

RESOLUTION NO. 18-15

**RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF
A UTILITY EASEMENT AGREEMENT BETWEEN
THE MORTON GROVE-NILES WATER COMMISSION AND COCA-COLA REFRESHMENTS USA, INC.,
A DELAWARE CORPORATION, SUCCESSOR TO HONDO INCORPORATED**

WHEREAS, in 2017, the Morton Grove-Niles Water Commission ("MGNWC" or "Commission") was established by the Village of Morton Grove, a home rule Illinois municipal corporation ("Morton Grove"), and the Village of Niles, a home rule Illinois municipal corporation ("Niles"), by the adoption of ordinances pursuant to Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1, *et seq.*) ("Division 135"). The establishing ordinances are Morton Grove Ordinance 17-5, which was adopted on March 13, 2017, and Niles Ordinance No. 2017-19, which was adopted on March 14, 2017. In order to accomplish the objectives set forth in the above-referenced Ordinances, Morton Grove and Niles also approved, under those same Ordinances, an intergovernmental agreement entitled, "Intergovernmental Agreement For The Establishment And Operation Of The Morton Grove-Niles Water Commission And For The Purchase And Sale Of Water To The Commission For Commission Use And To Commission Wholesale Water Customers" (the "IGA"), to provide for the governance and operation of the MGNWC and to create the Board of Commissioners of the Morton Grove-Niles Water Commission ("MGNWC Board") to govern the MGNWC; and

WHEREAS, the MGNWC was established for purposes of constructing and operating a public water supply system (the "MGNWC System") consisting of water transmission mains, pumping, storage, and other related water delivery and receiving infrastructure between a connection point on the Evanston water system and existing water receiving points of Niles and Morton Grove (the "Project"); and

WHEREAS, Coca-Cola Refreshments USA, Inc., a Delaware corporation, Successor to Hondo Incorporated ("Property Owner") is the fee simple owner of real estate commonly known as 6801 Jarvis Ave, Niles, Illinois. PIN: 10-30-400-024; 10-30-400-025. The MGNWC and the Property Owner have negotiated a Utility Easement Agreement, a copy of which is attached hereto as Exhibit "A" and made a part hereof, for the purposes of granting certain temporary construction easement rights and permanent easement rights to allow the MGNWC to construct and operate a water distribution system. The temporary construction easement areas and permanent easement areas are legally described in the attached Utility Easement Agreement; and

WHEREAS, in consideration of the grant of the temporary construction easement rights and permanent easement rights under the Utility Easement Agreement by the Property Owner, the MGNWC agrees to pay to the Property Owner the sum of \$23,000 and construct those Improvements to the Property Owner's Property set forth in **Exhibit A**.

WHEREAS, the Board of Commissioners of the Morton Grove-Niles Water Commission has the authority to approve of and enter into the Utility Easement Agreement pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*,

including 65 ILCS 5/11-135-1, *et seq.*), and find that entering into the Utility Easement Agreement is in the best interests of the MGNWC and its members, the Village of Morton Grove and the Village of Niles.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE MORTON GROVE-NILES WATER COMMISSION, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

SECTION 2: The Board of Commissioners of the Morton Grove-Niles Water Commission ("MGNWC Board") authorizes the approval of an agreement entitled "Utility Easement Agreement" with Coca-Cola Refreshments USA, Inc., a Delaware corporation, Successor to Hondo Incorporated for the purposes set forth in the Utility Easement Agreement, attached hereto as **Exhibit A**. The MGNWC Board further authorizes and directs the Chair, the Clerk and the General Counsel, or their respective designees, to execute the final version of the Utility Easement Agreement, which may contain certain non-substantive modifications that are approved by the Village Manager of Niles and the Village Administrator of Morton Grove, and to execute and deliver all other instruments and documents and pay all costs and fees that are necessary to fulfill MGNWC's obligations under the Utility Easement Agreement.

SECTION 3: This Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

ADOPTED this 25th day of January 2018, pursuant to a roll call vote as follows:

AYES: John Pietron and Steven Vinezeano
NAYS: None
ABSENT: None (Cook County Appointee not appointed yet)

PASSED by the Board of Commissioners of the Morton Grove-Niles Water Commission, Cook County, Illinois on a roll call vote at a Regular Meeting thereof held on the 25th day of January 2018, and approved by the Chair, and attested by the Clerk on the same day.


