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County
City of Red Creek
Town
Village

Local Law No. 1 of the year 20 17

A local law regulating the use of sewers in the Village of Red Creek
(Insert Title)

Be it enacted by the Village Board of Trustees of the
(Name of Legislative Body)

County
City of Red Creek as follows:
Town
Village

ARTICLE I. GENERAL PROVISIONS

§113-1. – TITLE

This chapter may be referred to as the “Village of Red Creek Sewer Use Law.”

§113-2 – PURPOSE

The purposes of this chapter are:

- A. To provide for the efficient, economic, environmentally safe, and legal operation of the private septic systems;
- B. To prevent the introduction of substances into the publicly owned treatment works (“POTW”) that will:

- (1) Interfere with the POTW in any way;
 - (2) Pass through the POTW to the state's waters and cause contravention of standards for those waters or cause violation of the POTW's SPDES permit;
 - (3) Increase the cost or otherwise hamper the disposal of POTW sludge and/or residuals;
 - (4) Endanger municipal employees;
 - (5) Cause air pollution or groundwater pollution, directly or indirectly;
 - (6) Cause, directly or indirectly, any public nuisance condition.
- C. To prevent new sources of infiltration and inflow and, as much as possible, eliminate existing sources of infiltration and inflow;
- D. To assure that new sewers and connections are properly constructed;
- E. To provide for equitable distribution to all users of the POTW of all costs associated with sewage transmission, treatment, and residuals disposal, and to provide for the collection of such costs.

§113-3 – REPEALER

The provisions contained in Local Law 1 of 2003 “Village of Red Creek Sewer Use Law” are hereby repealed and said provisions are replaced by the herein set forth articles.

ARTICLE II. DEFINITIONS

§113-4 – DEFINED TERMS

As used in this chapter, the following terms shall have the meanings indicated:

ABSORPTION FIELD - An area to which wastewater or effluent is distributed for infiltration to the soil.

ACT - The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C § 1251 et seq., as may be amended.

ADMINISTRATOR - The Regional Administrator of the U.S. Environmental Protection Agency (USEPA).

APPLICANT - That person who makes application for any permit. The applicant may be an owner, new or old, or his agent.

GARBAGE - The solid wastes for the preparation, cooking, and dispensing of food, from the handling, storage, and sale of produce, and from the packaging and canning of food.

GREASE TRAP - A plumbing appurtenance that is installed in a sanitary drainage system to intercept oily and greasy wastes from a wastewater discharge. Such device has the ability to intercept free-floating fats and oils.

INTERCEPTOR - A device designed and installed to separated and retain for removal, by automatic or manual means, deleterious, hazardous or undesirable matter from normal wastes, while permitting normal sewage or wastes to discharge into that sanitary drainage systems by

gravity.

POTW TREATMENT PLANT - That portion of the POTW designed to provide treatment to wastewater, and to treat sludge and residuals derived from such treatment, which is owned and operated, in this instance by the WCWSA.

PUBLICLY OWNED TREATMENT WORKS (POTW) - A treatment works, as defined by Section 212 of the Act (33 U.S.C. § 1292), which is owned, in this instance by the village and directly operated by WCWSA. This definition includes any sewers and appurtenances that transport wastewater to the POTW treatment plant, but does not include pipes, sewers, or other conveyances not connected directly or indirectly to a facility providing treatment.

SANITARY CODE OF WAYNE COUNTY - The Sanitary Code of Wayne County, State of New York.

SEPTAGE - All liquids and solids in and removed from septic tanks, holding tanks, cesspools, or approved type of chemical toilets, including but not limited to those serving private residences, commercial establishments, institutions, and industries; also sludge from small sewage treatment plants. Septage shall not have been contaminated with substances of concern or priority pollutants.

SEPTIC TANK - A private domestic sewage treatment system consisting of an underground tank (with suitable baffling), constructed in accordance with any and/or all local and state requirements.

SERVICE AREA OF THE POTW - The legally defined bounds of real property from which wastewater may be discharged into the POTW. The bounds shall be established, altered, changed, modified, reduced, enlarged, combined, or consolidated by action of the Village of Red Creek Board of Trustees.

SEWAGE - A combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, and such groundwater, surface water, and storm water as may be inadvertently present. The admixture of sewage, as defined above, with industrial wastes and other wastes shall also be considered sewage within the means of this definition.

