



AGENDA ITEM # 9A/B

**AGENDA ITEM EXECUTIVE SUMMARY
Village Board Meeting
November 11, 2019**

Item Title: Amendment to a Pre-Annexation for 7N741 Valley Road.

Staff Contact: Patrick Watkins, Community Development Director

VILLAGE BOARD ACTION

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| <ol style="list-style-type: none">1. Conduct a Public Hearing for an Amendment to the Pre-Annexation Agreement for 7N741 Valley Road.2. Pass an Ordinance Authorizing Execution of an Amendment to the Pre-Annexation Agreement for 7N741 Valley Road. |
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Executive Summary:

Attached is a public hearing notice that was published in the *Daily Herald on October 25, 2019* for a public hearing for the amendment to the pre-annexation agreement for 7N741 Valley. Mr. Fink, the property owner, had a pre-annexation agreement approved by the Village Board on January 23, 2017. This agreement required him to pay a \$10,000 cash bond for a sidewalk in front of their property. As the Village Board has since changed the sidewalk policy for pre-annexations, he has requested an amendment to his agreement so that he may receive a refund of his cash bond. Instead he will install sidewalks upon annexation, which is memorialized in a recordable, restrictive covenant that ensures that all future pre-annexation agreements beyond the 20 year limits of the agreements adopted tonight, if necessary, cannot change the existing sidewalk terms (installing them at the time of annexation).

Upon approval of the amendment to the agreement, staff will process a refund of the cash bond paid by Mr. Fink on his sidewalk.

Implications:

Is this item budgeted? N/A

Any other implications to be considered? N/A

Attachments:

- Public Hearing Notice
- Aerial
- Ordinance Authorizing the Execution of an Amendment to the Pre-Annexation Agreement
- Restrictive Covenant

PUBLIC HEARING NOTICE

NOTICE IS HEREBY given that the Roselle Village Board will hold a Public Hearing on Monday, November 11, 2019. The Village Board will meet at 7:00pm in the Roselle Village Hall, 31 South Prospect Street, Roselle, Illinois to consider the petition of Charles Fink for the purpose of an amendment to a pre-annexation agreement on property legally described as follows:

LOT 18 IN BLOCK 17 IN THE SECOND ADDITION TO ROSELLE COUNTRYSIDE, BEING A SUBDIVISION OF PART OF SECTIONS 3 AND 10, TOWNSHIP 40 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 13, 1948 AS DOCUMENT NUMBER 551835, AND CERTIFICATE OF CORRECTION FILED SEPTEMBER 10, 1948 AS DOCUMENT NUMBER 553789, IN DUPAGE COUNTY, ILLINOIS
PIN02-10-101-007

The common name is 7N741 Valley Road (formerly 23W638 Turner Avenue), Roselle, Illinois.

At present, the property is improved with a detached single family residence and in unincorporated DuPage County zoned R-3 (Single Family Residence District). The Village Board will consider R-1 Single Family Residence District zoning upon annexation.

Persons having questions or seeking additional information may contact the Village of Roselle Community Development Department at (630) 671-2806 for additional information.

All persons will have an opportunity to speak at such time and place.

Published In the Daily Herald October 25, 2019 (4534487)

Published on October 25, 2019

CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

**DuPage County
Daily Herald**

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the **DuPage County DAILY HERALD**. That said **DuPage County DAILY HERALD** is a secular newspaper, published in Naperville and has been circulated daily in the Village(s) of:

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County(ies) of DuPage
and State of Illinois, continuously for more than one year prior to the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said Village(s), County(ies) and State.

