party, any agent or attorney of any other party or any other person unless such agreement, representation, warranty, statement, promise or understanding is specifically set forth in this Agreement. No party hereto nor any of its attorneys shall be bound by or charged with any statements, promises, or understandings not specifically set forth in this Agreement.

18. Each party has relied upon the advice and representation of counsel of its own selection and has been fully advised as to the legal effect of this Agreement and has executed this Agreement as its own free and voluntary act.

19. The provisions contained in this Agreement shall bind and inure to the benefit of the Aqua Releasing Parties, the Aqua Released Parties, the Toll Releasing Parties, the Toll Released Parties, the Village Releasing Parties and the Village Released Parties.

20. This Agreement is executed by the parties for the sole purpose of compromising and settling all matters between the parties, including those involved in the Litigation. It is expressly understood and agreed, as a condition of this Agreement, that this Agreement shall not constitute nor be construed to be an admission of any liability, or indicating in any degree an admission of the truth or correctness of any of the allegations made in the Litigation.

21. The parties hereby agree to cooperate and to take further action as may be necessary to effectuate the terms and purposes of this Agreement.

22. This Agreement may be executed in counterparts, and any number of counterparts signed in the aggregate by the parties shall constitute a single, original instrument, and signatures of the parties by facsimile and e-mail shall be binding.

23. This Agreement is governed by and to be construed in accordance with internal laws of Illinois.

24. This Agreement may not be modified or amended except by a writing signed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and caused this Agreement to be executed in their respective corporate names by a proper officer or representative duly authorized to do so as of the date indicated.

AQUA ILLINOIS, INC.

By: 
Its: President

TOLL IL HWCC, L.P.

By: Toll Northeast LP Company, Inc.,
a Delaware Corporation,
General Partner

By: _____
Its: _____

VILLAGE OF HAWTHORN WOODS

By: 
Its: Mayor

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21. The parties hereby agree to cooperate and to take further action as may be necessary to effectuate the terms and purposes of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement and caused this Agreement to be executed in their respective corporate names by a proper officer or representative duly authorized to do so as of the date indicated.

AQUA ILLINOIS, INC.

By: _____
Its: _____

TOLL IL HWCC, L.P.

By: Toll Northeast LP Company, Inc.,
a Delaware Corporation,
General Partner

By:  _____
Its: Division President _____

VILLAGE OF HAWTHORN WOODS

By: _____
Its: _____

EXHIBIT 1

Second Storage Lagoon Construction and Escrow Agreement

This Second Storage Lagoon and Escrow Agreement ("Agreement") is entered into this 8th day of March, 2021 by and between Aqua Illinois, Inc. ("Aqua") and the **Village of Hawthorn Woods**, an Illinois Municipal Corporation ("Village"), and made in consideration of the mutual promises and undertakings hereinafter set forth and in furtherance of that certain Settlement Agreement and Release by and between Toll IL HWCC, L.P. ("Toll"), the Village and Aqua dated March 8, 2021 (the "Settlement Agreement").

WITNESSETH:

WHEREAS, the Village, Aqua and Toll in the Settlement Agreement have resolved certain disputes between them and by this Agreement the Village and Aqua desire to set forth certain understandings related to the phased construction of the Second Storage Lagoon which shall be constructed as part of Aqua's Wastewater Reuse and Reclamation System in Hawthorn Woods and the terms of the escrow account to be established for the funding of construction of the Second Storage Lagoon; and,

WHEREAS, the Settlement Agreement requires Toll to deposit \$625,000 into an escrow account to be established by the Village upon execution of the Settlement Agreement and requires the deposit of another \$625,000 upon the later of presentation to Toll of (i) a permit from the Village to Aqua or its contractor for the hauling away of peat spoils from the area where the Second Storage Lagoon will be constructed, AND (ii) an affidavit from Aqua attesting that Aqua has commenced the hauling away of the peat spoils from the area where the Second Storage Lagoon will be constructed (hereinafter the "Initial Payments"); and,

WHEREAS, pursuant to the Settlement Agreement Toll shall assign its existing rights to sewer recapture as established by that certain Recapture Agreement between the Village and Toll dated December 20, 2004 and recorded as Lake County Document No. 5715676 ("Recapture Agreement") as Amended by that certain Amendment to Wastewater Reclamation and Reuse System Recapture Agreement between the Village and Toll dated January 20, 2009 and recorded as Lake County Document No. 6539047 ("First Amendment") and that certain Second Amendment to Wastewater Reclamation and Reuse System Recapture Agreement dated March 8, 2021 ("Second Amendment") (hereinafter collectively referred to as the "Recapture Payments"); and,

WHEREAS, the Village and Aqua wish to establish herein the terms and conditions for the escrow account for receipt of the Initial Payments and the Recapture Payments or connection fees ("Escrow Account") which shall be used to finance the construction by Aqua of the Second Storage Lagoon for the Hawthorn Woods Wastewater Reclamation and Reuse System in Hawthorn Woods, Illinois ("Second Storage Lagoon") in up to five (5) phases as described herein upon the timing triggers set forth herein; and,

WHEREAS, Aqua shall construct, operate and own the Second Storage Lagoon and the capacity in the existing and Second Storage Lagoon shall be available for ongoing growth and development in the Village; and,

WHEREAS, it is the intention of the Parties herein that all design engineering, bidding, construction observation, inspection, legal and permitting fees related to the construction of the Second Storage Lagoon and Aqua's overhead costs ("Administrative Costs") shall be paid out of the Escrow Account and that the Parties shall at all times cooperate with each other on the Second Storage Lagoon construction.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Preamble. The recitals contained in the Preamble above shall become a part of this Agreement as if fully set forth herein.

2. Escrow Account. The Village shall establish a segregated Escrow Account for the sole purpose of funding construction of the Second Storage Lagoon and payment of the Administrative Costs. The Escrow Account shall receive the Initial Payments and all Recapture Payments and any specifically designated connection fees which may be established by the Village for wastewater treatment by the Hawthorn Woods WWPR System (hereinafter Recapture Payments and connection fees are referred to as "Escrow Deposits"), which shall be no less than \$7,000 per single family home, and which shall be collected by the Village from home builders and developers at the earlier of (a) approval of a Final Plat, or (b) approval of Final Engineering Plans. In addition, the Village shall be able to draw from the Escrow Account to pay for its Administrative Costs. The Escrow Account shall be interest bearing and the Village shall provide Aqua with quarterly statements showing the balance in the escrow account and detailing any amounts received or paid from the Escrow Account. Aqua shall have audit rights relative to the Escrow Account. No payments can be made from the Escrow Account to third parties unless Aqua is first provided with written notice of the pay request and sufficient documentation in support of the pay request. Aqua shall be given fourteen (14) days to respond in writing with its approval or rejection of the pay request with any rejection being supported by specific reasons in support thereof. The Parties shall resolve any disputes related to third-party payments from the Escrow Agreement using the dispute resolution procedure in Paragraph 9.

3. Construction Phasing. The Village and Aqua agree to the five (5) phased construction of the Second Storage Lagoon to the maximum capacity of up to 86,000,000 gallons as set forth on **Group Exhibit A**. Aqua may in its sole discretion after consultation with the Village determine that a phase or phases of the construction should be advanced or combined and in that event the Parties will thereafter agree upon terms for Aqua's construction costs to be reimbursed from the Escrow Account as Escrow Deposits are made.

4. **Phase 1 Timing.** Within three (3) months from execution of this Agreement, Aqua shall submit its Phase 1 Peat Stockpile Removal plans and permit request for removal of the existing stockpiled peat soils from the area depicted in **Group Exhibit A** for Phase 1. The Village shall have thirty (30) days to approve or deny the permit request and in the event of a denial the Village shall include the specific reasons for the denial and the Parties shall resolve any disputes using the dispute resolution procedure set forth Paragraph 9 below. Upon approval and issuance of the permit, Aqua or its contractor shall use the Haul Route(s) included in the attached **Exhibit B.** The Phase 1 Work shall be substantially completed within six (6) months of commencement of the Phase 1 Work. Aqua shall be entitled to submit Payment Requests from the Escrow Account for the Phase 1 Work in accordance with the procedures set forth in Paragraph 10 below.

5. **WWRR Capacity.** Aqua and the Village agree that the current WWRR has the capacity to serve an additional 255 homes using an agreed upon population equivalent per home of 2.75 and that 2.75 p.e. shall be used in evaluating capacity for the Second Storage Lagoon. (Population equivalent (p.e.) shall have the same meaning as set forth in the IEPA wastewater regulations and codes.) Aqua and the Village further agree that the current WWRR storage lagoon and the Second Storage Lagoon shall accommodate 150 days of storage capacity or such higher value as may be required by the IEPA.

6. **Phases 2-5 Construction Timing.** The Village and Aqua agree to the Phasing Triggers and the construction cost estimates set forth in **Exhibit C** attached hereto and incorporated herein. The foregoing notwithstanding, the Parties recognize that the phasing, cost estimates and construction triggers are based on current and available information and the actual costs may exceed the estimates due to market conditions, applicable regulations and future conditions and it is the intention of the Parties that the funds in the Escrow Account shall be sufficient to cover the actual costs of construction and actual Administrative Costs for each phase of the construction. Aqua shall have no obligation or duty to begin construction of a phase or phases until there are sufficient funds in the Escrow Account. In the event of insufficient funds in the Escrow Account to cover the actual construction costs of a respective Phase and Administrative Costs, the Parties shall cooperate to establish updated triggers, and to revise **Exhibit C** accordingly.

A. **Permitting.** Upon the Village's receipt of Escrow Deposits for the number of homes set forth as the Design Trigger in **Exhibit C,** Aqua shall commence the design of the subsequent Phase of the Storage Lagoon in the location and size as set forth in **Group Exhibit A.** Aqua shall include a preliminary plan for the ultimate buildout of the Second Storage Lagoon with Aqua's Phase 2 engineering which shall include proposals for permanent berming generally consistent with the temporary berming specifications in par. 7 subject to Village review and approval. The preliminary plan will address drainage for the entire site. Aqua shall complete its design and submit a permit request and engineer's estimate of construction costs to the Village for the respective Phase Work within three (3) months of receiving notice the Design Trigger Deposit. Upon receipt of a completed permit request and engineer's estimate the Village shall then have

thirty (30) days to approve or deny the permit request and Engineer's estimate, and in the event of a denial the Village shall include the specific reasons for the denial and the Parties shall resolve any disputes using the dispute resolution procedure set forth in Paragraph 9 below. Upon receipt of the Village's permit, Aqua shall submit its construction Permit Application to the Illinois Environmental Protection Agency ("IEPA") for the respective Phase of the Second Storage Lagoon.