SEWAGE, DOMESTIC (DOMESTIC WASTES) - Liquid wastes from the noncommercial preparation, cooking and handling of food, liquid wastes containing human excrement and similar matter from the sanitary conveniences in dwellings, commercial buildings, industrial buildings, and institutions, or liquid wastes from clothes washing and/or floor/wall washing. Therefore, domestic sewage includes both black water and grey water. (See "sewage, sanitary.")

SEWER, PUBLIC - A sewer in which all abutting property owners have equal rights, and the use of which is controlled by the WCWSA and/or the Village.

SEWER, SANITARY - A sewer which carries sewage, and to which storm waters, surface waters, and groundwaters are not intentionally admitted.

SEWER, STORM (STORM DRAIN) - A sewer which carries storm waters and surface waters and drainage, but excludes sewage and industrial wastewaters, other than cooling waters and

other unpolluted waters.

USER - Any person who contributes, causes, or permits the contribution of wastewater into the POTW.

VILLAGE - The Village of Red Creek.

WASTEWATER - The liquid and water-carried industrial or domestic wastewaters from dwellings, commercial establishments, industrial facilities, and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which is contributed into or permitted to enter into the POTW.

§113-5 – ABBREVIATIONS

The following abbreviations as used throughout this chapter shall have the following meanings:

- A. CEO: Code Enforcement Officer of the Village of Red Creek.
- B. NYSDEC: New York State Department of Environmental Conservation.
- C. NYSDOH: New York State Department of Health
- D. POTW: Publicly owned treatment works.
- E. WCWSA: Wayne County Water and Sewer Authority.

§113-6 – UNDEFINED TERMS

Terms not defined in this article, or terms found to be ambiguous or improperly defined in this article, shall be defined by the Act, or regulations pursuant thereto.

ARTICLE III. USE OF PUBLIC SEWERS REQUIRED

§113-7 – WASTE DISPOSAL

It shall be unlawful for any person to place, deposit, or permit to be deposited, in any unsanitary manner, on public or private property, within the Village of Red Creek or in any area under the jurisdiction of the Village of Red Creek, any human or animal excrement, garbage, or objectionable waste. Also, no person shall discharge domestic sewage onto the surface of the ground or discharge it in a way that permits it to come to the surface of the ground.

§113-8 – CONNECTION OF PRIVATE SEWAGE SYSTEM TO STORM SEWER

No person shall connect a private sewage system so that the sewage flows into a storm sewer or into a drain intended exclusively for storm water.

§113-9 – DISCHARGE OF SEWAGE INTO WELL

No person shall discharge sewage into a well.

§113-10 – WASTEWATER DISCHARGE

It shall be unlawful to discharge to any natural outlet, within the Village of Red Creek, or in any area under the jurisdiction of the Village, any wastewater or other polluted waters.

§113-11 – APPROVED WASTEWATER DISPOSAL METHOD REQUIRED

No property owner, builder, or developer shall be issued a building permit for a new dwelling or structure requiring sanitary facilities unless a suitable and approved method of wastewater disposal, conforming to the law, is available. All housing construction or building development which takes place after this chapter is enacted shall provide for an approved system of sanitary sewers.

§113-12 – PRIVATE WASTEWATER DISPOSAL

- A. Except as hereinafter provided, it shall be unlawful to construct or maintain any private privy, privy vault, cesspool, septic tank, or other facility intended or used for disposal of wastewater.
- B. Nothing contained in this chapter shall be deemed to prohibit any marina or RV park from collecting wastewater generated by an RV or boat and held in privately owned storage facility where such storage facility is connected directly to the public sewer.

§113-13 – CONNECTION TO PUBLIC SEWER REQUIRED

- A. The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the Village of Red Creek, and abutting on any street, alley, or right-of-way in which there is now located or may, in the future, be located a public sewer, is hereby required, at the owner's expense, to install suitable sanitary facilities therein, and to connect such facilities directly with the proper public sewer, in accordance with the provisions of this chapter, provided that said public sewer is within 100 feet of the property line. All properties lying within the Village boundaries shall connect to the public sewer by June 1, 2018.
- B. In the event an owner of real property identified in Subsection A is required to make more than one connection to the public sewer, the following schedule shall apply, provided that such person submits to the CEO a detailed plan for implementation of public sewer connections which includes specific structure identification and timetable:
 - (1) For persons required to make at least two but fewer than five connections to the public sewer, such person may phase in such connections by completing 1/2 of the such connections by the date set forth in Subsection A, and the remaining 1/2 of the connections within six months from the date set forth in Subsection A.
 - (2) For persons required to make at least five but fewer than 20 connections to the public sewer, such person may phase in such connections by completing 1/3 of the such connections by the date set forth in Subsection A, an additional 1/3 of such connections within six months from the date set forth in Subsection A, and the remaining 1/3 of the connections within 12 months from the date set forth in Subsection A.
 - (3) For persons required to make 20 or more connections to the public sewer, such person may phase in such connections by completing at least 12.5% of such connections by the date set forth in Subsection A, an additional 25% of such

