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Eugene "Gene" Moore Fee: \$52.00  
Cook County Recorder of Deeds  
Date: 07/01/2003 03:44 PM Pg: 1 of 15

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Recorder's Use

AMENDED RECAPTURE AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of June,

2003, by and among THE VILLAGE OF ORLAND PARK, an Illinois Municipal Corporation (the "VILLAGE"), STANDARD BANK AND TRUST COMPANY as Trustee under Trust Agreement dated May 2, 2001 and known as Trust Numer 16907, successor in interest to ~~VILLAGE~~ FIRST MIDWEST BANK AS SUCCESSOR TRUSTEE TO FIRST MIDWEST TRUST COMPANY, N.A., a national association, not personally but as Trustee under Trust Agreement dated February 1, 1999, and known as Trust Number 99-6507, and BULL MASTIFF CONSTRUCTION CO., an Illinois corporation (collectively the "OWNER"),

WITNESSETH:

WHEREAS, the VILLAGE is a home rule municipal corporation of the State of Illinois and has in full force and effect various ordinances and amendments thereto relating to the development of real estate including but not limited to a Land Development Code, and a Building Code; and

MAIL TO  
RECORDERS BOX 324 (KTH/RM)

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WHEREAS, the VILLAGE and the OWNER are parties to a Development Agreement dated September 13, 2001, which authorizes the construction of a professional office development, on property in the Village of Orland Park and legally described as follows:

THE WEST 570.00 FEET OF THE SOUTH 205.00 FEET OF THE NORTH 238.00 FEET OF THE FOLLOWING DESCRIBED PARCEL TAKEN AS A TRACT: THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 18, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPT THE NORTH 22 ACRES THEREOF AND EXCEPT THAT PART, IF ANY, FALLING SOUTH OF THE SOUTH LINE OF THE NORTH 22 ACRES THEREOF AND NORTH OF THE SOUTH LINE OF THE NORTH 793.68 FEET THEREOF AND ALSO EXCEPT THE SOUTH 40-3/4 ACRES OF THE WEST ½ OF THE NORTHWEST ¼ OF SAID SECTION, AND EXCEPT THE WEST 40.00 FEET THEREOF TAKEN FOR HARLEM AVENUE, ALL IN COOK COUNTY, ILLINOIS.

PIN NO. 28-18-100-018-0000

WHEREAS, Illinois Compiled Statutes, Chapter 65, Act 5, Section 9-5-1 et seq., and Article VII, Section 10 of the Illinois Constitution authorize municipalities to enter into contracts with a subdivider, developer or building permittee of property such as the OWNER, and agree that the subdivider may be reimbursed for a portion of the cost of certain improvements beneficial to property not in the subdivision or development; and

WHEREAS, the Development Agreement requires the OWNER to construct a sanitary sewer line, including lift station modifications (the "SEWER LINE") in accordance with the standards established by VILLAGE Codes, Ordinances and as approved by the VILLAGE Director of Engineering; and

WHEREAS, the Development Agreement provides that the OWNER shall recover a pro rata and equitable portion of the cost of constructing the SEWER LINE, inclusive of engineering fees and

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interest thereon at the rate of eight (8%) percent per annum to commence accruing upon completion of the SEWER LINE and to cease accruing upon the expiration of five years from the date the SEWER LINE is completed, which cost recovery is to be paid in part by neighboring property owners who connect to the SEWER LINE. The OWNER is entitled to recover from each property which directly or indirectly connects to the SEWER LINE. All properties, inclusive of the properties described in EXHIBIT A attached, which may connect directly or indirectly to the SEWER LINE are subject to this Recapture Agreement; and

WHEREAS, the VILLAGE agrees the OWNER may recover the costs attributable to construct the SEWER LINE by means of recapture fees to be paid by the owners of the properties which connect to the SEWER LINE; and

WHEREAS, the OWNER agrees that the planned SEWER LINE can accommodate sewage flow generated from a total of 17.33 buildable acres;

WHEREAS, the OWNER agrees that OWNER's property consists of 2.68 buildable acres and is included within the total of 17.33 buildable acres and must bear its share of the SEWER LINE costs; and

WHEREAS, the VILLAGE hereby agrees to use reasonable efforts to collect the amount attributable to any buildable area of property which may connect to the SEWER LINE from the owners of such property connecting; and

WHEREAS, the VILLAGE hereby agrees to permit the OWNER to construct the SEWER LINE and to recover the pro rata and equitable portion of the costs thereof subject to the terms and provisions contained in this Agreement.

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NOW THEREFORE, in consideration of the promises and mutual covenants and agreements herein contained, the VILLAGE and OWNER agree as follows:

## SECTION 1

The preambles set forth above are hereby incorporated and made a part of this Agreement.