B. Construction. Subject to Aqua's receipt of an IEPA Construction Permit approval and the Village's receipt of the Escrow Deposits for the number of homes set forth as the Construction Trigger in **Exhibit C**, Aqua shall commence construction of the respective Phase of the Storage Lagoon and construction shall be substantially completed within six (6) months thereafter.

7. **Berming Plan and Temporary Stockpiling of Soil.** The Village approves Aqua's berming plan set forth in **Exhibit D**. The Village agrees that as part of its Phase 2-5 construction, Aqua may construct the berms in the locations depicted in **Exhibit D** from suitable materials excavated during Second Storage Cell construction. The Village further agrees that as a cost savings measure and as part of its permit request(s) for Phases 2-5, Aqua may propose temporary stockpiling of soils in the Proposed Temporary Berm locations depicted in **Exhibit D**, provided that Aqua shall present a plan for removal of the stockpiles with its permit request(s). The temporary berms shall not exceed five (5) feet in height with a maximum 4:1 slope on the sides and will be vegetated with turf.

8. **Village Fees/Bonds for Second Storage Lagoon Permits.** The Village shall not charge separate fees for permits related to the phased construction of the Second Storage Lagoon. Aqua shall not be required to post a payment or construction bond related to the Second Storage Lagoon but upon request of the Village, the Village and Aqua shall agree on the amounts of a bond or bonds to insure repairs or restoration to all haul roads used by Aqua during the Second Storage Lagoon construction. All costs associated with any road bonds required by the Village shall be included as Administrative Costs.

9. **Dispute Resolution.** In the event a dispute arises between the Parties, the Parties shall endeavor to resolve any dispute through consultations between them. Such consultations shall commence upon the written notification that a dispute exists by one party to the other party. In the event an engineering dispute cannot be resolved by the Parties, such dispute shall be resolved by both Parties' selection of a neutral third-party engineer who shall within fourteen (14) days from selection and presentation of the Parties' respective positions on the disputed matter render a final decision which shall be binding on the Parties. If the Parties cannot agree on the neutral engineer, each party shall select a third-party engineer and thirty-party engineers shall select the neutral engineer.

10. **Aqua Payment Requests.** Aqua shall be entitled to payment from the Escrow Account for all Administrative Costs and construction costs for the phased construction of the Second Storage Lagoon. Aqua may submit no more frequently than

once each calendar month, using a cut-off date of the last day of the prior month and a submission date of the tenth (10th) day of the month a written Request for Payment in the Form attached hereto as **Exhibit E**. The Request for Payment shall be signed by Aqua's consulting or in-house engineer recommending payment. The Request for Payment shall include Aqua's draw request containing Aqua's Administrative Costs (overhead, engineering, legal and management services). The Village Engineer shall within ten (10) days from receipt of the Request for Payment issue its recommendation for approval or denial (in whole or in part) of the Request for Payment. The Village Board shall within forty-five (45) days from receipt of Aqua's Request for Payment the Village shall pay the recommended portion of the bill to Aqua. For any disapproved portion of a bill, within forty-five (45) days the Village shall notify Aqua as to the reasons for the disapproval and Aqua can either resubmit the portion that was disapproved or the parties shall follow the dispute resolution procedure set forth in Paragraph 9 above.

11. **Default.** If either Party defaults in the full and timely performance of any of its obligations hereunder, the non-breaching Party, after first providing written notice to the breaching Party of the event of default and providing thirty (30) days to cure the same, shall be entitled to invoke its legal rights and remedies as a result thereof, including, but not limited to, its equitable remedy of specific performance. All amounts not paid when due shall accrue interest at ten percent (10%) per annum. If after a determination has been made by a neutral third-party that Aqua has failed to either submit a permit request and engineer's estimate, submit the IEPA permit or commence construction and after the cure period set forth herein, the Village shall have the right engage in self-help to undertake the construction of the respective phase(s) with reimbursement from the Escrow Account. **THE FOREGOING NOTWITHSTANDING, NO PARTY SHALL BE LIABLE TO ANOTHER PARTY OR ANY OF ITS AFFILIATES, AGENTS EMPLOYEES OR CONTRACTORS FOR SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.**

12. **No Third Party Beneficiaries.** No provision of this Construction and Escrow Agreement is intended to benefit, nor shall any provision of this Construction and Escrow Agreement be construed to benefit any party, individual, owner, entity or developer or their respective successors or assigns.

13. **Force Majeure.** Neither the Village nor Aqua shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended, if the Party's performance of an obligation is delayed as a result of an event of force majeure, which is hereby defined to include, but not be limited to, damage or destruction by fire or casualty; strike; lockout; civil disorder; war; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for Aqua to proceed with construction of the work or any portion thereof; delay in commencement or completion of any and all work to be performed by others which affects Aqua's ability to commence or complete the work; shortage or delay in shipment of material or fuel; acts of God; disaster or emergency declarations from municipal, state or federal authorities; unusually adverse weather or wet soil conditions; or other like causes beyond the Parties' reasonable control, including, but not limited to, any litigation, court order or judgment resulting from any litigation challenging or affecting the validity

of: (a) the Wastewater Reclamation and Reuse System Recapture Agreement dated December 20, 2004, recorded as Lake County Recorder's Document No. 51576 as amended by the Hawthorn Woods Country Club First Amendment to Wastewater Reclamation and Reuse System Recapture Agreement dated January 20, 2009, recorded as Lake County Document No. 6539047 and the Hawthorn Woods Country Club Second Amendment to Wastewater Reclamation and Reuse System Recapture Agreement signed contemporaneously herewith; or (b) this Agreement; provided the Party claiming the benefits of this Paragraph 13 notifies the other Party in writing within thirty (30) days of the commencement of such claimed event of force majeure; and further provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by either Party to this Agreement in bad faith, and shall not include economic hardship; unavailability of materials (except as described above); strikes or labor disputes caused by the acts of the Aqua; or a failure of performance by a contractor (except as caused by events described above).

14. Recapture Indemnification. The Village and Aqua agree that the Indemnification provision in Paragraph 7 of the Hawthorn Woods Country Club Wastewater Reclamation and Reuse System Recapture Agreement dated December 20, 2004 ("Original Recapture Agreement") does not apply to Aqua. The Village and Aqua shall fully cooperate in the future to the extent necessary in order to effectuate the intentions of this Agreement concerning the funding of an escrow for the construction of the Second Storage Lagoon.

15. Notices. Any notices under this Agreement shall be personally delivered, delivered by the deposit thereof in the U. S. Postal Service, postage prepaid, registered, or certified, return receipt requested, or by overnight courier service to the party at the address listed below or at another address hereafter designated by notice or by facsimile or email transmission. Any such notice shall be deemed to have been delivered and given upon personal delivery or delivery by a nationally recognized overnight courier service, or deposit with the United States Postal Service or upon receipt of written confirmation that facsimile or email transmission has been successfully completed:

If to Hawthorn Woods: Village Clerk
Village of Hawthorn Woods
2 Lagoon Drive
Hawthorn Woods, IL 60047

With a copy to: Patrick T. Brankin
Schain, Banks, Kenny & Schwartz, Ltd.
70 W. Madison Street, Suite 5300
Chicago, IL 60602
pbrankin@schainbanks.com

If to Aqua: Craig L. Blanchette, President
Aqua Illinois, Inc.
1000 South Schuyler Avenue
Kankakee, Illinois 60901

With a copy to:

Christian G. Spesia
Spesia & Taylor
1415 Black Road
Joliet, Illinois 60435
cspesia@spesia-taylor.com

16. Miscellaneous.

A. Except as provided herein, neither Party shall assign this Agreement or any right or privilege any Party may have under this Agreement without the prior written consent of all Parties hereto. In the event a written consent is obtained, the assignee shall agree in a written notice to all Parties to carry out and observe each applicable Party's agreement hereunder ("Undertaking"). The terms and conditions herein contained shall, subject to the prior sentence, apply to and bind the successors of the Parties hereto. The foregoing notwithstanding, Aqua may assign, without Village's consent, but upon seven (7) days' prior written notice, its rights and obligations hereunder to any entity owned or controlled by it or any of its shareholders, directors or officers, or trusts owned or controlled by them, provided that any such assignee agrees to the Undertaking. Upon any such assignment by Aqua, Aqua shall be released from its duties and obligations hereunder and Village shall solely look to such Assignee for the performance of any of Aqua's obligations hereunder.

B. This Agreement shall be governed by the internal laws of the State of Illinois.

C. The person(s) executing this Agreement on behalf of the Parties hereto warrant that: (i) such party is duly organized and existing; (ii) the individual signing is duly authorized to execute and deliver this Agreement on behalf of said Party; (iii) by so executing this Agreement, such Party is formally bound to the provisions and conditions contained in this Agreement; and (iv) the entering into this Agreement by a Party does not violate any provision of any other agreement to which said Party is bound.

D. The Parties acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set forth in this Agreement. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the Parties as evidenced by this Agreement.

E. Aqua and Village shall defend, indemnify and hold the other harmless from and against any claims, losses, costs, liabilities, damages and expenses (including reasonable attorneys' fees and costs) arising out of, or resulting from, any breach of any provision of this Agreement, any violation of any

law, code, regulation or ordinance or any negligent or willful act or omission, by the other or its or their respective agents, employees, contractors or invitees. Nothing herein shall be construed to waive any immunities that may be asserted in response to or defense of any such claims.

F. This Agreement is the entire agreement between the Parties regarding its subject matter and may not be changed or amended except pursuant to a written instrument signed by all Parties.

G. The Exhibits attached to this Agreement are a part of this Agreement and are fully incorporated into this Agreement by reference.

H. Time is of the essence with regard to this Agreement.

I. This Agreement may be executed in any number of identical counterparts each of which shall be considered an original but which together shall constitute one and the same Agreement.

(signature page follows)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute same, the day and year first above written.

AQUA ILLINOIS, INC.