connections within 12 months from the date set forth in Subsection A, an additional 25% of such connections within 24 months from the date set forth in Subsection A, an additional 25% of such connections within 36 months from the date set forth in Subsection A, and the remaining connections within 42 months from the date set forth in Subsection A.

§113-14 – LIMITATION ON USE OF PUBLIC SEWERS

- A. The use of the public sewers shall be strictly limited and restricted, except as provided in §113-13, to receive and accept the discharge of sewage and other wastes, generated on or discharge from real property within the bounds of the service area of the POTW.
- B. Commercial premises engaged in whole or in part providing food service shall be required to install, operate, and maintain a grease trap in accordance with the provisions of the New York State Plumbing Code.
- C. The CEO is authorized to inspect grease traps upon one day's notice. In the event a grease trap is found to be inoperable, or ineffective, in whole or in part, the CEO shall initiate enforcement remedies pursuant to Article XI.
- D. In the event a POTW requires replacement, repair, or excessive maintenance due to the failure by a person or entity engaged in whole or in part in providing food service, such person or entity shall, in addition to any other penalty allowed by law, be required to pay for the cost of such replacement, repair, or maintenance, and the same shall be assessed to the property in the same manner as a tax upon real property

§113-15 – MORATORIUM

Upon notification from the WCWSA, who determines that one or more segments of the POTW is exceeding its hydraulic capacity at any time, or any specific purpose of this chapter is being violated, the Village shall have the authority to limit or deny new connections to the POTW until the conditions leading to the moratorium are corrected. Such correction may be by:

- A. Construction of new facilities.
- B. Enlarging existing facilities.
- C. Correction of inflow and infiltration.
- D. Cleaning and repairing of existing facilities.

§113-16 – BASIS OF SEWER USE REQUIREMENT

All requirements, directives, and orders calling for mandatory use of the sewers, within the service area of the POTW lying within the Village or within such areas as the Village may exercise jurisdiction, for the proper discharge of sewage and other wastes, including industrial wastes, shall be established and given by the Village Board of the Village of Red Creek.

§113-17 – SEWER RATES AND BILLING SCHEDULE

All persons utilizing sewer from the public sewer system shall pay a sewer service charge, which charge shall be fixed from time to time by resolution of the Village Board.

Nothing herein contained shall prevent the Village Board of the Village of Red Creek from establishing separate schedules of rates for separate sewer districts. Bills shall be payable at such times and places as may be designated by the Village Board. The Village Board may provide appropriate penalties for non-payment of bills, including a shutoff. See Appendix A for current fee schedule.

ARTICLE IV. PRIVATE WASTEWATER DISPOSAL

§113-18 – PRIVATE WASTEWATER DISPOSAL REQUIRED; PERMIT TO DISCHARGE

- A. Where a public sewer is not available or connection to the public sewer is not required under the provisions of this chapter, owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the Village of Red Creek, are required to utilize a private wastewater disposal system complying with the provisions of this chapter, the Sanitary Code of Wayne County, and the Rules and Regulations of the New York State Department of Health.
- B. All private wastewater disposal systems, whether new or existing prior to the effective date of this chapter, shall be authorized by a permit to discharge issued by the Village of Red Creek. The owner of the property utilizing a private wastewater disposal system, whether new or existing prior to the effective date of this chapter, without a discharge permit, is hereby required to perform the necessary upgrades, replacement, repairs, modifications and/or expansion necessary, and to apply for and obtain a permit to discharge. Operation of a private wastewater disposal system without a valid permit to discharge shall constitute a violation of this chapter. A discharge permit shall be valid for 5 years and shall only be issued after the property owner has provided the Village Clerk with the results of a passing dye test.

