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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/30/2010 11:28 AM Pg: 1 of 12

This document was prepared by,  
This instrument was prepared by  
and please return recorded copy to:

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10 S. Wacker Drive, 2300  
Chicago, IL 60606

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**FIRST AMENDMENT TO RESTATED REDEVELOPMENT AGREEMENT**  
**FOR THE**  
**PRAIRIE PARK DEVELOPMENT**

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## FIRST AMENDMENT TO RESTATED REDEVELOPMENT AGREEMENT FOR THE PRAIRIE PARK DEVELOPMENT

THIS FIRST AMENDMENT TO RESTATED REDEVELOPMENT AGREEMENT FOR THE PRAIRIE PARK DEVELOPMENT (the "First Amendment") is between and among the Village of Wheeling, Cook and Lake Counties, Illinois, a municipal corporation (hereinafter referred to as the "Village"), Wheeling Prairie LLC, a Delaware Limited Liability Company (hereinafter referred to as the "Developer") and MB Financial Bank, N.A. (hereinafter referred to as the "Bank") and is dated this 23<sup>rd</sup> day of December, 2010. The Village, the Developer and the Bank are individually referred to herein as a "Party" and collectively as the "Parties," as the context may require.

### WITNESSETH:

IN CONSIDERATION of the Preliminary Statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereto agree as follows:

#### I. PRELIMINARY STATEMENTS

- A. The Parties entered into that certain Restated Redevelopment Agreement for the Prairie Park Development on September 23, 2010 (the "Original Agreement"). Terms not defined herein shall have the meaning ascribed to them in the Original Agreement.
- B. The Original Agreement provided, in part, that the Village would reimburse Developer for previously incurred Redevelopment Project Costs but only in an amount equal to the amount of Project Infrastructure hard and soft construction costs actually incurred by the Developer and up to a maximum of \$2,500,000 (the "First Payment"). The First Payment was to be funded by the Village through the issuance of the Bonds.
- C. The Original Agreement further provided that the Village would make certain "per unit payments" from Bond Proceeds to the extent that any Bond Proceeds remained after the Village had made the First Payment.
- D. After considerable analysis, the Village has determined that the funding of the First Payment will be more cost effective and expeditious if the Village makes the First Payment from unpledged Area-Wide Incremental Property Taxes rather than from Bond Proceeds. The Developer and the Bank are agreeable to such alternate funding source and methodology of payment of the First Payment on the terms set forth herein.
- E. Accordingly, the Parties wish to amend the Original Agreement to: (1) provide that the First Payment shall be made from surplus Area-wide Incremental Property Taxes (or such other source as the Village may identify) instead of Bond Proceeds and (2) to establish a methodology to ensure the availability of such

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surplus Area-Wide Incremental Property Taxes (or such other source of funds) as and when needed to make the First Payment.

## II. SPECIFIC AMENDMENTS TO THE ORIGINAL AGREEMENT

- A. Section II.C. of the Original Agreement is hereby stricken in its entirety and replaced with the following italicized language:

*[Intentionally omitted].*

- B. Section V of the Original Agreement is stricken in its entirety and hereby deleted and is replaced with the following italicized language:

## V. UNDERTAKINGS ON THE PART OF THE VILLAGE

*Upon complete satisfaction of conditions set forth in Section IV.A through IV.D, the Village shall undertake the following:*

- A. *The Village will assist Developer in securing and obtaining, in an expeditious manner, all governmental approvals, consents, permits, licenses and authorizations reasonably necessary or required for the Project. Developer, however, shall remain primarily responsible for securing all of its necessary approvals, consents, permits, licenses and authorizations.*
- B. *The Village shall issue, where appropriate, and will reasonably assist Developer to obtain, such building permits, driveway permits, curb cut permits, licenses and other permits as Developer may require to cause the construction of the Project including the Project infrastructure, provided the Project complies with the applicable ordinances of the Village and other governmental bodies having jurisdiction.*

*The Village shall deposit Two Million Five Hundred Thousand Dollars (\$2,500,000) into a dedicated Village Account (the "Escrowed TIF Funds"), which funds shall be the source of payment for the First Payment. The source of the Escrowed TIF Funds may be surplus Area-wide Incremental Property Taxes or such other source of funds that the Village may identify. Disbursement of the Escrowed TIF Funds shall be made on terms and conditions as those set forth in Sections V.C.1 and V.C.2 below. The Village hereby pledges the Escrowed TIF Funds to the Developer for the payment of the First Payment in accordance with this Agreement, and the Village further agree that it shall not pledge, dedicate or encumber the Escrowed TIF Funds, or any portion thereof, for any other purpose unless consented to in writing by the Developer and the Bank. The Village shall deliver monthly statements to the Developer and the Bank to evidence that the amounts in the dedicated Village account is at least \$2,500,000.*