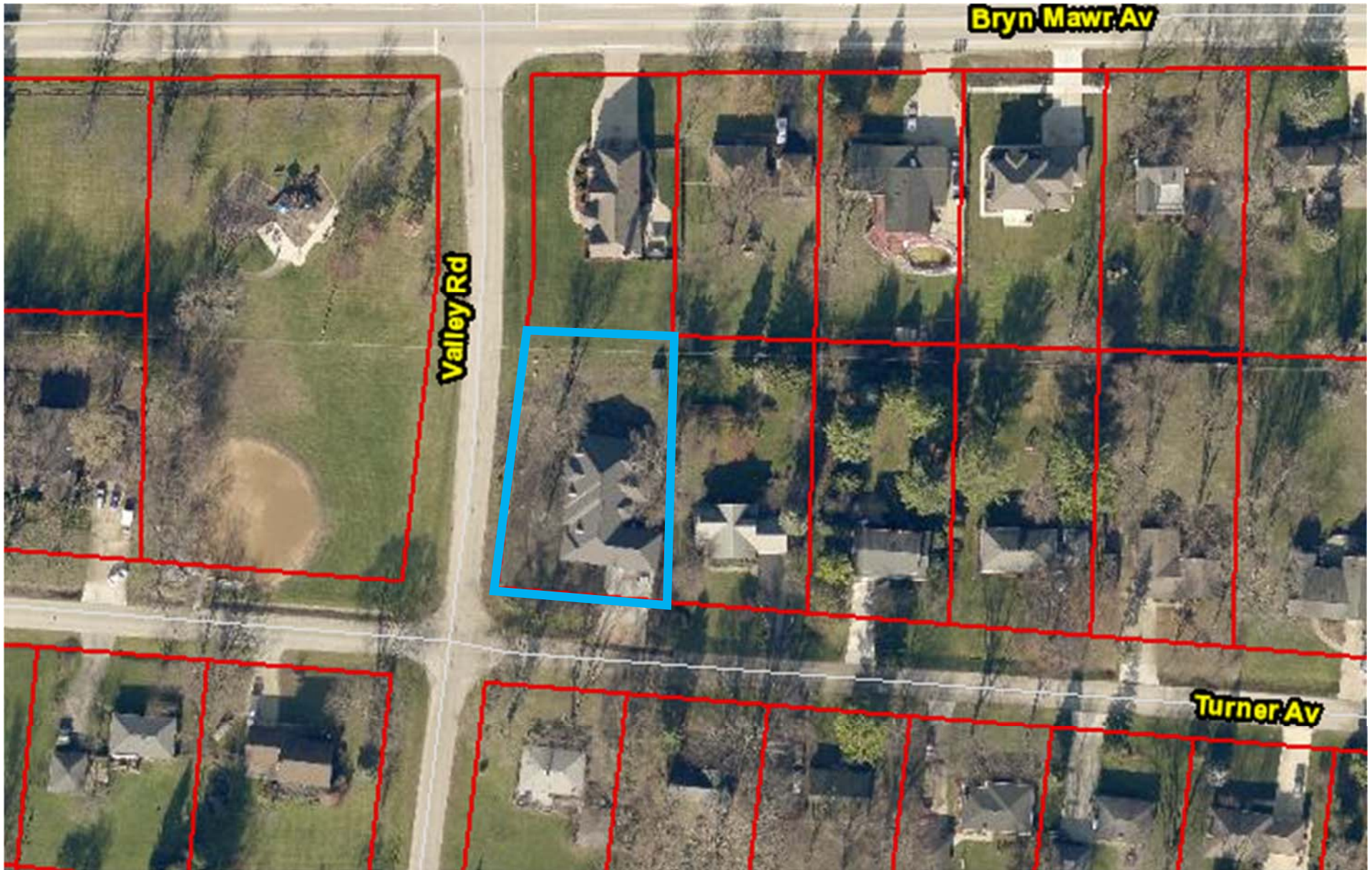
I further certify that the DuPage County DAILY HERALD is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 715, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published 10/25/2019 in said DuPage County DAILY HERALD.


IN WITNESS WHEREOF, the undersigned, the said PADDOCK PUBLICATIONS, Inc., has caused this certificate to be signed by, this authorized agent, at Arlington Heights, Illinois.