§113-19 – CONNECTION OF TWO BUILDINGS TO SAME SEPTIC TANK

No two separate permanent buildings, where the intended use for either is for distinct and separate business or a dwelling place for a private family or families, shall be connected to the same individual septic tank and/or absorption field.

§113-20 – CONSTRUCTION PERMIT APPLICATION

A completed application form, containing results of percolation tests, computations, and a plot plan, including the design and cross section of the wastewater disposal system, in relation to lot lines, adjacent and on-site well or water supply, and buildings, shall be submitted to the Village. A fee, set by the Board of Trustees and available in the office of the Village Clerk, shall accompany the application. The wastewater disposal system shall be designed by a professional engineer, licensed surveyor, or architect, and shall be in accordance with the NYSDOH “Standards for Waste Treatment Works,” or NYSDEC “Standards for Commercial and Institutional Facilities,” as appropriate.

§113-21 – CONSTRUCTION PERMIT

A written construction permit shall be obtained from the Village before construction commencement. The Village, or its designated representative, shall be permitted to inspect the

construction work at any stage, without prior notice.

§113-22 – PREVENTING NUISANCES; REHABILITATION REQUIRED

When the liquid or liquid-borne effluent from a private wastewater disposal system enters any watercourse, ditch, storm sewer, or water supply system located in the Village in such a manner, volume, and concentration so as to create a hazardous, offensive, or objectionable condition, in the opinion of the Village, the Wayne County Health Department, or the NYSDOH, the owner of the premises upon which such wastewater disposal system is located, upon receiving written notice from the CEO to do so, shall, within 30 days after receipt of such notice repair, rebuild or relocate such wastewater disposal system for the purpose of eliminating such hazardous, offensive, or objectionable conditions. The repair, rebuilding, or relocation of the system shall be accomplished in accordance with the rules and regulations of the NYSDOH and the Sanitary Code of Wayne County, at the owner's expense.

§113-23 – SANITARY OPERATION REQUIRED

The owner shall operate and maintain the private wastewater disposal system in a satisfactory manner at all times, at the owner's expense.

§113-24 – SEPTAGE REMOVAL

Owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purpose, situated within the Village and served by a holding tank are required to contract with a licensed hauler to pump out the tank on a routine basis.

- A. Holding tanks shall be pumped out per water usages. Should water usages exceed 10% of the pumped amount, an inspection will be immediately required to ascertain if the tank may be defective.
- B. A record of water usages and pump out must be maintained by the homeowner and sent to the Village Clerk of Red Creek on a monthly basis. The Village of Red Creek will forward this information to the Wayne County Health Department on a monthly basis. See Appendix B for a sample holding tank reporting sheet.
- C. If a holding tank has been found defective it shall be replaced with a tank with an alarm system or other devices to ensure no leakage or overflow and conform to the New York State Health Department requirements, 10 NYCRR Appendix 75-A of Part 75.

§113-25 – DIRECT CONNECTION TO NEW PUBLIC SEWERS REQUIRED

At such time that a public sewer becomes available to a property, a direct connection shall be made to the public sewer, in compliance with this chapter, and any cesspool, septic tank, and similar wastewater disposal facilities shall be cleaned of septage, by a licensed septage hauler, and finally either filled with clean sand, bank-run gravel, or dirt, or removed and properly disposed of. When the connection is made to the public sewer, the connection to the private wastewater disposal facility shall be broken, and both ends of the break shall be plugged.

§113-26 – ADDITIONAL REQUIREMENTS

No statement in this article shall be construed to prevent, or interfere with, any additional requirements that may be deemed necessary by the Village of the Wayne County Health Department to protect public health and public welfare.

ARTICLE V. BUILDING LATERALS, STREET LATERALS, CONNECTIONS AND FEES

§113-27 – APPROVAL REQUIRED FOR SEWER CONNECTIONS

- A. No unauthorized person shall uncover, make any connection with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining approval from the Village of Red Creek. The fee schedule shall be maintained and be made available by the Village of Red Creek.
- B. Upon completion of any connection to the public sewer, the WCWSA or its designated agent shall inspect and approve the connection prior to use.

§113-28 – INFLOW OR INFILTRATION PROHIBITED

No person shall discharge or cause to be discharged any storm cooling water or unpolluted industrial waters to any sanitary sewer. Swimming pool drains shall not be connected to any sanitary sewer.

