

## **MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

This Mutual Release and Settlement Agreement (the "Agreement") is entered into by and between THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO ("MWRD") and the CONDOMINIUMS OF BIRCH MANOR ASSOCIATION ("Association") (collectively "the Parties").

### **RECITALS**

Whereas, a sewer manhole was constructed and placed in service at Dempster Road and Busse Highway, Mount Prospect, Illinois under Sewer Permit No. 1962-0025;

Whereas, a controversy developed between MWRD and the Association regarding the Association's liability to MWRD regarding repairs to said Sewer Manhole;

Whereas, MWRD and the Association desire and intend to compromise and fully and finally settle the Dispute;

Whereas, MWRD and the Association further desire to compromise and fully resolve all claims of any nature which were made or could have been made against each other in the complaint commenced by MWRD against the Association before the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago, captioned the *Metropolitan Water Reclamation District of Greater Chicago v. Condominiums of Birch Manor Association*, Violation Complaint No. VC-01-036 (the "Complaint");

**NOW, THEREFORE,** MWRD and the Association agree as follows:

#### **1. Payment Amount, Schedule and Mailing Address**

A. The Association will pay MWRD the sum of Forty-Three Thousand Dollars (\$43,000) over a five (5) year period by making monthly payments of \$716.67 beginning September 1, 2015 and continuing every month thereafter, with payment due on the 1<sup>st</sup> day of the month, until the balance is paid in full;

B. All payments are to be in the form of a paper check mailed to MWRD, unless the parties agree on an alternative payment process, such as wire transfer or electronic payment.

Mail Monthly payments to:

Metropolitan Water Reclamation District of Greater Chicago

Local Sewer System Section

Department of Engineering

111 East Erie Street, 6<sup>th</sup> Floor

Chicago, Illinois 60611

Attn: Justine Skawski, Principal Civil Engineer

## **2. Reassignment of Permit and Securing Operation and Maintenance Bond**

A. The Association agrees to the reassignment of Permit No. 1962-0025 and must complete and execute a "Reassignment of MWRD Permit" form provided by the MWRD and thereafter agree to abide by the terms and conditions set forth therein.

B. The parties further acknowledge that the reassignment of Permit No. 62-0025 is conditioned on the Sole Permittee securing and maintaining in full force and effect, at its sole cost and expense, for the term of this Permit, an operation and maintenance bond with surety or other form of security in the initial penal sum acceptable to MWRD as the secured party, securing Sole Permittee's satisfactory performance of the operation and maintenance covenants of this Permit relating to the surface water drainage and sanitary sewer system, on-site and off-site originally issued under reissued Permit No. 62-0025.

C. Failure of Sole Permittee to procure and maintain an operation and maintenance bond, or other security, is a breach of this condition of the Permit and is grounds for immediate revocation of this Permit.

D. MWRD may from time to time, but no more frequently than once a year, review the sum of the bond, or other security, to determine if the amount is reasonably sufficient to secure Sole Permittee's performance hereunder. If MWRD determines that the amount is not reasonably sufficient, MWRD will notify Sole Permittee of that

determination in writing and Sole Permittee must furnish a revised bond or other security in the sum set forth in that notice.

E. The Association must record the reassigned Permit with Recorder of Deeds of Cook County, Illinois as an encumbrance against the common elements and individual units of the real estate covered by this Permit. All expenses required for the recording are to be borne by the Sole Permittee. The real estate for which the Permit is issued is legally described below and the legal description is made a part hereof.

### **3. Release**

Upon satisfaction of the obligations set forth in Paragraphs 1 and 2 of this Agreement and in consideration of the mutual promises contained herein, MWRD and the Association release and forever discharge the other, along with all of their subsidiary and parent companies and all of their heirs, successors, assigns, affiliates, associated companies or ventures, together with their respective members, stockholders, officers, directors, principals, partners, employees, agents, experts, adjusters, attorneys, accountants, investigators, indemnitors and other representatives from and on account of any and all claims, demands or actions of any nature whatsoever, whether held or claimed by the parties or any third party, whether in law or equity, whether based on tort, contract, statutory or any other theory of recovery, and whether for general, special, compensatory, consequential, punitive, statutory or any other damages, whether or not presently known or suspected, arisen, now arising or which may hereafter arise with respect to: the Dispute and the Complaint.