PADDOCK PUBLICATIONS, INC.
DAILY HERALD NEWSPAPERS

BY Daula Baltz
Designee of the Publisher and Officer of the Daily Herald

7N741 Valley Road – Aerial



 7N741 Valley Road (Formerly 23W638 Turner Ave) – Subject Property

33 SECTION 2: That the Mayor of the Village of Roselle is hereby authorized to
34 execute, and the Clerk of the Village of Roselle is hereby directed to attest to, that certain
35 Amendment, a copy of which is attached hereto and incorporated herein as if fully set
36 forth in "Attachment A," between the Village and the Owners of the Property, bearing a
37 parcel index number of 02-10-101-007, and legally described as follows:

38 LOT 18 IN BLOCK 17 IN THE SECOND ADDITION TO ROSELLE
39 COUNTRYSIDE, BEING A SUBDIVISION OF PART OF SECTIONS 3 AND 10,
40 TOWNSHIP 40 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL
41 MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 13,
42 1948 AS DOCUMENT NUMBER 551835, AND CERTIFICATE OF CORRECTION
43 FILED SEPTEMBER 10, 1948 AS DOCUMENT NUMBER 553789, IN DUPAGE
44 COUNTY, ILLINOIS

45 SECTION 3: This Ordinance shall automatically become null and void without
46 further action of the Corporate Authorities unless, within thirty (30) days from the date of
47 the passage of this Ordinance, the Owner executes a true and correct copy of the
48 Agreement. The Corporate Authorities, upon receipt of a written request from the Owner,
49 may grant extensions to this section in their sole discretion.

50 SECTION 4: Failure to construct the sidewalks within six (6) months of the passage
51 of an Annexation Ordinance as required by the Amendment (Attachment A) shall be a
52 material breach of the Amended Pre-Annexation Agreement and fully absolve and
53 release the Village of any obligation, or any other common law or equitable theory of law,
54 to provide any Village utilities, whatsoever to the property. In this instance, Village staff
55 shall disconnect the property and the Village utilities from the property upon thirty (30)
56 day written notice to the owner, petitioner or petitioner's successor.

57 SECTION 5: Upon passage, approval, and publication of this Ordinance as
58 required by law, as well as upon execution of the Amendment by the Owners, and the
59 Mayor of the Village, the Clerk of the Village shall record this Ordinance, and all exhibits,
60 in the Office of the Recorder of the County of DuPage. All costs associated with recording
61 shall be solely at the Owner's expense.

62 SECTION 6: This Ordinance and the Amendment shall be binding upon the parties
63 hereto, their respective successors, heirs, administrators, contract purchasers, executors,

64 grantees, and assigns for a full term of twenty (20) years from the date of execution
65 hereof.

66 SECTION 7: If any part or portion of this Ordinance and/or the Amendment is
67 declared invalid by a court of competent jurisdiction, such partial invalidity shall render
68 the Ordinance and Agreement null and void and without legal effect, and the Village's
69 provision of Village water and/or sewer services shall terminate.

70 SECTION 8: All ordinances and parts of ordinances in conflict or inconsistent with
71 the provisions of this Ordinance are hereby repealed to the extent of such conflict or
72 inconsistency.

73 SECTION 9: This Ordinance shall be in full force and effect from and after its
74 passage, approval, publication in pamphlet form as provided by law, and execution of the
75 Amendment by the Owner and the Mayor of the Village.

76 AYES:

77 NAYS:

78 ABSENT:

79 PASSED and APPROVED this _____th day of _____, 2019.

80 PUBLISHED in pamphlet form this _____th day of _____, 2019.

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83 ATTEST:

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VILLAGE OF ROSELLE:

Mayor, Village of Roselle, Illinois

Clerk, Village of Roselle, Illinois

89 **ATTACHMENT "A"**

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91 **AMENDMENT TO PRE-ANNEXATION AGREEMENT**
92 2019-_____
93 (7N741 Valley Road, formerly 23W638 Turner Avenue)
94

95 **THIS AMENDMENT** (hereinafter "Amendment"); made and entered into this
96 _____ day of _____, 2019, between the VILLAGE OF ROSELLE,
97 an Illinois municipal corporation located in DuPage and Cook Counties, Illinois
98 (hereinafter "Village"); and Charles Fink (hereinafter "Owner").