By: C Blanchett

Its: President

Attest:

By: Jisio Poreto

Its: Executive Assistant

VILLAGE OF HAWTHORN WOODS,
an Illinois Municipal Corporation

By: [Signature]

Its: Mayor

Attest: Donna Lobarto

By: Donna Lobarto

Its: Village Clerk

LIST OF EXHIBITS

- Group Exhibit A** - **Construction Phasing**
- Exhibit B** - **Haul Route(s)**
- Exhibit C** - **Phasing Triggers/Design Trigger/Construction Triggers**
- Exhibit D** - **Berming Plan**
- Exhibit E** - **Request for Payment Form**

GROUP EXHIBIT A
Construction Phasing



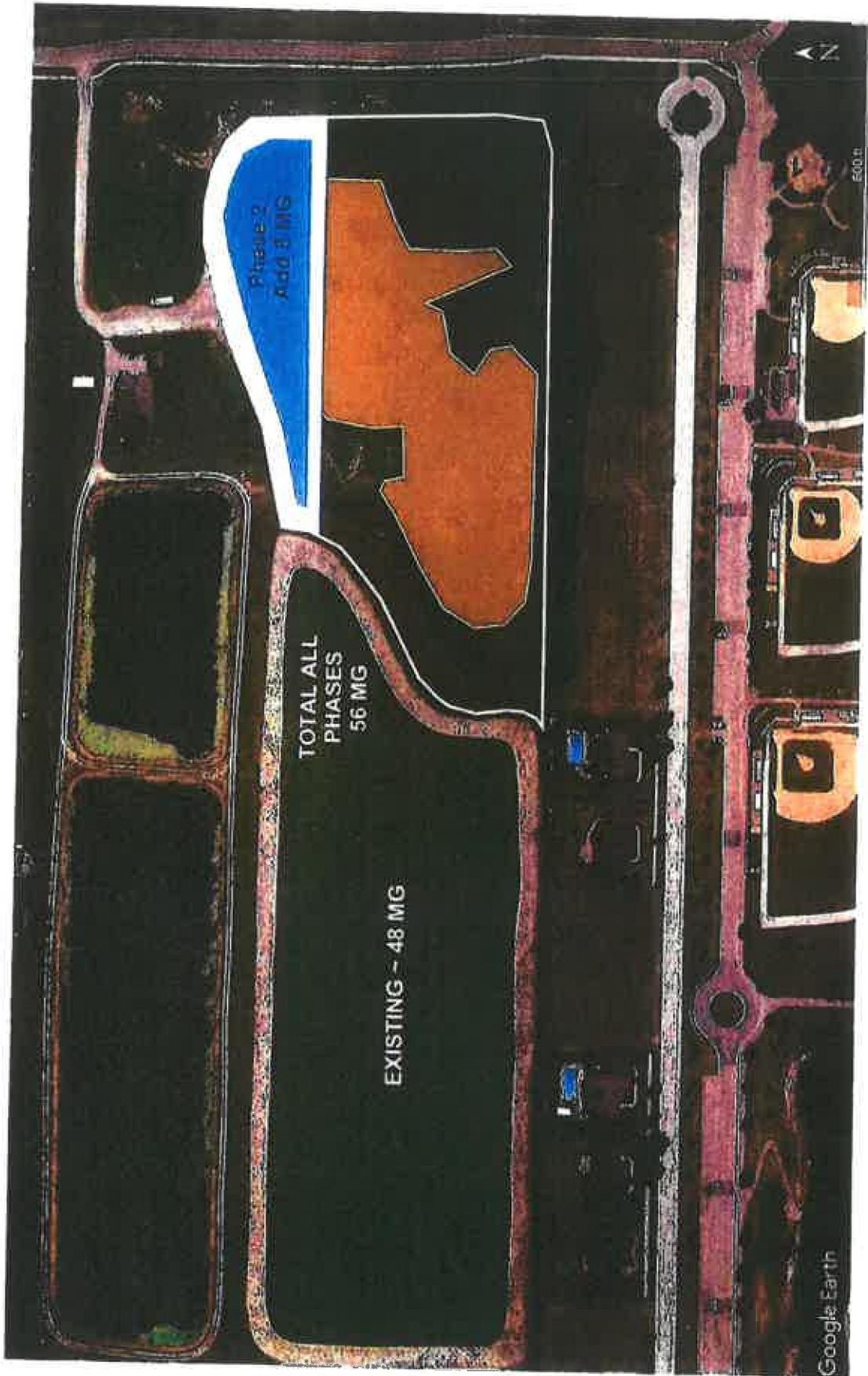
Phase 1 - Remove
Stockpile (Peat)

EXISTING - 48 MG

Google Earth



500'