## SECTION 2

The OWNER expects to complete the construction of the SEWER LINE in accordance with the requirements of the Development Agreement. The OWNER has provided the VILLAGE Director of Engineering with the actual contractual cost of construction, inclusive of engineering fees, and of interest thereon, as set forth in EXHIBIT B.

The VILLAGE has defined the recapture costs for each benefitting parcel and has incorporated the recapture costs per parcel in EXHIBIT A. In determining the costs for recapture, the VILLAGE has computed the ratio of total recoverable costs to the sum of the buildable acreage of the benefitted parcels, multiplied by the buildable acreage of the connecting parcel paying the recapture.

Any deviation from the recapture costs listed in EXHIBIT A by any property owner resulting, for example, from engineering changes or from actual cost of construction different from the estimated contractual cost of construction shall only be at the discretion of the VILLAGE.

Any owner of property which connects to the SEWER LINE, as described herein and constructed as part of the OWNER's Development, shall pay a recapture fee to the OWNER prior to or at the time of issuance by the VILLAGE of the first building permit for the property utilizing said SEWER LINE under the following formula:

"Recapture costs shall be determined on the basis of the total contractual cost of construction, inclusive of engineering fees, and interest at the rate of eight (8%)

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percent per annum commencing to accrue on the date the SEWER LINE is completed and ceasing to accrue upon the expiration of five years from the date the SEWER LINE is completed, divided by the SEWER LINE service capacity of 17.33 buildable acres and multiplied by the buildable acres of the connecting or accessing property at the time of the issuance of the first building permit to the benefitted parcel or parcels (the "RECAPTURE AMOUNT").

## SECTION 3

The OWNER and VILLAGE agree that it will neither be necessary for the VILLAGE to collect nor OWNER to pay the RECAPTURE AMOUNT.

## SECTION 4

The VILLAGE during the term of this Agreement shall use its reasonable efforts to collect on behalf of the OWNER the RECAPTURE AMOUNT to which it is entitled by virtue of this Recapture Agreement, including but not limited to billing and collecting the RECAPTURE AMOUNT prior to the issuance of any building permits, subdivision approval, or planned unit development on any property proposed to connect to the SEWER LINE. Notwithstanding the foregoing, the VILLAGE shall incur no liability to the OWNER for the VILLAGE's failure to collect the RECAPTURE AMOUNT. Upon receipt of the RECAPTURE AMOUNT, the VILLAGE shall promptly forward the RECAPTURE AMOUNT to the OWNER, its successors or assigns.

## SECTION 5

No part of this Recapture Agreement shall relieve any owner of property, commercial building or residence which connects to the SEWER LINE and pays the RECAPTURE AMOUNT as provided herein, from any fees or charges otherwise payable to the VILLAGE.

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## SECTION 6

The term of this Agreement shall be fifteen (15) years or until such time when the contractual cost of construction, inclusive of engineering fees has been paid in full.

## SECTION 7

In the event that litigation is initiated against the VILLAGE, its officers, trustees, employees, or agents during the term of this Agreement, challenging the validity or enforceability of this Agreement or any part thereof, the OWNER agrees to defend and protect the VILLAGE, its officers, trustees, employees, and agents and to hold them harmless from any damages, costs and/or expenses incurred in connection with such litigation.

## SECTION 8

This Agreement shall be recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

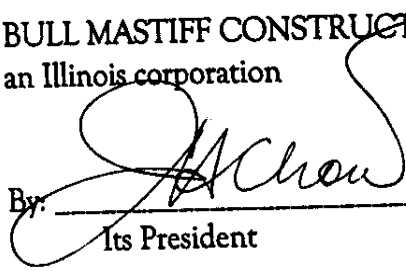
## SECTION 9

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve Village from performance under such invalid provision of this Agreement.

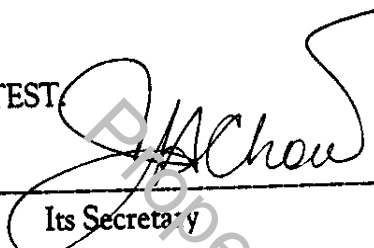
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DEVELOPER:

BULL MASTIFF CONSTRUCTION CO.,  
an Illinois corporation

By:   
Its President

ATTEST

By:   
Its Secretary

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## SECTION 10

This Agreement is entered into by the VILLAGE pursuant to its home rule authority under the Constitution of the State of Illinois and all other laws hereunto enabling, including but not limited to Illinois Compiled Statutes, Chapter 65, Act 5, Section 9-5-1, et seq.

IN WITNESS WHEREOF, the parties hereto, pursuant to the authority vested in each according to law and pursuant to duly enacted Ordinances and Resolutions of the corporate authorities or Board of Directors, as the case may be, have caused this document to be signed by their duly authorized officers and to have their corporate seals properly affixed hereto, this 20th day of June, 2003.