Steven Vinezeano, Chair

ATTEST:


John Pietron, Clerk

Exhibit "A"

**UTILITY EASEMENT AGREEMENT BETWEEN
THE MORTON GROVE NILES WATER COMMISSION AND COCA-COLA REFRESHMENTS USA, INC., A
DELAWARE CORPORATION, SUCCESSOR TO HONDO INCORPORATED**

(attached)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, John Pietron, Clerk of the Morton Grove-Niles Water Commission, Cook County, State of Illinois, certify that the attached and foregoing is a true and correct copy of that certain Resolution now on file in my office, entitled:

RESOLUTION NO. 18-15

**RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF
A UTILITY EASEMENT AGREEMENT BETWEEN
THE MORTON GROVE-NILES WATER COMMISSION AND COCA-COLA REFRESHMENTS USA, INC.,
A DELAWARE CORPORATION, SUCCESSOR TO HONDO INCORPORATED**

which Resolution was passed by the Board of Commissioners of the Morton Grove-Niles Water Commission at a Regular Meeting held on the 25th day of January, 2018, at which meeting a quorum was present.

I further certify that the vote on the question of the passage of said Resolution by the Board of Commissioners of the Morton Grove-Niles Water Commission was taken by Ayes and Nays and recorded in the minutes of the Board of Commissioners of the Morton Grove-Niles Water Commission, and that the result of said vote was as follows, to-wit:

AYES: John Pietron and Steven Vinezeano
NAYS: None
ABSENT: None (Cook County Appointee not appointed yet)

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of January 2018.



John Pietron, Clerk

Utility Easement Agreement

Property Address: 6801 Jarvis Ave.
Niles, Illinois
PINs: 10-30-400-024 and 10-30-400-025

This Agreement was prepared by and upon recording should be returned to:

Teresa Hoffman Liston
Corporation Counsel, Village of Morton Grove
6101 Capulina Avenue, Morton Grove, Illinois 60053
CCRD Box # _____

UTILITY EASEMENT AGREEMENT

This Utility Easement Agreement ("Agreement") is entered into this 5 day of January 2018 between Lone Oak-Niles III, L.L.C., hereinafter referred to as "Property Owner," the Village of Niles, hereinafter referred to as "Village," and the Morton Grove Niles Water Commission, hereinafter referred to as "MGNWC," collectively referred to herein as "Utility," for the installation, placement, replacement, construction, reconstruction, maintenance, rehabilitation, operation and/or repair of "Utilities," as defined in Recital A. below, within the "Easement Area," defined in Recital A. below, pursuant to the terms and conditions set forth in this Agreement.

RECITALS

A. The Property Owner is the sole owner of industrial property commonly known as 6801 Jarvis Ave., Niles, Illinois and legally described as follows:

Parcel 1: Lot 11 In Tam O'Shanter's Industrial Park, being a subdivision in Section 30 and Jane Miranda's Reservation, In Township 41 North, Range 13, East of the Third Principal Meridian, according to the plat thereof filed on November 17, 1966, as LR2301105 and recorded as Document 19996514, all in Cook County, Illinois. Property Index Numbers (PIN): 10-30-400-024 and 10-30-400-025.

This parcel is hereinafter referred to as the "Property Owner's Property."

The Utility proposes to install, place, replace, construct, reconstruct, maintain, rehabilitate, operate and/or repair underground utilities of any kind, including, but not limited to, a water transmission main and related water service lines, valves, meters, vaults, buffalo boxes, communication wires, cables and related conduit, fiber lines and related conduit, and any other related personal property, infrastructure and equipment (the "Utilities") over, under, in, along, across and upon a portion of the Property Owner's Property, legally described as follows:

**Permanent Easement Area 1: Jarvis Street
Affects PIN 10-30-400-024 and 10-30-400-025**

That part lying 25 feet southerly of and adjoining the 10 foot watermain easement granted per Document 96872162 in Lot 11 together with that part of said Lot 11 lying southerly of a line 25 feet southerly of and parallel with the southerly line of said 10 foot watermain easement granted per Document 96872162 and lying northerly of a line 50 feet southerly of and parallel with the westmost northerly line of said Lot 11 in Tam O'shanter's Industrial Park, being a subdivision in Section 30 and Jane Miranda's Reservation, in Township 41 North, Range 13, east of the Third Principal Meridian, according to the plat thereof filed on November 17, 1966 as LR2301105 and recorded as Document 19996514, all in Cook County, Illinois, hereinafter referred to as

removed or damaged by the Property Owner or its officials, employees, agents and contractor(s) or other invitees or permittees of the Property Owner, the Property Owner, at its expense, shall be responsible for completing basic restoration costs to restore, repair or replace such Utilities or other improvements or personal property to its/their original, existing condition immediately prior to such removal or damage using like-kind and quality materials.