99 WITNESSETH

100 **WHEREAS**, the parties hereto have entered into a certain Pre-Annexation
101 Agreement on January 23, 2017; and,

102 **WHEREAS**, the Owners control the real estate at 7N741 Valley Road, formerly
103 23W638 Turner Avenue, Roselle, Illinois (hereinafter "Property"), as illustrated on the Plat
104 of Survey, marked as Exhibit C, which is attached hereto and made a part hereof this
105 Amendment; and,

106 **WHEREAS**, the undersigned Owner understands that they do not have any legal
107 duty or obligation to sign this Amendment and may, as an alternative, have their property
108 disconnected from Village water and/or sewer services and replace those services with a
109 well and/or septic field; and,

110 **WHEREAS**, the parties hereto desire to amend the pre-annexation agreement in
111 order to establish an enforceable covenant with the Village of Roselle to provide those
112 protections recited herein for the Village of Roselle to provide water and/or sewer services
113 to the Owner's Property while at the same time obligating the Owner to comply with the
114 terms of this covenant in order to be entitled under the terms of this Amended Agreement
115 to water and/or sewer services; and,

116 **WHEREAS**, the undersigned Owner acknowledges and covenants that execution
117 of this Amendment is not based on legal advice provided by the Village, its attorney,
118 employees or agents, and that the undersigned has been given ample opportunity to
119 confer with other advisors of their choosing in deciding whether to execute this restrictive
120 covenant or Amendment; and,

121 **WHEREAS**, the Village of Roselle has no legal obligation to provide water and/or
122 sewer services to unincorporated properties in absence of a written agreement to do so;
123 and,

124 **WHEREAS**, the Village has the power to control its corporate boundaries, its
125 municipal water and sewer systems (“Village Services”), both within and outside its
126 corporate boundaries; and,

127 **WHEREAS**, the Village has the power to “contract and be contracted with” 65 ILCS
128 5/2-2-12; and,

129 **WHEREAS**, it is the mutual understanding of the Village and the Owner that the
130 Village would not approve this Amendment for the Property in absence of a corresponding
131 contract/covenant related to the provision of Village water and/or sewer services after
132 expiration of 20 years.

133 **NOW, THEREFORE**, in consideration of the foregoing preambles and mutual
134 covenants and agreements contained herein, the parties hereto agree as follows:

135 1. Section 4 of Ordinance 2017-3875 is hereby repealed and rescinded in its
136 entirety.

137 2. Paragraph 7.c. of Exhibit A of Ordinance 2017-3875 is hereby repealed and
138 rescinded in its entirety and replaced with the following:

139 c. Public Sidewalk. If there is no public sidewalk on contiguous public right of
140 way along Turner Avenue and Valley Road (“Locations”) the Petitioner shall install
141 a sidewalk at their sole cost along the entire length of both Locations contiguous
142 to the Property no later than six (6) months from the date of the adoption of an
143 Annexation Ordinance, per Section 3 of this agreement, and in accordance with
144 Article XVI, Section 2-293(e) and Section 2-293(f) of the Roselle Village Code of
145 Ordinances.

146 Failure to construct the sidewalk in accordance with the above sections
147 shall be a material breach of this agreement and fully absolve and release the
148 Village’s obligation under this agreement, or any other common law or equitable
149 theory of law, to provide any Village utilities whatsoever to the Property. In this

150 instance, the Village shall have the unmitigated right to disconnect the Property
151 from the Village water and/or sewer services upon thirty (30) days' written notice
152 to the owner, petitioner or petitioner's successor. Petitioner fully waives and
153 releases the Village from any and all claims, actions, causes of action, damages,
154 injuries, costs, actual or consequential damages, or expenses associated with the
155 disconnection of Village water and/or sewer.

156 3. The following section is added to Exhibit A of Ordinance 2017-3875 and
157 incorporated herein as fully set forth:

158 RESTRICTIVE COVENANT. The Corporate Authorities find that the Owner
159 has submitted an executed contract/covenant for the continuing provision of
160 Village Services. Neither this Agreement nor the restrictive covenant will become
161 effective until this Agreement is executed by the Owner as required by Section 3
162 of the "Ordinance Authorizing Execution" of Ordinance 2018-3965. The restrictive
163 covenant is a material element of this Amendment and is incorporated herein as
164 fully set forth as Exhibit "B." If this Amendment and the restrictive covenant are not
165 both executed by the Owner within thirty (30) days of the adoption of the Ordinance
166 approving this Amendment, both shall become null and void and will cause the
167 disconnection of any Village Service to the Property.

