

## **SEPARATION AGREEMENT**

This Separation Agreement (the "Agreement") is entered into as of the date of the last signature below by and between the **VILLAGE OF GRANVILLE**, ("Granville"), an Ohio Municipal Corporation, and **DON E. HOLYCROSS** ("Holycross")(collectively the "Parties")(individually the "Party") who agree to be bound by all of the terms and conditions hereof.

### **RECITALS**

WHEREAS, Granville and Holycross entered into an Employment Agreement on May 17, 2006, employing Holycross as the Village Manager of the Village of Granville ("Employment Agreement"); and

WHEREAS, Holycross intends to tender his resignation as Village Manager upon execution of this Agreement.

NOW, THEREFORE, in exchange for the mutual promises and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### **AGREEMENT**

**1. Resignation.** Holycross shall immediately tender his resignation as Granville Village Manager upon execution of this Agreement by the Parties.

**2. Effective Date of Termination.** The Parties agree that the employment relationship between Granville and Holycross shall terminate upon the effective date of the Agreement ("Termination Date").

**3. Compensation.** Granville agrees to pay Holycross, in two installments, an amount equal to "six (6) months aggregate salary and benefits" as that term is defined in Section 3A of the Employment Agreement. The first installment payment shall be direct deposited in Holycross' checking account on the first scheduled payroll after expiration of the seven (7) day rescission period described in Paragraph 21 and the second installment payment on the first scheduled payroll in January 2011. The first installment payment shall be in the amount of two months salary and the second installment payment shall be in the amount of four months salary and shall also include payment for 184 hours of vacation, representing the agreed upon net earned vacation of Holycross. The salary and benefit payments shall be subject to all appropriate and customary deductions and withholdings.

**4. Website Consultation or Services.** During his tenure as Village Manager, Holycross has developed the Village of Granville website and the Granville Welcome Center website ("website"). As there may be a need for website consultation or services with Holycross on the website after his employment relationship with Granville terminates, the Parties agree to compensate Holycross at the rate of forty-five dollars (\$45.00) per hour for each hour of website consultation or services with Granville for one year after the Effective Date of this Agreement. In no event shall such website consultation or services to Granville exceed forty (40) hours per month. Holycross disclaims and denies any ownership interest in either website.

**5. Return of Property.** Prior to the Termination Date, Holycross shall return all property owned by Granville to Granville, including, but not necessarily limited to, all files, documents, keys, access items and electronic devices.

**6. Comments or Inquiries.** The Parties shall not make any disparaging or derogatory remarks concerning the other that is either of a personal or professional nature. Furthermore, the Parties shall not make any claims nor take any actions which may adversely affect the professional or personal reputation or status of the other.

**7. Indemnification.** In addition to that required under state and local law, Granville shall defend, save harmless, and indemnify Holycross against any tort, professional liability claim or demand, whether groundless or otherwise, arising out of an alleged act or omission

occurring in the performance of Holycross' duties as Village Manager. Granville shall compromise and settle any such claim or lawsuit and pay the amount of any settlement or judgment rendered thereon.

**9. Release and Discharge.** Pursuant to the terms of this Agreement, Holycross hereby fully releases and forever discharges Granville and Granville's past, present and future Mayors, members of Council, officers, department heads, attorneys, agents, representatives, employees, descendants, ancestors, dependents, heirs, executors, administrators, successors and assigns, from any and all claims, causes or rights of action, liability or obligations of any kind, type or nature, in law or in equity, whether presently known or unknown, which Holycross ever had, may now have, or may hereafter have against Granville or Granville's above-described successors arising out of or in connection with any aspect of Holycross' employment with Granville. This release does not release either Party from any of the obligations contained in this Agreement. This release is part of the Parties' disassociation and shall not be treated as an admission of liability by the Parties for any purpose at any time.

Holycross understands and acknowledges the significance and consequence of the specific intention to release all claims, demands and causes of action hereinabove specified, whether known or unknown to Holycross at the time of execution of this Agreement and the assumption of full responsibility for any injuries, damages, losses, or liability that he may incur as a result.