VILLAGE OF ORLAND PARK, an Illinois Municipal Corporation

By: [Signature]  
Village President

ATTEST:

By: [Signature]  
Village Clerk

By: [Signature]  
Dorothy Fiene  
Deputy Village Clerk

OWNER:

STANDARD BANK AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 2, 2001 AND KNOWN AS TRUST NUMBER 16907,

not personally but as Trustee aforesaid

By: [Signature]  
Patricia Ralphson, I. President

ATTEST:

By: [Signature]  
Donna Diviero, A.T.O. Secretary

This instrument is signed, sealed and delivered by STANDARD BANK AND TRUST COMPANY, solely in its capacity as Trustee as aforesaid. Any and all duties, obligations and liabilities of the Trustee hereunder are to be performed by said STANDARD BANK AND TRUST COMPANY only as such Trustee. Any claims, demands and liabilities which may at any time be asserted against the Trustee hereunder shall be paid, collected or satisfied against only the property or assets in the possession of said STANDARD BANK AND TRUST COMPANY as Trustee as aforesaid, and the said STANDARD BANK AND TRUST COMPANY does not undertake, nor shall it be under any personal or individual liability or obligation of any nature whatsoever by virtue of the execution and delivery hereof, nor shall STANDARD BANK AND TRUST COMPANY, either individually or as Trustees, be under any duty or obligation to secure the rents, issues and profits arising from the property described or any other property which it may hold under the terms and conditions of said Trust Agreement.









**UNOFFICIAL COPY****EXHIBIT A****DESCRIPTIONS OF BENEFITTING PARCELS  
AND RECAPTURE AMOUNT PER PARCEL**

<b>LEGAL DESCRIPTION</b>	<b>TOTAL PARCEL ACREAGE</b>	<b>BUILDABLE ACREAGE</b>	<b>RECAPTURE AMOUNT</b>	<b>PERCENT</b>
<b>PARCEL 1 (ECK)</b>				
The N 12 acres of the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Sec. 18, Twp 36N, Range 13, E of the 3rd PM (except the W 70.00 ft.) in Cook County, Illinois.	11.7	7.75	\$320,100.00	45%
PIN NO. 28-18-100-001				
<b>PARCEL 2 (SIPES)</b>				
The W $\frac{1}{2}$ of the N 10 acres of that part of the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Sec. 18, Twp 36N, Range 13, E of the 3rd PM, lying S of the N 26-2/3 rods of the W $\frac{1}{2}$ of said NW $\frac{1}{4}$ , in Cook County, Illinois.	4.4	3.65	\$149,380.00	21%
PIN NO. 28-18-100-010				
<b>PARCEL 3</b>				
The E $\frac{1}{2}$ of the N 10 acres of that part of the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Sec. 18, Twp 36N, Range 13, E of the 3rd P.M., lying S of the N 26-2/3 rods of the W $\frac{1}{2}$ of said NW $\frac{1}{4}$ , in Cook County, Illinois.	5.0	3.25	\$135,154.00	19%
PIN No. 28-18-100-011				

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LEGAL DESCRIPTION	TOTAL PARCEL ACREAGE	BUILDABLE ACREAGE	RECAPTURE AMOUNT	PERCENT
<b>PARCEL 4 (BULL MASTIFF)</b>				
The W 570.00 ft. of the S 205.00 ft. of the N 238.00 ft. of the following described parcel taken as a tract: The W½ of the NW¼ of Sec. 18, Twp 36N, Range 12, E of the 3rd PM, in Cook County, IL, except the N 22 acres thereof and except that part, if any, fall- in S of the S line of the N 22 acres thereof and N of the S line of the N 793.68 ft. thereof and also except the S 40 3/4 acres of the W½ of the NW¼ of said Section, and except the W 40.00 ft. thereof taken for Harlem Ave., all in Cook County, Illinois.	2.68	2.68	\$106,700.00	15%
PIN No. 28-18-100-018				
<b>TOTAL</b>		<u>17.33</u>	<u>\$711,334.00</u>	<u>100%</u>

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## EXHIBIT B

### ACTUAL CONTRACTUAL COST OF CONSTRUCTION

TOTAL ACTUAL COST OF CONSTRUCTION OF THE SEWER LINE, INCLUSIVE OF ENGINEERING FEES, IS SEVEN HUNDRED ELEVEN THOUSAND THREE HUNDRED THIRTY-FOUR AND NO/100 (\$711,334.00) DOLLARS PLUS INTEREST THEREON AT EIGHT PER CENT (8.0%) PER ANNUM COMMENCING TO ACCRUE ON THE DATE THE SEWER LINE IS COMPLETED AND CEASING TO ACCRUE UPON THE EXPIRATION OF THE FIVE (5) YEARS FROM THE DATE THE SEWER LINE IS COMPLETED.

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