ARTICLE VI. ENFORCEMENT AND PENALTIES

§113-29 – NOTIFICATION OF VIOLATION

Whenever the CEO finds that any user has violated or is violating this chapter, or any order, prohibition, limitation, or requirement permitted by this chapter, the CEO may serve upon such person a written notice stating the nature of the violation. Within 10 calendar days of the date the CEO mails the notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof shall be submitted to the CEO by the user. The correction and prevention plan shall include specific actions. Submission of this plan in no way relieves the user of the liability for any violations caused by the user before or after receipt of the notice of violation.

§113-30 – CONSENT ORDERS

The CEO is hereby empowered, subject to approval of the Mayor, to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the user responsible for the noncompliance. Such orders shall include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order.

§113-31 – ADMINISTRATIVE OR COMPLIANCE ORDERS

- A. When the CEO finds that a user has violated or continues to violate this chapter or a permit or administrative order issued thereunder, he may, subject to the approval of the Mayor, issue an administrative order to the user responsible for the discharge directing that, following a specific time period, sewer service shall be discontinued, severed and abated unless the violation is corrected and that there is no reoccurrence

of the violation. Administrative orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment technology, additional self-monitoring, and management practices.

- B. The User may, within 15 calendar days of receipt of such order, petition the CEO to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the CEO by registered mail. The CEO, upon approval of the Mayor shall then:
- (1) Reject any frivolous petitions;
 - (2) Modify or suspend the order; or
 - (3) Order the petitioner to show cause in accordance with §113-35 and may as part of the show cause notice request the user to supply additional information.

§113-32 – ADMINISTRATIVE FINES

- A. Notwithstanding any other section of this chapter, any user who is found to have violated any provision of this chapter, or an administrative order issued hereunder, shall be fined in an amount not to exceed \$1,000 per violation. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation.
- B. The user may, within 15 calendar days of notification of the CEO's notice of such fine, petition the CEO to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the CEO by registered mail. The CEO shall, upon approval of the Mayor, then:
- (1) Reject any frivolous petitions;
 - (2) Modify or suspend the fine; or
 - (3) Order the petitioner to show cause in accordance with §113-35 and may as part of the show cause notice request the user to supply additional information.

§113-33 – CEASE-AND-DESIST ORDERS

- A. When the CEO finds that a user has violated or continues to violate this chapter or any permit or administrative order issued hereunder, the CEO may issue an administrative order to cease and desist all such violations and direct those persons in noncompliance to:
- (1) Comply forthwith;
 - (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatening violation, including halting operations or terminating the discharge.
- B. The user may, within 15 calendar days of the date the CEO mails notification of such order, petition the CEO to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the CEO by registered mail. The CEO, upon approval of the Mayor, shall then:
- (1) Reject any frivolous petitions;
 - (2) Modify or suspend the order;
 - (3) Order the petitioner to show cause in accordance with §113-35 and may as part of the show cause notice request the user to supply additional information.

§113-34 – WATER SUPPLY SEVERANCE

- A. Whenever a user has violated or continues to violate the provisions of this chapter or and order or permit issued hereunder, water service to the user may be severed, and service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply. The user may, within 15 calendar days of the severance, petition the CEO to reconnect water supply service. Such petition shall be in written form and shall be transmitted to the CEO by registered mail. The CEO shall, upon approval by the Mayor, then:
- (1) Reject any frivolous petitions;
 - (2) Reconnect the water supply; or
 - (3) Order the petitioner to show cause in accordance with **§113-35** and may as part of the show cause notice request the user to supply additional information

§113-35 – SHOW CAUSE HEARING

- A. The CEO may order any user appealing administrative remedies for violations of this chapter to show cause, before the Village Board, why an enforcement action, initiated by the CEO, should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the Village Board regarding the violation, the reasons the action is to be taken, and the proposed enforcement action, and directing the user to show cause before the Village Board why the proposed enforcement action should not be taken. The notice of the hearing shall be served at least 10 calendar days before the hearing in accordance with **§113-37** of this article. Service shall be made on any principal or executive officer of a user's establishment or to any partner in a user's establishment. The notice of the hearing shall be served at least 10 calendar days before the hearing in accordance with **§113-37**. The Village Board may itself conduct the hearing, or may designate any of its members or any officer or employee of the Village to conduct the hearing and:
- (1) Issue, in the name of the Village Board, notices of hearings requesting the attendance and testimony of witnesses, and the production of evidence relevant to any matter involved in such hearings;
 - (2) Take the evidence;
 - (3) Take sworn testimony and transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Village Board for action thereon.
- B. After the Village Board has reviewed the evidence and testimony, it may order the user to comply with the CEO's order or fine, modify the CEO's order or fine, or vacate the CEO's order or fine.