Holycross' covenants and releases, as set forth in this Agreement, include a waiver of any and all rights or remedies which he ever had, may now have, or may hereafter have against Granville under any federal, state or local law or judicial, administrative or common law action of any kind, including, but not limited to, any claim for sexual harassment, breach of express or implied contract, wrongful discharge, tort, infliction of emotional distress, violation of public policy, loss of consortium and/or services, defamation, tortious interference, worker's compensation or violation of civil rights, including, but not limited to, any right or claim arising under the Federal Civil Rights Acts of 1866, 1870, 1871, 1964, 1972, 1988, and 1991, the National Labor Relations Act, as amended, the Labor Management Relations Act of 1947, as amended, the Americans with Disabilities Act of 1990, as amended, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Employee Retirement Income Security Act, the Rehabilitation Act of 1973, as amended, the Equal Pay Act, as amended, the Worker Adjustment Retraining Notification Act, the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621, and the Older Workers Benefit Protection Act, Ohio Revised Code Chapters 4111, 4112, 4113, and 4123, the Family and Medical Leave Act (F.M.L.A.), and any other federal, state or local laws or regulations governing employment relationships, employment discrimination, conditions or termination of employment, and any claims for attorneys' fees, costs and interest, which was or could have been asserted in a civil action against Granville. Holycross understands and agrees that, notwithstanding any provisions or covenants in this Agreement, nothing in this Agreement is intended to constitute an unlawful release or waiver of Holycross' rights under any laws and/or to prevent, impede or interfere with Holycross' ability and/or right to (a) provide truthful testimony if under subpoena; and/or (b) participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission.

**10. Entire Agreement; Amendments.** This Agreement contains the entire agreement between the Parties and supersedes any prior or contemporaneous understandings or agreements between them respecting the same subject matter. No changes, alterations, modifications, additions, or qualifications to the terms of this Agreement shall be made or be legally enforceable unless made in writing and signed by the Parties.

**11. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which will constitute one and the same instrument.

**12. Governing Law.** All questions concerning the intention, validity, and meaning of this Agreement or related rights and obligations of the Parties with respect to their performance under this Agreement shall be construed and resolved according to the laws of Ohio.

**13. Headings; Severability.** The headings of this Agreement are inserted for convenience only and do not constitute a Section of this Agreement. In addition, whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable laws and regulations. However, if any provision of this Agreement is held to be prohibited by or invalid under applicable laws or regulations, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**14. Successors and Assigns.** This Agreement shall bind the heirs, personal representatives, successors, assigns, executors, and administrators of each party, and inure to the benefit of each party and its heirs, successors, and assigns.

**15. Authorization.** Each party signing this Agreement, by so signing, represents and warrants that the signature is duly authorized.

**16. Further Actions.** The Parties shall execute any and all additional documents and instruments and shall take any and all other actions necessary to carry out the intent and purposes of this Agreement.

**17. Approval by Village Council.** The Parties specifically understand and agree that approval of this Agreement by the Granville City Council is a condition precedent to the performance of Granville's duties and obligations under this Agreement.

**18. Notices.** All notices under this Agreement must be in writing and shall be delivered personally, transmitted by facsimile, sent by certified or registered mail (postage prepaid and return receipt requested), or by overnight delivery service to the Party to which such notice, demand, or consent is given, at the following addresses:

To: The Village of Granville  
Mayor, Village of Granville  
141 East Broadway  
P.O. Box 514  
Granville, Ohio 43023  
Telephone: (740) 587-0707

with copy to:

D. Michael Crites, Esq.  
Dinsmore & Shohl, LLP  
191 W. Nationwide Blvd, Suite 300  
Columbus, Ohio 43215  
Telephone: (614) 628-6934  
Email: mcrites@dinslaw.com

To: Don E. Holycross  
31121 Mays Road  
Logan, Ohio 43138  
Telephone: (740) 389-6585

**19. Acknowledgement.** The Parties have read and fully considered this Agreement. The Parties have furthermore consulted with legal counsel. The Parties are voluntarily electing to execute this Agreement in order to fulfill its promises and to receive its benefits. Moreover, the Parties acknowledge that they have mutually prepared this Agreement and that no particular party is or should be deemed the drafter or preparer of this Agreement. To the extent that there should later prove to be ambiguities in this Agreement, the Parties agree that such ambiguities should not be construed in favor of or against a particular Party.

**20. Time to Consider Agreement; 21 days.** The Parties hereto agree that they have read and fully considered this Agreement and are mutually desirous of entering into this Agreement. They also agree that Holycross has been provided a minimum of twenty-one (21) days to consider this Agreement and has been encouraged to consult with or seek advice from an attorney or any other person of Holycross' choosing. Having voluntarily

elected to execute this Agreement, to fulfill the promises and to receive the benefits as fully set forth herein, Holycross freely and knowingly, and after due consideration, enters into this Agreement intending to waive, settle and release any and all claims he has or had against Granville as of the date of this Agreement.

**21. Revocation of Agreement; 7 days.** The Parties hereto agree that Holycross has seven (7) days from the last date executed below to revoke this Agreement, and the Agreement shall not become effective or enforceable until the date upon which the seven (7) day period expires.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**VILLAGE OF GRANVILLE**

DATED: \_\_\_\_\_ By: \_\_\_\_\_  
Melissa Hartfield  
Mayor

Approved as to Form:

DATED: \_\_\_\_\_ By: \_\_\_\_\_  
D. Michael Crites (0021333)  
Law Director

**DON E. HOLYCROSS**

DATED: \_\_\_\_\_ By: \_\_\_\_\_  
Don E. Holycross