- b. If the Property Owner's improvements within the Easement Area or elsewhere within the Property Owner's Property are removed or damaged by the Utility or its officials, employees, agents and contractor(s) or other invitees or permittees of the Utility in exercising its easement rights, the Utility, at its expense, shall be responsible for completing basic restoration costs to restore, repair or replace such improvements to its/their original, existing condition immediately prior to such removal or damage using like-kind and quality materials.

B. Access to Easement Area: The Utility, and its officials, employees, agents and contractor(s) and any governmental or regulatory agency personnel with oversight authority of the Utility or the Utilities, shall be permitted to access and travel with their equipment upon and over the Property Owner's Property to access the Easement Area on an as-needed basis for purposes of installing, placing, constructing, reconstructing, maintaining, rehabilitating, operating and/or repairing the Utilities.

C. Obligations for Own Improvements: Each party shall be responsible for maintaining, repairing and insuring its own improvements located within the Easement Area.

3. **Utility's Use of Easement Area.** The following general conditions shall apply to Utility's use of the Easement Area:

A. The Utility, at its own expense, shall procure and maintain, prior to entry upon the Property Owner's Property, all licenses, consents, permits, authorizations and other approvals required from any federal, state, county or local governmental authority or any regulatory agency with oversight authority in connection with the installation, placement, construction, reconstruction, maintenance, rehabilitation, operation and/or repair of the Easement Area and the Utilities, and the Utility shall comply with all laws, rules, statutes and regulations of any governmental authorities having jurisdiction over the Easement Area, the Utilities or the Utility's operations. The Property Owner may, from time to time, request reasonable evidence that all such governmental or regulatory approvals have been obtained by the Utility and are in full force and effect. In no event shall the Utility seek any governmental or regulatory approvals that may affect in any way the Property Owner's operations, including without limitation any zoning approvals, without in each instance obtaining the Property Owner's prior written consent, which consent may be granted or withheld in the Property Owner's sole discretion.


B. Except as specifically provided in this Agreement, the Utility's use of the Easement Area shall be conducted in a manner that does not conflict or interfere with the Property Owner's current operations.

C. The Utility agrees to not cause or permit any lien (including, without limitation, any mechanic's lien) or claim for lien to be filed or asserted against the Easement Area or any interest therein, whether such lien or claim for lien results from or arises out of any act or omission of the Utility or its officials, employees, agents and contractor(s) or other invitees or permittees. In the event any such lien or claim for lien is issued or filed against title to the Property Owner's Property, the Utility will immediately remedy and obtain a release of the lien or claim.

6. **Assignment.** This Agreement, and the rights and obligations of the parties set forth in this Agreement, shall be binding upon and inure to the benefit of the parties and their respective successors, personal representatives and assigns, and the owners of the Property Owner's Property, from time to time; provided, however, that the Utility may assign all or any portion of its right, title, interest or obligation in this Agreement to the Village of Morton Grove, the Village of Niles, the Morton Grove-Niles Water Commission, or its successor entity, or to any municipal joint action water agency.
7. **Entire Agreement.** The terms, exhibits and addenda, if any, herein contain the entire agreement between the Property Owner and the Utility regarding the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

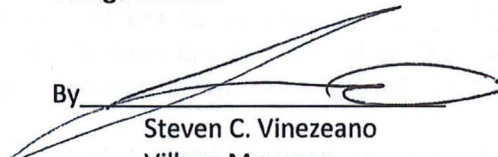
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of the last signatory below, which date shall be inserted on page 1 of this Agreement.

Lone Oak-Niles III, L.L.C.


By: Michael Manfred
Its Treasurer

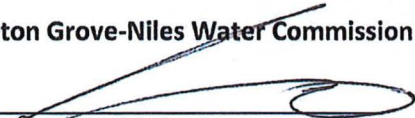
Dated: January 5, 2018

Village of Niles

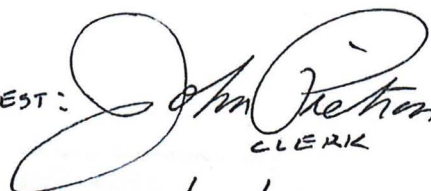
By: 
Steven C. Vinezeano
Village Manager

Dated: 2/15/18

Morton Grove-Niles Water Commission

By: 
Steven C. Vinezeano, its Chairperson

Dated: 2.15.18

ATTEST: 
CLERK
2/15/18

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CERTIFICATION

I, the undersigned, a Notary Public, in and for the County and State aforesaid, CERTIFIES that the above-named Steven C. Vinezeano, personally known to me to be the Chairperson of the Morton Grove-Niles Water Commission, and also known to me to be the same person whose name is subscribed to the foregoing Agreement as such Chairperson, appeared before me this day in person and severally acknowledged that, as such Chairperson, he signed and delivered the signed Agreement, pursuant to authority given by the Morton Grove-Niles Water Commission, as his free and voluntary act, and as the free and voluntary act and deed of the Morton Grove-Niles Water Commission, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this 15th day of February, 2018.