168 4. Any Owner seeking to set aside this covenant/contract upon losing the
169 litigation shall reimburse the Village for all its reasonable attorneys' fees or costs.

170 5. This Amendment and the corresponding contract/covenant constitute the
171 full and final agreement between the Village and the undersigned all prior agreed upon
172 terms and conditions being set forth herein. This agreement may not be modified or
173 amended in any fashion or manner other than by agreement of the parties.

174 6. The Village shall refund any escrow for sidewalk construction paid under
175 the previous Annexation agreement within forty five days of the execution and recording
176 of this Amendment.

177 7. Each and every provision of the Pre-Annexation Agreement not inconsistent
178 with the provisions of this Amendment shall remain in full force and effect.

179 **IN WITNESS WHEREOF**, the Parties hereto have hereunder set their hands and
180 seals on the day and year first above written.

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VILLAGE OF ROSELLE

Village Mayor

Attest:

Village Clerk

OWNER:


Charles Fink

Date: _____

STATE OF ILLINOIS, County of _____ ss

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____ is personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such _____ appeared before me this day in person and acknowledged that he signed and delivered the said instrument at his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth, and the said, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposed therein set forth.

GIVEN under my hand and Notary Seal this _____ day of _____, 2019.
Notary Public

EXHIBIT "B"
**CONTRACT COVENANT PERTAINING TO CONTINUING PROVISION
OF VILLAGE SERVICES**

RECITALS

WHEREAS, the Village of Roselle ("Village") has no legal obligation to provide water and/or sewer services to unincorporated properties in absence of a written agreement to do so; and,

WHEREAS, the Village has the power to control its corporate boundaries, its municipal sewer and water systems, both within and outside its corporate boundaries; and,

WHEREAS, the Village has the power to "contract and be contracted with" 65 ILCS 5/2-2-12; and,

WHEREAS, the undersigned owner and the Village wish to establish an enforceable contract covenant (sometimes "Covenant") to provide those protections recited herein for the Village to provide water and/or sewer services to the owner's Property while at the same time obligating the owner to comply with the terms of this covenant in order to be entitled under the terms of this covenant to water and/or sewer services; and,

WHEREAS, the Owner and Village acknowledge that the mutual rights and obligations set forth in this agreement are supported by adequate consideration; and,

WHEREAS, the undersigned owner understands that they ("Owner") does not have any legal duty or obligation to sign this contract covenant and may, as an alternative, have their property disconnected from Village water and/or sewer services and request that the County of DuPage permit a septic field for the Property; and,

WHEREAS, the undersigned owner acknowledges and covenants that this agreement is not based on legal advice provided by the Village, its attorney, employees or agents, and that the undersigned owner has been given ample opportunity to confer with an attorney or other advisors of his or her choosing in deciding whether to execute this restrictive covenant agreement; and,

WHEREAS, it is the mutual understanding of the Village and the Owner that the Village would not approve this contract covenant or, the related Pre-Annexation Agreement in absence of an understanding that this agreement is within the Village's municipal powers to control its corporate boundaries and the provision of its water and/or sewer services.

NOW, THEREFORE, the undersigned owner, being the owner of the following legally described Property LOT 18 IN BLOCK 17 IN THE SECOND ADDITION TO

ROSELLE COUNTRYSIDE, BEING A SUBDIVISION OF PART OF SECTIONS 3 AND 10, TOWNSHIP 40 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 13, 1948 AS DOCUMENT NUMBER 551835, AND CERTIFICATE OF CORRECTION FILED SEPTEMBER 10, 1948 AS DOCUMENT NUMBER 553789, IN DUPAGE COUNTY, ILLINOIS (hereinafter "Property") hereby covenants and agrees, and the Village of Roselle hereby accepts, the terms and conditions set forth in this restrictive covenant as follows:

1. That the foregoing Recitals are incorporated herein as if fully set forth as representing the understanding and the intent of the parties and its substantive terms and conditions. Where the term "Village" is used in this restrictive covenant it shall mean the Corporate Authorities of the Village of Roselle.
2. The undersigned owner, its successors and assigns, in order to maintain access to Village of Roselle potable water and/or sewer services (hereinafter "Services") only as those Services are being provided as of the first date of execution of this covenant/contract _____, 2019 as approved by Ordinance 2019-_____ and for a period not to exceed the rule against perpetuities, agrees to the following terms and conditions which shall apply to the Property in order for it to qualify to continue to receive Village Services.
3. That if the Property does not become contiguous to the Village of Roselle and is not annexed within the twenty (20)-year period of the Pre-Annexation Agreement adopted in conjunction with approval of this agreement, the Property shall be entitled to receive Services only if the owner submits a proposal to enter into a new Pre-Annexation Agreement with the Village under the identical terms and conditions as the Pre-Annexation Agreement approved and in effect for the Property at the time this Covenant Agreement is also approved. The application for a renewed Pre-Annexation Agreement shall be filed no less than sixty (60) days prior to the expiration of the Pre-Annexation Agreement.
4. Any owner not agreeing to enter into a new Pre-Annexation Agreement with the Village at the time of the prior Pre-Annexation Agreement's expiration, hereby agrees that the Village, in its sole discretion, shall have the right to terminate Village Services at any time after a thirty (30)-day written notice from the Village to the owner.
5. Once an approved application for a renewed pre-annexation agreement has been filed with the Village by an owner, it shall remain valid and effective until accepted by the Corporate Authorities of the Village. There shall be no time limitation on the Village's acceptance of the application.

If the application is timely made, the Village Shall agree to a new pre-annexation agreement for the Property so long as the pre-annexation agreement is the same as the pre-annexation agreement that expired.

6. Nothing in this covenant shall be interpreted to require the Village to extend or provide additional Services not specifically provided by the Village to the Property as of the date of the approval of this covenant/contract.
7. During the term of this covenant, owners shall comply with all ordinances of general application related to Village Services applicable to any other resident of the Village. Failure to comply with all Village ordinances shall result in termination of the Village's Service upon thirty (30) days' notice of termination to the owner.
8. If there is no public sidewalk on contiguous public right-of-way along Turner Avenue, the Petitioner shall install a sidewalk no later than six (6) months from the date of the adoption of an Annexation Ordinance, and in accordance with Article XVI, Section 2-293(e) and Section 2-293(f) of the Village of Roselle Code of Ordinances. Failure to construct the sidewalk in accordance with the Pre-Annexation Agreement shall be a material breach of this Covenant Agreement and the Pre-Annexation Agreement and fully absolve and release the Village's obligation under this Covenant Agreement and Pre-Annexation Agreement, or any other common law or equitable theory of law, to provide any Village utilities whatsoever to the Property. In this instance, the Village shall have the unmitigated right to disconnect the Property from Village Services upon thirty (30) days written notice to the owner, petitioner, or petitioner's successor. Petitioner fully waives and releases the Village from any and all claims, actions, causes of action, damages, injuries, costs, actual or consequential damages, or expenses associated with the disconnection of Village Services.
9. This agreement shall be recorded by the Village Clerk at the owner's expense.
10. Should any Court invalidate or declare all or any portion or provision of this covenant/contract, invalid or unenforceable, the corresponding Pre-Annexation Agreement, shall become null and void and without effect, and the Village's duty to provide Village Services to a property shall terminate. Any Owner seeking to set aside this covenant/contract upon losing the litigation shall reimburse the Village for all its reasonable attorneys' fees or costs.
11. Integration. Other than the corresponding pre-annexation agreement, this Agreement constitutes the full and final agreement between the

Village and the undersigned owner all prior agreed terms and conditions being set forth herein. This agreement may not be modified or amended in any fashion or manner other than by mutual agreement of the parties.

12. Exclusive jurisdiction and venue for any litigation related to this matter shall be in the 18th Judicial Circuit Court, DuPage County, Wheaton, Illinois.
13. This contract covenant shall run with the land and be binding upon the parties hereto, their respective successors, heirs, purchasers, contract purchasers, administrators, executors, grantees and assigns, and all subsequent owners during its term.

Mayor, Village of Roselle

ATTEST:

Village Clerk, Village of Roselle

Charles Fink

Charles Fink

ATTEST:

Canon C Bricker