§113-36 – FAILURE OF USER TO PETITION CEO

In the event the CEO issues any administrative order, or makes any fine as set forth in this article, and the user fails, within the designated period of time set forth, to petition the CEO, as provided in appropriate sections of this article, the user shall be deemed in fault, and its rights to contest the administrative order or fine shall be deemed waived.

§113-37 – NOTICE REQUIREMENTS

The notices, orders, petitions, or other notifications which the user or CEO shall desire or be required to give pursuant to any sections of this chapter shall be in writing and shall be served personally or sent by certified mail or registered mail, return receipt requested, postage prepaid, and the notice, order, petition, or other communication shall be deemed given upon its mailing as provided herein. Any notice, administrative order, or communication mailed to the user pursuant to the sections of this article shall be mailed to the user where the user's effluent is discharged into transmission lines of the POTW. Any notice, petition, or other communication mailed to the CEO shall be addressed and mailed to the Village Hall of the Village of Red Creek.

§113-38 – RIGHT TO CHOOSE MULTIPLE REMEDIES

The CEO shall have the right, within the CEO's sole discretion, to utilize any one or more appropriate administrative remedies set forth in this article. The CEO may utilize more than one administrative remedy established pursuant to this article, and the CEO may hold one show cause hearing combining more than one enforcement action.

§113-39 – CIVIL ACTIONS FOR PENALTIES

- A. Any person who violates any of the provisions of or who fail to perform any duty imposed by this chapter, or any administrative order or determined of the CEO promulgated under this chapter, or the terms of any permit issued hereunder, shall be liable to the Village for a civil penalty not to exceed \$1,000 for each such violation, to be assessed after a hearing (unless the user waives the right to a hearing) held in conformance with the procedures set forth in this article. Each violation shall be separate and distinct violation, and in the case of continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation. Such penalty may be recovered in an action brought by the Village Attorney, or his designated attorney, at the request of the Mayor in the name of the Village, in any court of competent jurisdiction, giving preference to the courts local to the Village of Red Creek. In addition to the above described penalty, the Village may recover all damages incurred from any persons or users who violate any provisions of this chapter, or who fail to perform any duties imposed by this chapter or any administrative order or determination of the CEO promulgated under this chapter, or the terms of any permit issued hereunder. In addition to the above-described damages, the Village may recover all reasonable attorney's fees incurred in enforcing the provisions of this article, including reasonable attorney's fees incurred in any action to recover penalties and damages, and the Village may also recover court costs and other expenses associated with the enforcement activities, including sampling and monitoring expenses.
- B. In determining the amount of the civil penalty, the court shall take into account all relative circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, and economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other relative factors as justice may require.
- C. Such civil penalty may be released or compromised by the CEO, upon approval of the Mayor, before the matter has been referred to the Village Attorney, and where such matter has been referred to the Village Attorney, and such penalty may be released or compromised, and any action commenced to recover the same may be settled and discontinued by the Village Attorney, with the consent of the Mayor of Red Creek.

§113-40 – COURT ORDERS

In addition to the power to assess penalties as set forth in this article, the Village shall have the power, following the hearing held in conformance with the procedures set forth in this article, to seek an order enjoining the violator from continuing the violation.

- A. Any such court order shall be sought in an action brought by the Village Attorney, at the request of the Mayor, in the name of the Village, in any court of competent jurisdiction, giving precedence to courts local to the Village of Red Creek.
- B. The Village Attorney, at the request of the Mayor, shall petition the court to impose, assess, and recover such sums imposed according to the article. In determining amount of liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, and economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

§113-41 – CRIMINAL PENALTIES

- A. Any person who willfully violates any provision of this chapter or any final determination or administrative order of the CEO made in accordance with this article shall be guilty of a Class A misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$500 nor more than \$1,000, or imprisonment not to exceed one year, or both. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.
- B. Any user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter shall be guilty of a Class A misdemeanor and, upon conviction, shall be punished by a fine of not more than \$1,000 per violation per day or imprisonment for not more than one year, or both.