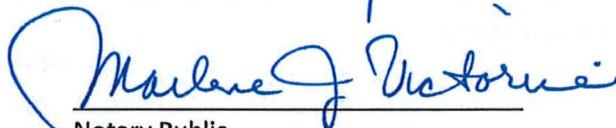

Notary Public



EXHIBIT "A" – Permanent Easement Area 1 (attached)

Attachment "C"

**PROPERTY OWNER CONSENT FOR
MORTON GROVE-NILES WATER COMMISSION ("MGNWC") TO ACQUIRE
A TEMPORARY CONSTRUCTION EASEMENT AND A PERMANENT UTILITY EASEMENT FOR THE PROJECT**

**Morton Grove-Niles Water Commission ("MGNWC")
Water Transmission Main Line Project
IEPA Loan Project Number L175513**

Project: Land Acquisition and Construction of New Water Main Lines, Two (2) Pump Stations and a Water Storage Standpipe, and Rehabilitation of Certain Existing Water Main Lines to Connect the Villages of Morton Grove and Niles to the MGNWC's Future Water Supplier, the City of Evanston

**Address: 6801 Jarvis Avenue, Niles, IL 60714, 10-30-400-024 AND 10-30-400-025
See Legal Description in the Attached Utility Easement Agreement**

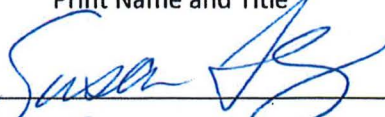
I, Michael Manfred, the undersigned, state and certify as follows:

- A. I am authorized to sign this Property Owner Consent on behalf of the below listed fee simple owner(s) of the Real Property.
- B. The fee simple owner(s) of Real Property located at 6801 Jarvis Avenue, Niles, IL 60714 (the "Property") is: Lone Oak – Niles III, L.L.C. (the "Owner").
- C. The Property Owner understands his/her/their/its rights under the federal Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (42 USC 4601 *et seq.*) (the "Act") relating to payment of certain financial compensation by the Morton Grove-Niles Water Commission to the Property Owner in consideration of the Property Owner's approval and execution of the Easement Utility Agreement that grants a temporary construction easement(s) and a permanent easement(s) to be filed against title to the Real Property to allow the Morton Grove-Niles Water Commission to install and operate a water main transmission line and related infrastructure on the Real Property as part of the completion of the Project.
- D. The purpose of the Act is to require units of local government to pay fair market value to property owners when units of local government desire to acquire fee simple title to or easement rights in privately owned real property.
- E. When seeking to acquire ownership of or easement rights in private real property, units of local government are required to participate in a time-consuming land acquisition process with the property owner that requires two (2) levels of appraisal review before a decision is made that results in either a mutually agreed upon acquisition of fee simple title or securing easement rights in private property, or the unit of local government is forced to consider acquiring the real property via an eminent domain action. There is an exception to the Act's two (2) level appraisal review and land acquisition process, which involves the unit of

- d. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate; and
 - e. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.
- K. If the value of the easement rights in the Real Property, as determined by any review process of the appraisal, is less than the amount that the Morton Grove-Niles Water Commission paid for the easement rights in the Real Property, the Morton Grove-Niles Water Commission agreed, in writing, to allow the Property Owner to retain the surplus amount.
- L. If the value of the easement rights in the Real Property, as determined by any review process of the appraisal, is more than the amount that the Morton Grove-Niles Water Commission paid for the easement rights in the Real Property, the Morton Grove-Niles Water Commission agreed, in writing, to pay the difference in property valuation within thirty (30) calendar days of the completion of the appraisal review process.
- M. The Morton Grove-Niles Water Commission agree, in writing, to reimburse the Property Owner for all reasonable expenses necessarily incurred for:
- a. Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying or securing the easement rights in the Real Property;
 - b. Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the Real Property; and
 - c. The pro rata portion of any prepaid real property taxes which are allocable to the period after the MGNWC obtains title to the Real Property or effective possession of it, whichever is earlier.
- N. I agree that this Property Owner Consent shall be admissible in evidence in any action in which the terms of this Consent is sought to be enforced.
- O. I have signed this Property Owner Consent as my own free and voluntary act.

Signature:  Date: January 5, 2017-2018

By: Michael Manfred, Treasurer
Print Name and Title

Notary Public: 

Date: 1/5/2018

Commission Expires: 7/15/19