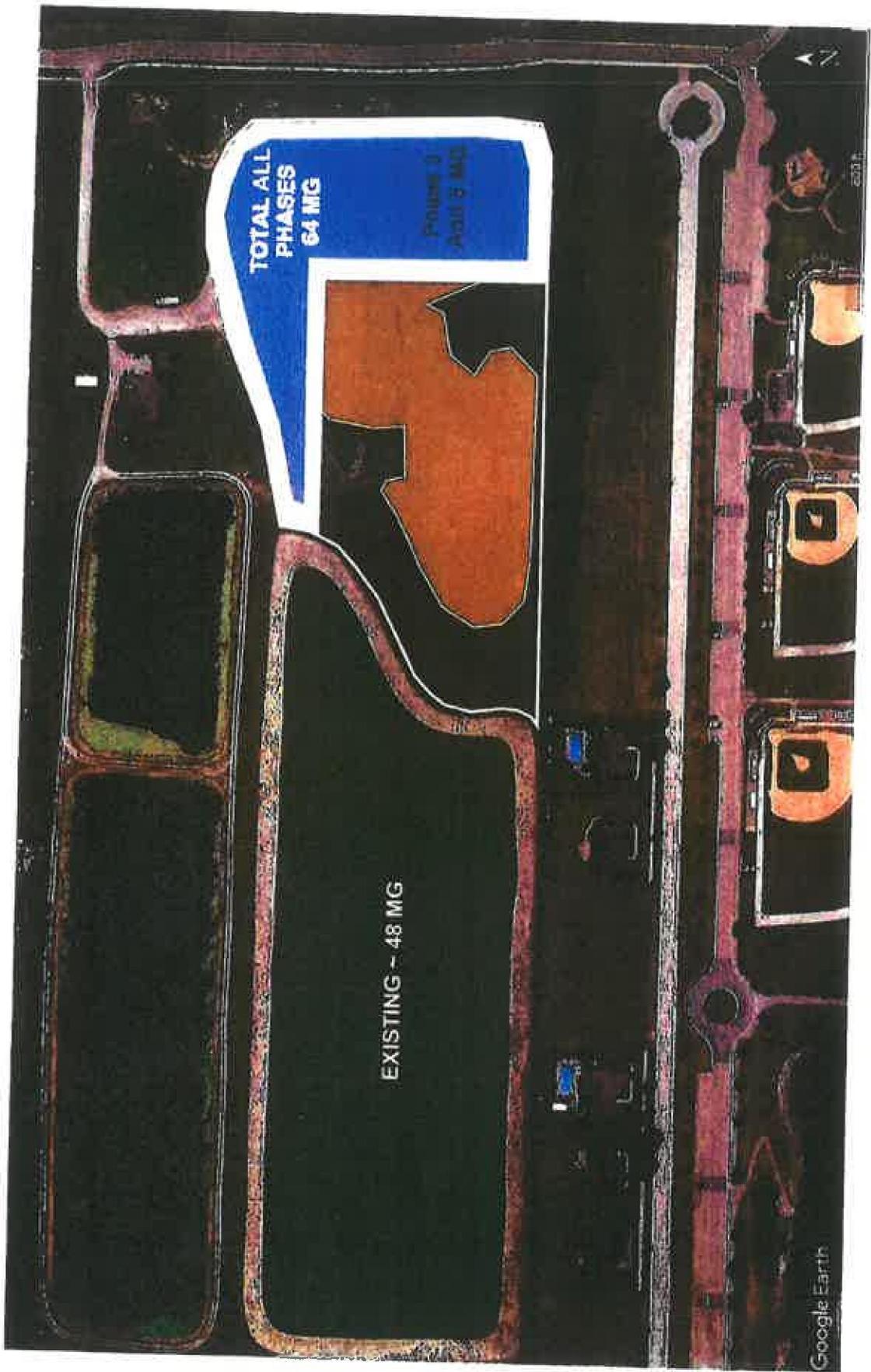
Phase 2
Add 3 MG

TOTAL ALL
PHASES
56 MG

EXISTING ~ 48 MG

Google Earth

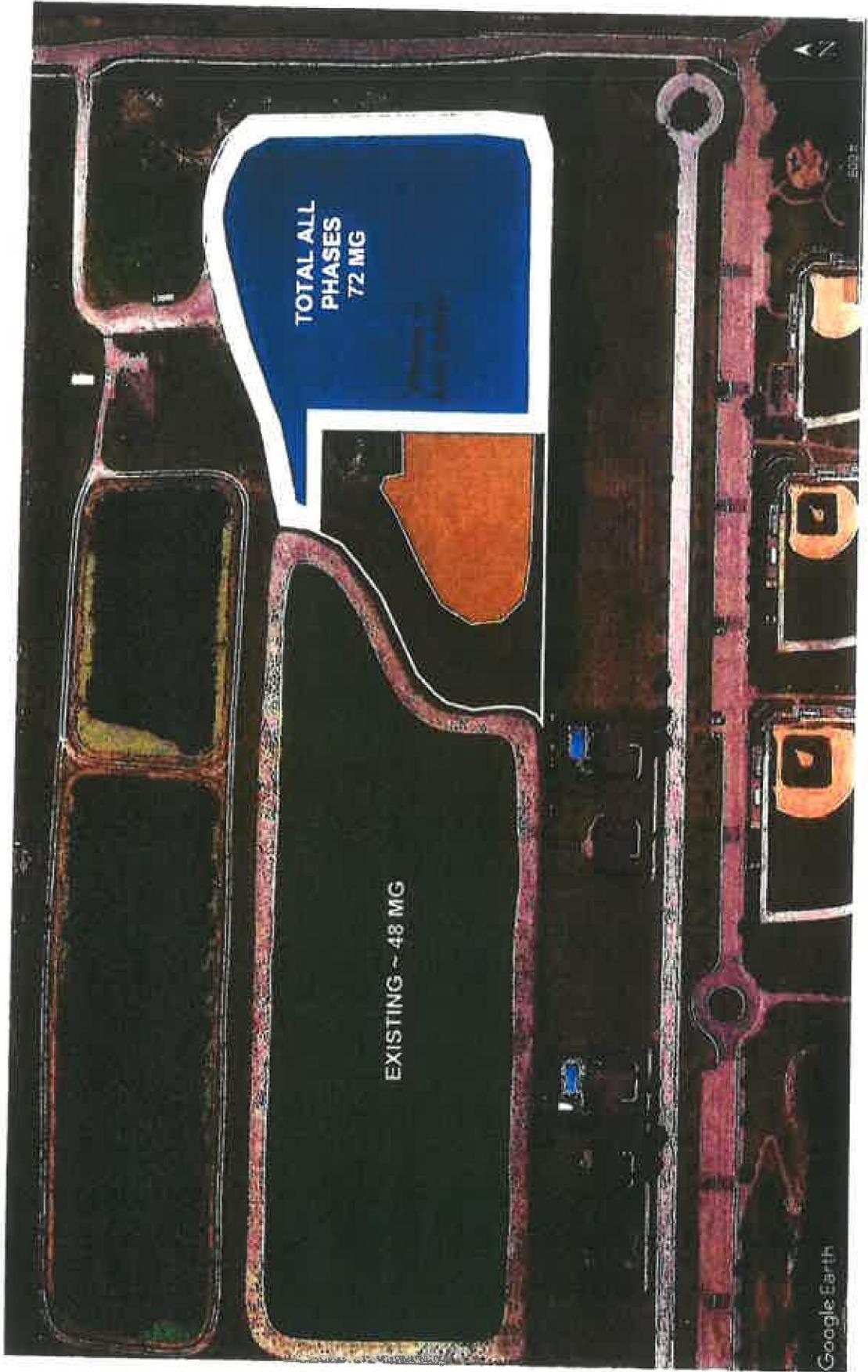
6000



TOTAL ALL PHASES 64 MG

Phase 3 Add 8 MG

EXISTING ~ 48 MG



TOTAL ALL
PHASES
72 MG

EXISTING ~ 48 MG

Google Earth

E00 #



TOTAL ALL PHASES up to 86 MG

Phase 5 Add up to 14 MG

EXISTING ~ 48 MG

500 ft



Google Earth

EXHIBIT B

Haul Route(s)

EXHIBIT B

Truck Route

All construction vehicles, trucks, equipment etc. being used for the Aqua/Hawthorn Woods Second Storage Lagoon shall utilize West Kruckenberg Road to Midlothian Road. Construction traffic cannot utilize Heritage Oaks Park Road/parking lot, any private roadways within the Hawthorn Woods Country Club and any roadways within the Hawthorn Hills and Legend Knolls Subdivisions. Any necessary permits for the truck traffic will need to be obtained by Aqua Illinois.

EXHIBIT C

Phasing Triggers/Design Trigger/Construction Triggers

1. Phase 1 – Remove Peat

- a. Design Trigger per Second Lagoon Construction and Escrow Agreement
- b. Construction Trigger per Second Lagoon Construction and Escrow Agreement
- c. Cost: \$1,250,000*
- d. Escrow: \$1,250,000
- e. Cash Flow: Zero

2. Phase 2- Increase Lagoon by 8 MG

- a. Design Trigger 175th deposit
- b. Construction Trigger 225th deposit
- c. Cost: \$1,415,000*
- d. Escrow: \$1,575,000
- e. Cash Flow: \$ 160,000

3. Phase 3- Increase Lagoon by 8 MG

- a. Design Trigger 380th deposit
- b. Construction Trigger 430th deposit
- c. Cost: \$1,415,000*
- d. Escrow: \$1,435,000
- e. Cash Flow: \$ 180,000

4. Phase 4- Increase Lagoon by 8 MG

- a. Design Trigger 580th deposit
- b. Construction Trigger 630th deposit
- c. Cost: \$1,415,000*
- d. Escrow: \$1,400,000
- e. Cash Flow: \$ 165,000

5. Phase 5- Increase Lagoon by up to 16 MG

- a. Design Trigger 808th deposit
- b. Construction Trigger 858th deposit
- c. Cost: \$1,761,000**
- d. Escrow: \$1,575,000
- e. Cash Flow: \$ 0

* Costs shall be updated per preliminary design, final design, and bid experience

** This cost is expected to achieve about 10 MG of additional storage for a total of 170 days of storage

EXHIBIT D

Berming Plan



AGUA ILL.
HAWTHORN WOODS
STORAGE POND
244 N. WILSON ST.
BRIDGEVIEW, IL 60417
OFFICE: 815.834.4811
M. GINGRICH, GEORGE & ASSOCIATES

SCALE
1" = 150'

POTENTIAL
TEMPORARY
BERM

ADDITIONAL
STORAGE
UP TO 36 M.E.

EXISTING L.P. M.G.



EXHIBIT E

Request for Payment Form

EXHIBIT 2

DATE: _____, 2021

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 000000-00

BENEFICIARY

VILLAGE OF HAWTHORN WOODS
ATTN: CHIEF OPERATING OFFICER
2 LAGOON DRIVE
HAWTHORN WOODS, IL 60047

APPLICANT

TOLL IL HWCC, L.P.
C/O FIRST HUNTINGDON FINANCE CORP.
1140 VIRGINIA DRIVE
FORT WASHINGTON, PA 19034
ATTN: ACCOUNTING DEPARTMENT
SR. LETTER OF CREDIT ADMINISTRATOR

AMOUNT

USD \$625,000.00
SIX HUNDRED TWENTY-FIVE THOUSAND US
DOLLARS

EXPIRATION DATE

_____, 2021 AT OUR COUNTERS

LADIES AND GENTLEMEN:

WE, COMERICA BANK, N.A., HEREBY ISSUE AT THE REQUEST OF TOLL IL HWCC, L.P., C/O FIRST HUNTINGDON FINANCE CORP., 1140 VIRGINIA DRIVE, FORT WASHINGTON, PA 19034 OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 000000-00 EFFECTIVE _____, 2021, IN YOUR FAVOR AVAILABLE WITH US BY SIGHT PAYMENT AGAINST PRESENTATION OF THE FOLLOWING DOCUMENTS:

1- THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS THERETO, IF ANY.

2- YOUR DRAFT "AT SIGHT", PURPORTEDLY SIGNED BY THE CHIEF OPERATING OFFICER OF THE VILLAGE OF HAWTHORN WOODS, DRAWN ON US, BEARING THE CLAUSE:

"DRAWN UNDER COMERICA BANK, N.A. LETTER OF CREDIT NUMBER 000000-00".

3- BENEFICIARY'S STATEMENT, IN DUPLICATE, PURPORTEDLY SIGNED BY THE CHIEF OPERATING OFFICER OF THE VILLAGE OF HAWTHORN WOODS CERTIFYING THAT:

- a. "TOLL IL HWCC, L.P. HAS DEFAULTED IN ITS OBLIGATION UNDER PARAGRAPH 3 OF THAT CERTAIN SETTLEMENT AGREEMENT AND GENERAL MUTUAL RELEASE BETWEEN AND AMONG TOLL IL HWCC, L.P., AQUA ILLINOIS, INC., AND THE VILLAGE OF HAWTHORN WOODS DATED _____, 2021, BY FAILING TO DEPOSIT THE SUM OF SIX HUNDRED TWENTY-FIVE THOUSAND DOLLARS(\$625,000.00) INTO THE AQUA ESCROW AS AND WHEN IT WAS REQUIRED TO DO SO";
- b. THE CONDITIONS PRECEDENT TO TOLL IL HWCC, L.P.'S OBLIGATION TO MAKE SUCH DEPOSIT WERE FULLY SATISFIED EITHER BY AQUA ILLINOIS, INC. OR THE VILLAGE OF HAWTHORN WOODS; AND

- c. TOLL IL HWCC, L.P. HAS FAILED TO CURE SUCH DEFAULT AFTER RECEIPT OF A NOTICE OF DEFAULT AND LAPSE OF THE CURE PERIOD, AS PROVIDED FOR IN THE AFORESAID SETTLEMENT AGREEMENT.

ALL DRAFTS AND DOCUMENTS MUST BE PURPORTEDLY SIGNED BY THE CHIEF OPERATING OFFICER OF THE VILLAGE OF HAWTHORN WOODS.

WE HEREBY AGREE WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THIS STANDBY LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION TO COMERICA BANK, AT THE ADDRESS EVIDENCED ABOVE. PRESENTATION MAY ALSO BE EFFECTED BY FACSIMILE TO COMERICA BANK FAX NUMBER 313-222-9324 OR 313-222-3129, CONFIRMED BY PHONE CALL AT 313-222-0070. WHEN PRESENTATION IS MADE BY FACSIMILE, THE ORIGINAL LETTER OF CREDIT MAY BE REPLACED BY A BENEFICIARY'S STATEMENT THAT THE VILLAGE OF HAWTHORN WOODS IS IN POSSESSION OF THE ORIGINAL LETTER OF CREDIT, AND THAT THE AMOUNT AND DATE OF THIS PRESENTATION HAS BEEN NOTED ON THE BACK OF SUCH ORIGINAL.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT WRITTEN AMENDMENT FOR A ONE (1) YEAR PERIOD FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE HEREOF, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY SUCH EXPIRATION DATE, WE SEND TO YOU IN WRITING VIA OVERNIGHT COURIER, AT THE ADDRESS SET FORTH ABOVE OR SUCH AMENDED ADDRESS OF WHICH PRIOR WRITTEN NOTICE HAS BEEN PROVIDED TO US THEREOF, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT NO. 000000-00 EXTENDED FOR ANY SUCH ADDITIONAL PERIOD.

UPON RECEIPT OF SUCH NOTICE, YOU MAY DRAW UPON THIS LETTER OF CREDIT BY MEANS OF EITHER OF THE FOLLOWING:

- 1- DOCUMENTS 1, 2 AND 3 NOTED ABOVE; OR
- 2- BENEFICIARY'S SIGNED STATEMENT CERTIFYING:

"COMERICA BANK, N.A. HAS ELECTED NOT TO RENEW LETTER OF CREDIT NO. 000000-00 BEYOND ITS PRESENT EXPIRATION DATE AND TOLL IL HWCC, L.P. HAS FAILED TO SUPPLY US WITH AN ACCEPTABLE REPLACEMENT LETTER OF CREDIT AND/OR OTHER ACCEPTABLE SUBSTITUTE COLLATERAL."

WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT SHALL BE DULY HONORED ON PRESENTATION. COMERICA BANK AGREES THAT SHOULD THE VILLAGE OF HAWTHORN WOODS PREVAIL IN ANY ACTION BASED ON A REFUSAL TO HONOR A DULY PRESENTED DRAFT, COMERICA BANK WILL BE RESPONSIBLE AND LIABLE FOR REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF COLLECTION, INCLUDING COURT COSTS, WHICH MAY BE INCURRED BY THE VILLAGE IN ENFORCING COLLECTION OF THIS LETTER OF CREDIT IN ACCORDANCE WITH ITS TERMS.

IN THE EVENT YOU WISH TO CANCEL THIS LETTER OF CREDIT, THIS ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS HERETO MUST BE SUBMITTED TO COMERICA BANK, ACCOMPANIED BY YOUR LETTER NOTIFYING US OF YOUR INTENT TO CANCEL.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 2007 REVISION, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600.

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

EXHIBIT 3

Operator: DW
Recorded: 5/11/2021 3:22:34 PM
Fee Amt: \$60.00 Page 1 of 4
Receipt#: 202100045535
IL Rental Housing Fund: \$9.00
Lake County IL Recorder
Mary Ellen Vanderventer Recorder

File# 7786698

*THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:*

*Christian G. Spesia
SPESIA & TAYLOR
1415 Black Road
Joliet, Illinois 60435*

ABOVE SPACE FOR RECORDER'S USE ONLY

SPECIAL WARRANTY DEED

This Special Warranty Deed, made this 23rd day of February, 2021, between **TOLL IL HWCC, L.P.**, an Illinois limited partnership ("Grantor") and **Aqua Illinois, Inc.**, an Illinois corporation ("Grantee"), having an address of 1000 South Schuyler Avenue, Kankakee, IL 60901.

WITNESSETH, that Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, by these presents does REMISE, WARRANT, RELEASE, ALIEN AND CONVEY unto Grantee, and to Grantee's successors and assigns FOREVER, all the following described real estate, situated in the County of Lake and State of Illinois known and legally described as follows, to wit:

THAT PART OF GOVERNMENT LOT 1 OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 43 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF OUTLOT H IN HAWTHORN WOODS COUNTRY CLUB PHASE 1, ACCORDING TO THE PLAT THEREOF, RECORDED JULY 30, 2004 AS DOCUMENT 5613059; THENCE SOUTH 00 DEGREES 16 MINUTES 32 SECONDS WEST 244.40 FEET ALONG THE MOST EASTERLY LINE OF SAID OUTLOT H; THENCE NORTH 89 DEGREES 34 MINUTES 30 SECONDS WEST 41.50 FEET ALONG A SOUTHERLY LINE OF SAID OUTLOT H TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 16 MINUTES 32 SECONDS WEST 435.60 FEET ALONG THE WEST LINE OF KRUCKENBERG ROAD PER THE PLAT OF DEDICATION, RECORDED OCTOBER 15, 2014 AS DOCUMENT 7140080 TO THE NORTH LINE OF LOT 52 IN SAID HAWTHORN WOODS COUNTRY CLUB PHASE 1; THENCE NORTH 89 DEGREES 34 MINUTES 30 SECONDS WEST 158.50 FEET ALONG THE NORTH LINE OF LOTS 52 AND 110 IN SAID HAWTHORN WOODS COUNTRY CLUB PHASE 1 TO A EASTERLY LINE OF SAID OUTLOT H; THENCE NORTH 00 DEGREES 16 MINUTES 32 SECONDS EAST 435.60 FEET ALONG SAID EASTERLY LINE TO A SOUTHERLY LINE OF SAID OUTLOT H; THENCE SOUTH 89 DEGREES 34 MINUTES 30 SECONDS EAST 158.50 FEET ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING.

PIN: 14-04-200-021

Property Address: West of Kruckenberg Road, Hawthorn Woods, Illinois 60047

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, of Grantor, either in law or equity, of, in and to the above described premises, with the hereditaments and appurtenances:

TO HAVE AND TO HOLD the said premises as above described, with the appurtenances, unto Grantee and Grantee's successors and assigns forever.

And Grantor, for itself, and its successors, does covenant, promise and agree, to and with Grantee and Grantee's successors and assigns, that it has not done or suffered to be done, anything whereby the said premises hereby granted are, or may be, in any manner encumbered or charged, except as herein recited; and that it WARRANTS AND DEFENDS the said premises against all persons lawfully claiming, or to claim the same, by, through or under it, subject only to:

- (a) General real estate taxes for 2020 and for subsequent years;
- (b) Special taxes or assessments for improvements not yet completed;
- (c) Easements, covenants, restrictions, agreements, conditions of record;
- (d) Applicable zoning and building laws and ordinances;
- (e) Roads and highways, if any;
- (f) Unrecorded public utility easements, if any;
- (g) Plats of dedication and covenants thereof; and
- (h) Acts done or suffered by Grantee or anyone claiming under Grantee.

IN WITNESS WHEREOF, said Grantor has caused its name to be signed to these presents on the day and year first above written.

TOLL IL HWCC, L.P.

By: TOLL NORTHEAST LP COMPANY, INC.,
a Delaware Corporation, General Partner

By: [Signature]
Its: Division President

MARJORIE J. GOOCH
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF GENESEE
My Commission Expires 3/8/2026
Acting in the County of Oakland

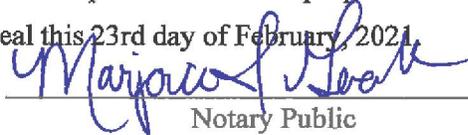
State of MI)

SS

County of Oakland

I, Marjorie Gooch, a Notary Public in and for said County and State, do hereby certify that Alex Martin as Division President of Toll Northeast LP Company, Inc., the general partner of Toll II HWCC, L.P., an Illinois limited partnership (the "Partnership"), appeared before me this day in person and acknowledged that he signed this instrument as his free and voluntary act, and as the free and voluntary act of the Partnership for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23rd day of February, 2021.



Notary Public

EXEMPT UNDER PROVISIONS OF PARAGRAPH "E" SECTION 31-45, PROPERTY TAX CODE.

DATE

BUYER SELLER OR REPRESENTATIVE

Send subsequent tax bills to:

Aqua Illinois, Inc.
1000 South Schuyler Avenue
Kankakee, IL 60901

PLAT ACT AFFIDAVIT

CHECK A OR B BELOW. IF B IS CHECKED, ALSO CIRCLE THE NUMBER BELOW WHICH IS APPLICABLE TO THE ATTACHED DEED.

STATE OF MI)
COUNTY OF Oakland) SS

Alex Martin ("Affiant"), on behalf of TOLL IL HWCC, L.P., having an address of 250 Gibraltar Road, Horsham PA 19044, being duly sworn on oath, states:

A. [] That the attached deed is not in violation of 765 ILCS 205/1(a), in that the sale or exchange is of an entire tract of land not being a part of a larger tract of land and described in the same manner as title was taken by the grantor(s); or

B. [x] That the attached deed is not in violation of 765 ILCS 205/1(b) for one of the following reasons: (please circle the appropriate number):

- 1. The division or subdivision of land is into parcels or tracts of 5 acres or more in size which does not involve any new streets or easements of access.
2. The division is of lots or blocks of less than 1 acre in any recorded subdivision which does not involve any new streets or easements of access.
3. The sale or exchange of parcels of land is between owners of adjoining and contiguous land.
4. The conveyance is of parcels of land or interest therein for use as right of way for railroads or other public utility facilities, which does not involve any new streets or easements of access.
5. The conveyance is of land owned by a railroad or other public utility which does not involve new streets or easements of access.
6. The conveyance is of land for highway or other public purposes or grants or conveyances relating to the dedication of land for public use or instruments relating to the vacation of land impressed with a public use.
7. The conveyance is made to correct descriptions in prior conveyances.
8. The sale or exchange of parcels or tracts of land following the division into no more than 2 parts of a particular parcel or tract of land existing on July 17, 1959, and not involving any new streets or easements of access.
9. The sale of a single lot of less than 5 acres from a larger tract when a survey is made by an Illinois Registered Land Surveyor, provided, that this exemption shall not apply to the sale of any subsequent lots from the same larger tract of land, as determined by the dimensions and configuration of the larger tract on October 1, 1973, and provided also that this exemption does not invalidate any local requirements applicable to the subdivision of land.
10. The preparation of a plat for wind energy devices under Section 10-620 of the Property Tax Code.

AFFIANT further states that he makes this affidavit for the purpose of inducing the Recorder of Deeds of Lake County, Illinois, to accept the attached deed for recording.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 23rd DAY OF FEBRUARY, 2021

Notary Public signature

Alex Martin signature

MARJORIE J. GOOCH NOTARY PUBLIC - STATE OF MICHIGAN COUNTY OF GENESEE My Commission Expires 3/8/2028 Acting in the County of Oakland

EXHIBIT 4

**HAWTHORN WOODS COUNTRY CLUB SECOND AMENDMENT TO
WASTEWATER RECLAMATION AND REUSE SYSTEM RECAPTURE AGREEMENT**

**THIS SECOND AMENDMENT TO WASTEWATER RECLAMATION AND
REUSE SYSTEM RECAPTURE AGREEMENT** is made and entered into as of
March 8, 2021 ("Effective Date") by and between TOLL
IL HWCC, L.P., an Illinois Limited Partnership ("Developer"), and the **VILLAGE OF
HAWTHORN WOODS**, an Illinois Municipal Corporation located in Lake County, Illinois
("Village"). Developer and Village are sometimes referenced herein as "Party" and
collectively as the "Parties".