§113-42 – ADDITIONAL INJUNCTIVE RELIEF

Whenever a user has violated or continues to violate the provisions of this chapter or a permit or order issued hereunder, the Village, through counsel, may petition the court, in the name of the Village, for the issuance of a preliminary or permanent injunction, or both (as may be appropriate), which restrains the violation of or compels the compliance with any order or determination thereunder by the CEO.

§113-43 – SUMMARY ABATEMENT

- A. Notwithstanding any inconsistent provisions of this chapter, whenever the CEO finds, after investigation, that any user is causing, engaging in, or maintaining a condition or activity which, in the judgment of the CEO, presents an imminent danger to the public health, safety, or welfare, or to the environment, or is likely to result in severe

damage to the POTW or the environment, and it therefore appears to be prejudicial to the public interest to allow the condition or activity to go unabated until notice and an opportunity for a hearing can be provided, the CEO may, with the approval and consent of the Mayor, and without prior hearing, order such user by notice, in writing wherever practicable or in such other form as practices are intended to be proscribed, to discontinue, abate, or alleviate such condition or activity, and thereupon such person shall immediately discontinue, abate, or alleviate such condition or activity; or where the giving of notice is impracticable, or in the event of a user's failure to comply voluntarily with an emergency order, the CEO may take all appropriate action to abate the violating condition. As promptly as possible thereafter, not to exceed 15 calendar days, the CEO shall provide the user the opportunity to be heard, in accordance with the provisions of this article.

- B. If the user is not within the geographical boundaries of the Village, the right of summary abatement to discontinue, abate, or alleviate conditions or activities shall be those limited by intermunicipal agreement with the municipality in which the user is located.
- C. The CEO, acting upon the belief that an emergency exists, shall be indemnified against any personal liability that may arise in the performance of his duties to protect the public health, safety, or welfare, or to preserve the POTW or the environment.

ARTICLE VII. CONFLICTS; SEVERABILITY; EFFECTIVE DATE; APPLICABILITY

§113-44 – CONFLICTS

The provisions of any Village law in conflict with any provisions of this chapter are hereby repealed.

§113-45 – SEVERABILITY

Each provision of this chapter is severable from the others, so that if any provision is held to be illegal or invalid for any reason whatsoever, such illegal or invalid provision shall be severed from this chapter, which shall nonetheless remain in full force and effect.

§113-46 – WHEN EFFECTIVE

This chapter shall take effect upon its filing in the office of the Secretary of State of the State of New York.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2017 of the ~~(County)(City)(Town)~~ (Village) of Red Creek was duly passed by the Village Board of Trustees on _____ 2017, in accordance with the applicable provisions of law.
(Name of Legislative body)

~~**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the ~~(County)(City)(Town)(Village)~~ of _____ was duly passed by the _____ on _____ 20____, and was ~~(approved)(not approved)~~ *(Name of Legislative Body)* ~~(repassed after disapproval)~~ by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20____, in accordance with the applicable provisions of law.~~

~~**3. (Final adoption by referendum.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the ~~(County)(City)(Town)(Village)~~ of _____ was duly passed by the _____ on _____ 20____, and was ~~(approved)(not approved)~~ *(Name of Legislative Body)* ~~(repassed after disapproval)~~ by the _____ on _____ 20____. Such *(Elective Chief Executive Officer*)* local law was submitted to the people by reason of a ~~(mandatory)(permissive)~~ referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the ~~(general)(special)(annual)~~ election held on _____ 20____, in accordance with the applicable provisions of law.~~

~~**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the ~~(County)(City)(Town)(Village)~~ of _____ was duly passed by the _____ on _____ 20____, and was ~~(approved)(not approved)~~ *(Name of Legislative Body)* ~~(repassed after disapproval)~~ by the _____ on _____ 20____. Such *(Elective Chief Executive Officer*)* local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provision of law.~~

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. ~~(City local law concerning Charter revision proposed by petition.)~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. ~~(County local law concerning adoption of Charter.)~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the County of _____ State of New York, having been submitted to the electors of the General Election of November __ 20__, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

SUSAN SAYLOR, VILLAGE CLERK

(Seal)

Date: _____

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF OSWEGO

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceeding have been had or taken for the enactment of the local law annexed hereto.

Allison J. Nelson
Town Attorney
Title

County _____
City _____
Town _____ of Red Creek
Village _____

Date: _____