### **4. Dismissal with prejudice**

After the execution of this Agreement, MWRD agrees to dismiss with prejudice all of its existing claims for violation of MWRD's Sewer Permit Ordinance against the Association in the Complaint, whether or not the claims have heretofore been specifically asserted, with each party to bear its own attorneys' fees, expenses and costs.

**5. Disclaimer of Liability**

The Parties agree and acknowledge that the Association agrees to make payment of the sum specified in Paragraph 1 of this Agreement and agrees to have the Sewer Permit No. 1962-0025 reassigned as described in Paragraph 2 of this Agreement as well as secure an Operation and Maintenance Bond in the amount of \$50,000.00, as a full and complete compromise of matters involving disputed issues; that neither payment of this sum by Association, its agreement to have the Permit assigned to it, or securing the Operation and Maintenance Bond, nor any statement made nor event occurring during negotiations for this settlement, nor any statement or communication made in connection therewith, by the Parties or their respective attorneys or representatives shall be considered an admission of liability; and that no past or present wrongdoing on the part of the parties or other released persons or entities is implied.

**6. Payment of Attorneys' Fees**

MWRD and the Association are each responsible for the payment of their own attorneys' fees and all other expenses in connection with the matters referred to in this Agreement.

**7. Effect of Agreement**

This Agreement will be binding upon and inure to the benefit of MWRD and the Association and their respective heirs, predecessors, parents, successors, assigns, affiliates, members, employees, agents and any corporation or entity to which or with which any party to this Agreement may merge or consolidate.

**8. Applicable Law.**

This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. Any dispute arising out of this Agreement will be submitted before any court of competent jurisdiction located in Cook County, Illinois.

## **9. Preparation of Release and Settlement Agreement**

MWRD and the Association specifically acknowledge and agree that this Agreement has been prepared, reviewed, studied and executed without compulsion, fraud, duress or undue influence and without circumstances which would overcome the free will of the signatories, and that it is expressly made by MWRD and the Association with the requisite experience and advice of independent counsel, each party acting as equals in bargaining the terms of this Agreement and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment of it.

## **10. Authority**

MWRD and the Association represent and warrant that no other person or entity has any interest in the claims, demands, obligations or causes of action released under this Agreement. MWRD and the Association have the sole right and exclusive authority to execute this Agreement and that MWRD has the right to receive the sums specified in it; and have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action released under this Agreement.

## **11. Severability**

MWRD and the Association agree that if any of these provisions of this Agreement are deemed invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability will not affect the whole agreement, but the Agreement will be construed as if not containing the particular provision held to be invalid or unenforceable, and the obligations of MWRD and the Association will be construed and enforced accordingly.

## **12. Counterparts**

MWRD and the Association agree that this Agreement may be executed in counterparts.

### 13. **Entire Agreement**

This Agreement contains the entire agreement between MWRD and the Association and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, with regard to the matters set forth in it. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing signed by MWRD and the Association.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK - SIGNATORY PAGE FOLLOWS]*

## SIGNATORY PAGE

**In Witness Whereof**, the parties have executed this Agreement, effective on the last date set forth herein.

### CONDOMINIUMS OF BIRCH MANOR ASSOCIATION

By:   
Authorized Officer

DOROTHY JANIK  
(Print Name)

BIMCA TREASURER  
(Print Title)

Date: 5/29/15

### METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

By: \_\_\_\_\_  
Ronald M. Hill, General Counsel

Date: \_\_\_\_\_

### Legal Counsel for Association:

By:   
Pamela J. Park  
Kovitz Shifrin & Nesbit

Date: 6.10.15

### Approved as to Engineering:

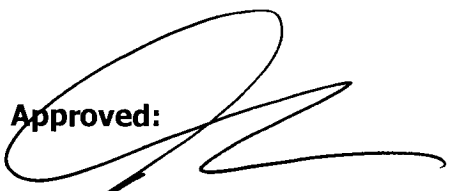
By: \_\_\_\_\_  
Assistant Director of Engineering

\_\_\_\_\_  
(Print Name)

By: \_\_\_\_\_  
Catherine A. O'Connor,  
Director of Engineering

Date: \_\_\_\_\_

### Approved:

  
James A. Thomas, Hearing Officer

Date: 7/6/15