WITNESSETH:

WHEREAS, the Parties have previously entered into a Wastewater Reclamation
and Reuse System Recapture Agreement dated December 20, 2004, recorded as Lake
County Recorder's Document No. 571576 on January 12, 2005 ("WWRR System
Recapture Agreement") as amended by that Hawthorn Woods Country Club First
Amendment to Wastewater Reclamation and Reuse System Recapture Agreement dated
January 20, 2009, recorded as Lake County Recorder's Document No. 6539047 ("First
Amendment"). The WWRR System Recapture Agreement as amended by the First
Amendment requires the owners and developers of certain properties who will benefit
from the construction of the WWRR System to pay recapture fees and interest to the
Village. The Benefitted Properties are described and depicted on **Exhibit "A"** attached
hereto and incorporated herein; and

WHEREAS, the Parties now wish to enter into this Second Amendment to the
WWRR System Recapture Agreement to (i) eliminate Developer's obligation to construct
the Winter Storage Reservoir or any further expansion of the WWRR System including
phase three as described in the WWRR System Recapture Agreement and to substitute
therefore reference to that certain Second Storage Lagoon Construction and Escrow
Agreement between Aqua and the Village dated
March 8, 2021 ("Construction and Escrow Agreement"); and

WHEREAS, the WWRR System Recapture Agreement as amended by the First
Amendment shall otherwise remain in full force and effect to the extent not amended by
this Second Amendment.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and
promises contained herein, and other good and valuable consideration, the receipt and
sufficiency of which are hereby acknowledged, the Parties hereby agree that the First
Amendment is amended as follows:

1. Preamble. The recitations set forth in the foregoing preamble are expressly
incorporated into and made a part of this Second Amendment as if fully set forth in this
Paragraph 1.

2. Replacement of Paragraph 3 "Construction of Winter Storage Reservoir" and Elimination of Developer Obligation to Construct Expansions to the WWRR System. The Parties agree that Paragraph 3 "Construction of Winter Storage Reservoir" of the First Amendment and any obligation on behalf of Developer to construct any further facilities related to the WWRR System as described in the WWRR System Recapture Agreement are eliminated and replaced with the following:

"Construction of Second Storage Lagoon. The Village has entered into that separate Construction and Escrow Agreement with Aqua Illinois, Inc., and all references in the WWRR System Recapture Agreement or First Amendment to construction of Phase Three of the WWRR System or expansion of the WWRR System and the timing for construction/expansion shall be replaced by and substituted with the terms and obligations between Aqua and the Village set forth in the Construction and Escrow Agreement. Developer shall have no further obligations whatsoever related to the construction of any expansion or addition to the WWRR System including but not limited to construction of Phase Three or the Winter Storage Reservoir."

3. Recapture Term. The "Term" set forth in Paragraph 9 of the Recapture Agreement as amended by Paragraph 3 of the First Amendment is hereby deleted in its entirety and replaced with the following:

"Term. The WWRR System Recapture Agreement as amended by the First Amendment and this Second Amendment shall remain in full force and effect until the earlier of payment in full to Aqua Illinois, Inc. pursuant to the terms of the Construction and Escrow Agreement or 20 years from Aqua's construction of the final phase of the Second Storage Lagoon."

4. Effect of Amendment and Conflicts. To the extent of a conflict or inconsistency between the terms of the WWRR System Recapture Agreement, the First Amendment and this Second Amendment, the Second Amendment shall supersede and control. Except as set forth in the First Amendment and this Second Amendment, the WWRR System Recapture Agreement shall control. All references in the WWRR System Recapture Agreement to the "Agreement" shall refer to the WWRR System Recapture Agreement except as amended and modified by the First Amendment and this Second Amendment.

5. Captions and Designations. Paragraph and section numbers and caption headings are purely descriptive and shall be disregarded in construing this First Amendment.

6. Severability. If any provision of this Second Amendment is held to be invalid by any court of competent jurisdiction, such provision shall be deemed to be excised from this Second Amendment and the invalidity thereof shall not affect any other provision contained herein.

7. Authorizations. The Parties represent and warrant that the individuals executing this Second Amendment on their behalf have been duly authorized to do so and that all necessary actions, authorizations, resolutions and approvals have been secured prior to the execution and delivery of this Second Amendment.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed by their duly authorized corporate officers as of the dates set forth below their respective signatures to be effective as of the Effective Date.

**VILLAGE OF HAWTHORN WOODS, an
Illinois Municipal Corporation**

By: Dominick DiMaggio
Name: Dominick DiMaggio
Its: Mayor

ATTEST:

By: Donna Lokaito
Name: Donna Lokaito
Its: Village Clerk

Date of Execution: March 8, 2021

**TOLL IL HWCC, L.P., an Illinois Limited
Partnership**

By: TOLL IL GP CORP., an Illinois
Corporation, its General Partner

By: Alex Martin
Name: Alex Martin
Its: Division President

Date of Execution: February 23, 2021

EXHIBIT "A"

EXHIBIT A

LEGAL DESCRIPTION OF BENEFITED PROPERTIES

BEGINNING IN SECTION 28 OF FREMONT TOWNSHIP (T44N, R10E) AT THE INTERSECTION OF OWENS ROAD AND GILMER ROAD THENCE SOUTHEASTERLY ALONG THE CENTERLINE OF GILMER ROAD TO THE INTERSECTION WITH SOUTH SYLVAN DRIVE, THENCE SOUTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF SECTION 3 OF ELA TOWNSHIP (T43N, R10E) TO THE INTERSECTION WITH MIDLOTHIAN ROAD, THENCE WESTERLY ALONG THE EAST-WEST CENTERLINE OF THE NORTHWEST QUARTER OF SECTION 3 TO THE WESTERN BOUNDARY OF SECTION 3, THENCE SOUTHERLY AND THEN SOUTHEASTERLY ALONG THE CENTERLINE OF KRUCKENBERG ROAD TO THE INTERSECTION WITH MIDLOTHIAN ROAD, THENCE NORTHEASTERLY ALONG THE CENTERLINE OF MIDLOTHIAN ROAD TO A POINT 720 FEET NORTH OF THE EAST-WEST CENTERLINE OF SECTION 3, THENCE EASTERLY TO THE NORTH-SOUTH CENTERLINE OF SECTION 3, THENCE NORTHEASTERLY TO GILMER ROAD, THENCE SOUTHEASTERLY ALONG GILMER ROAD TO THE INTERSECTION WITH THE ELGIN, JOLIST AND EASTERN RAILROAD, THENCE SOUTHWESTERLY ALONG THE CENTERLINE OF THE ELGIN, JOLIST AND EASTERN RAILROAD TO THE INTERSECTION WITH OLD MCHENRY ROAD, THENCE NORTHERLY 1390 FEET ALONG THE WESTERN BOUNDARY OF SECTION 10 OF ELA TOWNSHIP, THENCE WESTERLY TO FAIRFIELD ROAD, THENCE SOUTHERLY 648 FEET ALONG FAIRFIELD ROAD, THENCE EASTERLY TO MIDLOTHIAN ROAD, THENCE SOUTHWESTERLY ALONG MIDLOTHIAN ROAD TO THE INTERSECTION WITH OLD MCHENRY ROAD, THENCE SOUTHEASTERLY ALONG OLD MCHENRY ROAD TO A POINT 190 FEET WEST OF THE WESTERN BOUNDARY OF SECTION 10 OF ELA TOWNSHIP, THENCE NORTHERLY 480 FEET, THENCE EASTERLY TO THE WESTERN BOUNDARY OF SECTION 10 OF ELA TOWNSHIP, THENCE SOUTHERLY 2400 FEET ALONG THE WESTERN BOUNDARY OF SECTION 10 OF ELA TOWNSHIP, THENCE NORTHWESTERLY ALONG THE NORTHERN BOUNDARY OF PARCEL 5 OF A MAY 6, 1998 BOUNDARY AGREEMENT BETWEEN THE VILLAGE OF HAWTHORN WOODS AND THE VILLAGE OF LAKE ZURICH TO THE INTERSECTION WITH THE NORTH-SOUTH CENTERLINE OF THE SOUTHEAST QUARTER OF SECTION 9 OF ELA TOWNSHIP, THENCE NORTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF THE SOUTHEAST QUARTER OF SECTION 9 TO THE INTERSECTION WITH OLD MCHENRY ROAD, THENCE NORTHWESTERLY ALONG OLD MCHENRY ROAD TO A POINT 320 FEET WEST OF THE NORTH-SOUTH CENTERLINE OF SECTION 9, THENCE SOUTHERLY TO THE EAST-WEST CENTERLINE OF SECTION 9, THENCE WESTERLY ALONG THE EAST-WEST CENTERLINE OF SECTION 9 TO THE NORTH-SOUTH CENTERLINE OF THE SOUTHWEST QUARTER OF SECTION 9, THENCE SOUTHERLY TO THE EAST-WEST CENTERLINE OF THE SOUTHWEST QUARTER OF SECTION 9, THENCE WESTERLY ALONG THE EAST-WEST CENTERLINE OF THE SOUTHWEST QUARTER OF SECTION 9 TO ECHO LAKE ROAD THENCE NORTHERLY ALONG THE CENTERLINE OF ECHO LAKE ROAD TO THE EAST-WEST CENTERLINE OF SECTION 3 OF ELA TOWNSHIP, THENCE WESTERLY 1100 FEET ALONG THE EAST-WEST

CENTERLINE OF SECTION 8, THENCE NORTHERLY 900 FEET, THENCE WESTERLY TO THE NORTH-SOUTH CENTERLINE OF SECTION 8, THENCE NORTHERLY TO OLD MCHENRY ROAD, THENCE SOUTHEASTERLY ALONG OLD MCHENRY ROAD TO A POINT 880 FEET WEST OF THE NORTH-SOUTH CENTERLINE OF SECTION 9 OF ELA TOWNSHIP, THENCE NORTHERLY TO THE EAST-WEST CENTERLINE OF THE NORTHEAST QUARTER OF SECTION 9, THENCE EASTERLY ALONG THE EAST-WEST CENTERLINE OF THE NORTHEAST QUARTER OF SECTION 9 TO FAIRFIELD ROAD, THENCE NORTHERLY AND NORTHWESTERLY ALONG THE CENTERLINE OF FAIRFIELD ROAD TO THE EAST-WEST CENTERLINE OF THE NORTHWEST QUARTER OF SECTION 4 OF ELA TOWNSHIP, THENCE WESTERLY ALONG THE EAST-WEST CENTERLINE OF THE NORTHWEST QUARTER OF SECTION 4 TO THE WESTERN BOUNDARY OF SECTION 4, THENCE NORTHERLY TO THE NORTH BOUNDARY OF SECTION 4, THENCE EASTERLY ALONG THE NORTH BOUNDARY OF SECTION 4 TO FAIRFIELD ROAD, THENCE NORTHWESTERLY ALONG THE CENTERLINE OF FAIRFIELD ROAD TO MILTON ROAD, THENCE NORTHEASTERLY ALONG THE CENTERLINE OF MILTON ROAD TO SCHWERMAN ROAD, THENCE WESTERLY ALONG THE CENTERLINE OF SCHWERMAN ROAD TO OWENS ROAD, THENCE EASTERLY AND NORTHERLY ALONG THE CENTERLINE OF OWENS ROAD TO THE PLACE OF BEGINNING.

EXHIBIT 5



Image# 061338050011 Type: ORD
 Recorded: 09/24/2021 at 08:43:15 AM
 Receipt#: 2021-00082816
 Page 1 of 11
 Fees: \$50.00
 Lake County IL Recorder
 Mary Ellen Vanderventer Recorder
 File **7828872**

2 LAGOON DRIVE • HAWTHORN WOODS, ILLINOIS 60047 • TEL. 847-438-5500 • FAX 847-438-1459
 WWW.VHW.ORG

STATE OF ILLINOIS)
)
 COUNTY OF LAKE)

I, Donna Lobaito, certify that I am duly appointed and Village Clerk of the Village of Hawthorn Woods, Lake County, Illinois, **DO HEREBY CERTIFY THAT AS SUCH** Village Clerk I am the keeper of the records, ordinances, resolutions, minutes, entries, orders, books, papers and seal of the said Village.

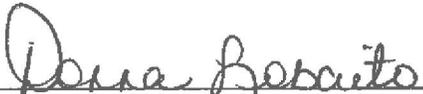
I DO FURTHER CERTIFY that pursuant to 735 ILCS 5/1-109, the following is a true and correct copy of:

ORDINANCE NO. 2072-21

AN ORDINANCE AUTHORIZING THE EXECUTION OF ASSIGNMENT OF RECAPTURE AGREEMENT BETWEEN THE VILLAGE OF HAWTHORN WOODS, AQUA ILLINOIS INC. AND TOLL IL HWCC, L.P.

and that the original of said copies for the Village of Hawthorn Woods remains on file in my office and is in full force and effect.

WITNESS my hand and the corporate seal of said Village, this 20th day of September 2021.



 Donna Lobaito, Village Clerk

Submitted by and Mail to:
 Donna Lobaito, Village Clerk
 Village of Hawthorn Woods
 2 Lagoon Drive
 Hawthorn Woods, IL 60047





ORDINANCE NO. 2072-21

AN ORDINANCE AUTHORIZING THE EXECUTION OF ASSIGNMENT OF RECAPTURE AGREEMENT BETWEEN THE VILLAGE OF HAWTHORN WOODS, AQUA ILLINOIS INC. AND TOLL IL HWCC, L.P.

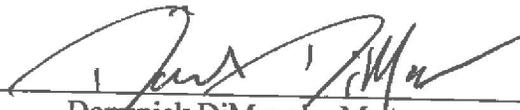
BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Mayor and be, and the same, is hereby authorized and directed to execute an Assignment of Recapture Agreement with Aqua Illinois, Inc. and Toll IL HWCC L.P., in substantially the form attached hereto as Exhibit "A", and, by this reference, made a part hereof. The agreement is subject to final review, modification and approval by the Village Attorney.

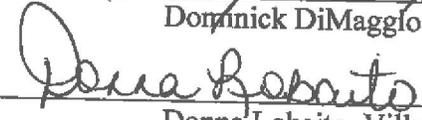
The foregoing Ordinance was adopted on February 22, 2021 by a roll call vote as follows:

AYES: Kaiser, Kasik, Riveso, David, McCarthy, Rycevic

NAYS: 0

ABSENT AND NOT VOTING: 0

APPROVED: 
Dominick DiMaggio, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

ADOPTED: February 22, 2021

APPROVED: March 8, 2021

This instrument prepared by,

Harold W. Francke
Meltzer, Purtil & Stelle LLC
1515 E. Woodfield Route, Suite 250
Schaumburg, IL 60173
(847) 330-6068
hfrancke@mpslaw.com

After recording return to:

Christian G. Spesia
Spesia & Taylor
1415 Black Rd.
Joliet, IL 60435
(815) 726-4311
cspesia@spesia-taylor.com

ABOVE SPACE FOR RECORDER'S USE ONLY

Legal Description: See Exhibit "A"

ASSIGNMENT OF RECAPTURE AGREEMENT

This **ASSIGNMENT OF RECAPTURE AGREEMENT** ("Assignment") is entered into as of ~~February~~ ^{March} 8, 2021, by and among TOLL IL HWCC, L.P., an Illinois limited partnership ("Assignor"), AQUA ILLINOIS, INC., an Illinois corporation ("Assignee"), and the VILLAGE OF HAWTHORN WOODS, an Illinois municipal corporation (the "Village").

RECITALS

A. Assignor and the Village entered into that certain Hawthorn Woods Country Club Wastewater Reclamation And Reuse System Recapture Agreement dated December 20, 2004 ("Original Recapture Agreement"), as amended by that certain First Amendment To Wastewater Reclamation And Reuse System Recapture Agreement made and entered into as of January 20, 2009 ("First Amendment") and Hawthorn Woods Country Club Second Amendment to Wastewater Reclamation and Reuse System Recapture Agreement ("Second Amendment"), and together with the Original Recapture Agreement the First Amendment and Second Amendment are collectively referenced herein as the "Recapture Agreement". Terms used but not defined in this Assignment shall have the meaning ascribed to them in the Recapture Agreement.

B. The Recapture Agreement establishes the obligation of the owners and developers of the Benefited Properties, described on Exhibit "A" attached hereto and made a part hereof, to pay Recapture Fees and Interest to the Village prior to their connection to and use of the Hawthorn Woods Wastewater Reclamation and Reuse System.

C. The parties hereto wish to enter into this Assignment to confirm Assignor's assignment to Assignee of its rights, and its delegation to Assignee of its obligations, under the Recapture Agreement as "Developer" and to confirm the Village's consent to such assignment and

delegation and its release of Assignor from any and all obligations as "Developer" under the Recapture Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the foregoing recitals, which are incorporated herein by reference, the parties hereto agree as follows:

1. Assignor hereby assigns, transfers, conveys and sets over unto Assignee, and Assignee hereby accepts and assumes from Assignor, on an "AS IS-WHERE IS" basis, with all faults, and without recourse, representation or warranty, express or implied (except as contained in Paragraph 2 of this Assignment), all of Assignor's rights under the Recapture Agreement (including, without limitation, the right to receive Recapture Fees and Interest under and pursuant to the provisions of the Recapture Agreement), and all of Assignor's obligations under the Recapture Agreement (collectively, the "Transferred Rights and Obligations").

2. Assignor hereby represents and warrants to Assignee that Assignor: (a) is the sole owner and holder of the Recapture Agreement and the Transferred Rights and Obligations; (b) has the full right, power and authority to execute this Assignment; (c) has not previously transferred, assigned, conveyed or pledged the Recapture Agreement or the Transferred Rights and Obligations; and (d) has not amended, modified, consolidated, restated, renewed, extended and/or replaced the Original Recapture Agreement, except as identified above with respect to the First Amendment and Second Amendment.

3. Assignee hereby represents to Assignor that Assignee: (a) has the full right, power and authority to execute this Assignment and assume the Developer's obligations under the Recapture Agreement; (b) is relying solely on its own investigation of the Recapture Agreement, the Transferred Rights and Obligations, and any other documents, instruments or information it deems necessary to evaluate the making and acceptance of this Assignment; and (c) except for the representations and warranties contained in Paragraph 2 above, is not relying upon any representation or warranty of Assignor, or of any of the parties related to Assignor described in Paragraph 4 below, in consummating this transaction.

4. Assignee acknowledges and agrees that Assignor has not made any representations or warranties concerning the Recapture Agreement or the Transferred Rights and Obligations except those set forth in Paragraph 2 above.

5. The Village hereby consents to Assignor's assignment of the Recapture Agreement and the Transferred Rights and Obligations to Assignee and fully releases Assignor and its parents, subsidiaries, and affiliates and their respective officers, directors, stockholders, agents, employees, attorneys, servants, insurers, representatives, successors and assigns of and from any and all obligations to the Village under the Recapture Agreement, for recapture payment claims or demands made after the date of this Assignment.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the dates set forth below their respective signatures, to be effective as of the date written above.

ASSIGNOR:

TOLL IL HWCC, L.P.

By: Toll Northeast LP Company,
Inc., a Delaware Corporation,
General Partner

By: _____

Its: _____

Date: _____

ASSIGNEE:

AQUA ILLINOIS, INC.

By: *C. Blanchet*
Its: President

Date: February 23, 2021

VILLAGE:

VILLAGE OF HAWTHORN WOODS

By: *Dominick DiMaggio*
Dominick DiMaggio, Mayor

ATTEST:

By: *Donna Lobaito*
Donna Lobaito, Village Clerk

Date: March 8, 2021

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the dates set forth below their respective signatures, to be effective as of the date written above.

ASSIGNOR:

TOLL IL HWCC, L.P.

By: Toll Northeast LP Company,
Inc., a Delaware Corporation,
General Partner

By: [Signature]
Its: Division President
Date: 02/25/2021

ASSIGNEE:

AQUA ILLINOIS, INC.

By: _____
Its: _____

Date: _____

VILLAGE:

VILLAGE OF HAWTHORN WOODS

By: _____
Dominick DiMaggio, Mayor

ATTEST:

By _____
Donna Lobaito, Village Clerk

Date: _____

STATE OF MI)
) SS
COUNTY OF Oakland)

MARJORIE J. GOOCH
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF GENESSEE
My Commission Expires 3/31/2028
Acting in the County of Oakland

I, the undersigned, a notary public in and for said County, in the State aforesaid, do hereby certify that Alex Martin, personally known to me to be the same person whose name is subscribed to the foregoing Assignment, appeared before me this day in person and acknowledged that he signed and delivered said Assignment on behalf of TOLL NORTHEAST LP COMPANY, INC., the General Partner of TOLL IL HWCC L.P., after being duly authorized to do so, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 23rd day of February, 2021.

Marjorie J. Gooch
Notary Public

STATE OF _____)
) SS
COUNTY OF _____)

I, the undersigned, 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 whose name is subscribed to the foregoing Assignment, appeared before me this day in person and acknowledged that (s)he signed and delivered said Assignment as _____ of AQUA ILLINOIS, INC. after being duly authorized to do so, as her/his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 23rd day of February, 2021.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

I, the undersigned, a notary public in and for said County, in the State aforesaid, do hereby certify that Dominick DiMaggio and Donna Lobaito, personally known to me to be the same persons whose names are subscribed to the foregoing Assignment, as Mayor and Village Clerk of the Village of Hawthorn Woods, appeared before me this day in person and acknowledged that they signed and delivered said Assignment as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 23rd day of February, 2021.

Notary Public

STATE OF _____)
) SS
COUNTY OF _____)

I, the undersigned, 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 whose name is subscribed to the foregoing Assignment, appeared before me this day in person and acknowledged that he signed and delivered said Assignment on behalf of TOLL NORTHEAST LP COMPANY, INC., the General Partner of TOLL IL HWCC L.P., after being duly authorized to do so, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 23rd day of February, 2021.

Notary Public

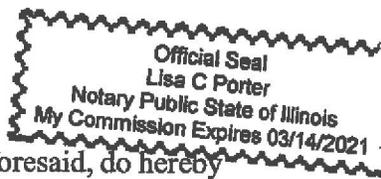
STATE OF Illinois)
) SS
COUNTY OF Kankakee)

I, the undersigned, a notary public in and for said County, in the State aforesaid, do hereby certify that Craig Blanchette, personally known to me to be the same person whose name is subscribed to the foregoing Assignment, appeared before me this day in person and acknowledged that (s)he signed and delivered said Assignment as President of AQUA ILLINOIS, INC. after being duly authorized to do so, as her/his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 23rd day of February, 2021.

Lisa C. Porter
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)



I, the undersigned, a notary public in and for said County, in the State aforesaid, do hereby certify that Dominick DiMaggio and Donna Lobaito, personally known to me to be the same persons whose names are subscribed to the foregoing Assignment, as Mayor and Village Clerk of the Village of Hawthorn Woods, appeared before me this day in person and acknowledged that they signed and delivered said Assignment as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 23rd day of February, 2021.

Notary Public

STATE OF _____)
) SS
COUNTY OF _____)

I, the undersigned, 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 whose name is subscribed to the foregoing Assignment, appeared before me this day in person and acknowledged that he signed and delivered said Assignment on behalf of TOLL NORTHEAST LP COMPANY, INC., the General Partner of TOLL IL HWCC L.P., after being duly authorized to do so, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this ____ day of _____, 2021.

Notary Public

STATE OF _____)
) SS
COUNTY OF _____)

I, the undersigned, 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 whose name is subscribed to the foregoing Assignment, appeared before me this day in person and acknowledged that (s)he signed and delivered said Assignment as _____ of AQUA ILLINOIS, INC. after being duly authorized to do so, as her/his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this ____ day of _____, 2021.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

I, the undersigned, a notary public in and for said County, in the State aforesaid, do hereby certify that Dominick DiMaggio and Donna Lobaito, personally known to me to be the same persons whose names are subscribed to the foregoing Assignment, as Mayor and Village Clerk of the Village of Hawthorn Woods, appeared before me this day in person and acknowledged that they signed and delivered said Assignment as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 8 day of March, 2021.



Danette E Russell
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF BENEFITED PROPERTIES

1
2
3
4
5
6 BEGINNING IN SECTION 28 OF FREMONT TOWNSHIP (T44N, R10E) AT THE
7 INTERSECTION OF OWENS ROAD AND GILMER ROAD THENCE SOUTHEASTERLY
8 ALONG THE CENTERLINE OF GILMER ROAD TO THE INTERSECTION WITH SOUTH
9 SYLVAN DRIVE, THENCE SOUTHERLY ALONG THE NORTH-SOUTH CENTERLINE
10 OF SECTION 3 OF ELA TOWNSHIP (T43N, R10E) TO THE INTERSECTION WITH
11 MIDLOTHIAN ROAD, THENCE WESTERLY ALONG THE EAST-WEST CENTERLINE
12 OF THE NORTHWEST QUARTER OF SECTION 3 TO THE WESTERN BOUNDARY OF
13 SECTION 3, THENCE SOUTHERLY AND THEN SOUTHEASTERLY ALONG THE
14 CENTERLINE OF KRUCKENBERG ROAD TO THE INTERSECTION WITH
15 MIDLOTHIAN ROAD, THENCE NORTHEASTERLY ALONG THE CENTERLINE OF
16 MIDLOTHIAN ROAD TO A POINT 720 FEET NORTH OF THE EAST-WEST
17 CENTERLINE OF SECTION 3, THENCE EASTERLY TO THE NORTH-SOUTH
18 CENTERLINE OF SECTION 3, THENCE NORTHEASTERLY TO GILMER ROAD,
19 THENCE SOUTHEASTERLY ALONG GILMER ROAD TO THE INTERSECTION WITH
20 THE ELGIN, JOLIET AND EASTERN RAILROAD, THENCE SOUTHWESTERLY ALONG
21 THE CENTERLINE OF THE ELGIN, JOLIET AND EASTERN RAILROAD TO THE
22 INTERSECTION WITH OLD MCHENRY ROAD, THENCE NORTHERLY 1330 FEET
23 ALONG THE WESTERN BOUNDARY OF SECTION 10 OF ELA TOWNSHIP, THENCE
24 WESTERLY TO FAIRFIELD ROAD, THENCE SOUTHERLY 640 FEET ALONG
25 FAIRFIELD ROAD, THENCE EASTERLY TO MIDLOTHIAN ROAD, THENCE
26 SOUTHWESTERLY ALONG MIDLOTHIAN ROAD TO THE INTERSECTION WITH OLD
27 MCHENRY ROAD, THENCE SOUTHEASTERLY ALONG OLD MCHENRY ROAD TO A
28 POINT 190 FEET WEST OF THE WESTERN BOUNDARY OF SECTION 10 OF ELA
29 TOWNSHIP, THENCE NORTHERLY 480 FEET, THENCE EASTERLY TO THE WESTERN
30 BOUNDARY OF SECTION 10 OF ELA TOWNSHIP, THENCE SOUTHERLY 2400 FEET
31 ALONG THE WESTERN BOUNDARY OF SECTION 10 OF ELA TOWNSHIP, THENCE
32 NORTHWESTERLY ALONG THE NORTHERN BOUNDARY OF PARCEL 5 OF A MAY 6,
33 1998 BOUNDARY AGREEMENT BETWEEN THE VILLAGE OF HAWTHORN WOODS
34 AND THE VILLAGE OF LAKE ZURICH TO THE INTERSECTION WITH THE NORTH-
35 SOUTH CENTERLINE OF THE SOUTHEAST QUARTER OF SECTION 9 OF ELA
36 TOWNSHIP, THENCE NORTHERLY ALONG THE NORTH-SOUTH CENTERLINE OF
37 THE SOUTHEAST QUARTER OF SECTION 9 TO THE INTERSECTION WITH OLD
38 MCHENRY ROAD, THENCE NORTHWESTERLY ALONG OLD MCHENRY ROAD TO A
39 POINT 320 FEET WEST OF THE NORTH-SOUTH CENTERLINE OF SECTION 9, THENCE
40 SOUTHERLY TO THE EAST-WEST CENTERLINE OF SECTION 9, THENCE WESTERLY
41 ALONG THE EAST-WEST CENTERLINE OF SECTION 9 TO THE NORTH-SOUTH
42 CENTERLINE OF THE SOUTHWEST QUARTER OF SECTION 9, THENCE SOUTHERLY
43 TO THE EAST-WEST CENTERLINE OF THE SOUTHWEST QUARTER OF SECTION 9,
44 THENCE WESTERLY ALONG THE EAST-WEST CENTERLINE OF THE SOUTHWEST
45 QUARTER OF SECTION 9 TO ECHO LAKE ROAD THENCE NORTHERLY ALONG THE
46 CENTERLINE OF ECHO LAKE ROAD TO THE EAST-WEST CENTERLINE OF SECTION

1 8 OF ELA TOWNSHIP, THENCE WESTERLY 1100 FEET ALONG THE EAST-WEST
2 CENTERLINE OF SECTION 8, THENCE NORTHERLY 900 FEET, THENCE WESTERLY
3 TO THE NORTH-SOUTH CENTERLINE OF SECTION 8, THENCE NORTHERLY TO OLD
4 MCHENRY ROAD, THENCE SOUTHEASTERLY ALONG OLD MCHENRY ROAD TO A
5 POINT 880 FEET WEST OF THE NORTH-SOUTH CENTERLINE OF SECTION 9 OF ELA
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7 NORTHEAST QUARTER OF SECTION 9, THENCE EASTERLY ALONG THE EAST-
8 WEST CENTERLINE OF THE NORTHEAST QUARTER OF SECTION 9 TO FAIRFIELD
9 ROAD, THENCE NORTHERLY AND NORTHWESTERLY ALONG THE CENTERLINE OF
10 FAIRFIELD ROAD TO THE EAST-WEST CENTERLINE OF THE NORTHWEST
11 QUARTER OF SECTION 4 OF ELA TOWNSHIP, THENCE WESTERLY ALONG THE
12 EAST-WEST CENTERLINE OF THE NORTHWEST QUARTER OF SECTION 4 TO THE
13 WESTERN BOUNDARY OF SECTION 4, THENCE NORTHERLY TO THE NORTH
14 BOUNDARY OF SECTION 4, THENCE EASTERLY ALONG THE NORTH BOUNDARY
15 OF SECTION 4 TO FAIRFIELD ROAD, THENCE NORTHWESTERLY ALONG THE
16 CENTERLINE OF FAIRFIELD ROAD TO MILTON ROAD, THENCE NORTHEASTERLY
17 ALONG THE CENTERLINE OF MILTON ROAD TO SCHWERMAN ROAD, THENCE
18 WESTERLY ALONG THE CENTERLINE OF SCHWERMAN ROAD TO OWENS ROAD,
19 THENCE EASTERLY AND NORTHERLY ALONG THE CENTERLINE OF OWENS ROAD
20 TO THE PLACE OF BEGINNING.