- C. *Provided that the Certificate has been issued and provided that all other applicable conditions precedent to payment set forth herein have been met to the reasonable satisfaction of the Village, the Village shall reimburse the Developer for such Redevelopment Project Costs in the total amount of Six Million and*

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00/100 Dollars (\$6,000,000.00) (the "Funding Cap") over and above the Four Million Five Hundred Thousand Dollars and 00/100 Dollars (\$4,500,000.00) reimbursed to date, to be paid as follows:

1. REIMBURSEMENT UPON COMPLETION OF PROJECT INFRASTRUCTURE

- i. The Village will reimburse Developer from Escrowed TIF Funds for previously incurred Redevelopment Project Costs but only in an amount equal to the amount of Project Infrastructure hard and soft construction costs actually incurred by the Developer and consistent with the Project Infrastructure budget. The calculation of Project Infrastructure soft costs shall not include attorneys' fees. The calculation of Project Infrastructure soft costs shall include interest on the loan extended by the Bank to complete the Project Infrastructure for the period starting on the first day that funds are drawn on such loan until the date of substantial completion of the Project Infrastructure (the "Interest Period"). In no event, however, shall the Interest Period exceed the number of days set forth in the Project Schedule for construction plus ninety (90) days which date is August 28, 2011. Substantial completion shall mean that the conditions set forth in Section V.C.1(iii)(e) have been satisfied. The interest rate during the Interest Period shall be five and one-half percent (5.5%) compounding on an annual basis. The amount that the Village is obligated to reimburse the Developer pursuant to this Section V.C.1(i) shall in no event exceed Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) (such amount, the "First Payment"). The First Payment shall be made to the Dedicated Account within ten (10) business days of satisfaction of the conditions precedent set forth in Section V.C.1(iii).
- ii. [Intentionally omitted]
- iii. The Village shall not be obligated to make the First Payment until the following conditions have been satisfied in the reasonable discretion of the Village:
  - (a) The Village shall have received the Certificate in an amount of at least the First Payment plus the Initial Reimbursement Amount;
  - (b) The Project Infrastructure shall have been bid out to at least two general contractors, one of which is Smith Family Construction, and Developer shall have entered into a guaranteed maximum price general contract, approved by the Bank as to form and substance and the Village as to consistency with price, the Project Infrastructure budget and the Project Schedule, for the completion of the Project Infrastructure; provided

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however, that, while in no way affecting the maximum amount of the First Payment, increases in the costs of or change orders to the Project Infrastructure shall not be grounds for the Village to claim non-satisfaction of this condition:

- (c) All plans and specifications for the Project Infrastructure submitted for governmental approvals and permits shall substantially conform to the Final PUD Plans;
- (d) Developer has delivered to the Village evidence that it has expended funds in an amount equal to or greater than the First Payment amount; such evidence shall include but not be limited to invoices, cancelled checks, lien waivers, and owner's and general contractor's sworn statements;
- (e) Developer has substantially completed the Project Infrastructure in accordance with the Final PUD Plans and the Final Permit Plans as evidenced by: (a) issuance of a certificate of occupancy for the clubhouse by the Village; and (b) receipt by the Village of an architect's certificate attesting to substantial completion for the clubhouse and an engineer's certificate of substantial completion for the ring road and other improvements identified on EXHIBIT "9." Issuance of the certificate of occupancy shall be subject to the Village's customary requirements for issuing certificates of occupancy;
- (f) Developer has completed the Project Infrastructure in accordance with Project Schedule or an amended Project Schedule as approved by the Village and the Bank; and
- (g) No uncured default by Developer and the Bank exists under this Agreement.

## 2. REIMBURSEMENT UPON UNIT SALES

- i. In addition to the First Payment and provided that the conditions set forth in Sections V.C.1(iii) and as set forth below in this Section V.C.2(ii) have been met, the Village will reimburse Developer for previously incurred Redevelopment Project Costs in an amount equal to Thirty Thousand and no/100 Dollars (\$30,000) per unit closed for closings occurring between the Effective Date and the last day of the twenty-fifth (25th) month after the Effective Date (the collective amount paid during such period, hereinafter the "Second Payment) and thereafter in an amount per unit closed after such 25-month period equal to the difference between Six Million and 00/100 Dollars (\$6,000,000.00) minus the First Payment and the Second Payment divided by the number of unsold units in Building 4 and Building 5. After the completion of the Project Infrastructure in accordance with Section V(C)(1) above,

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the per unit payments shall be paid to Developer on a per dwelling unit basis, upon the issuance of an occupancy permit and the closing of the unit for which payment is sought. It is acknowledged that the Village may make one or more "per dwelling unit" payments concurrently with the First Payment provided that all conditions precedent have been satisfied. The Village shall make such payments to the Dedicated Account, within seven (7) days of receipt of written documentation evidencing the closing for each dwelling unit. The Village shall make such payments from any excess Escrowed TIF Funds until such excess Escrowed TIF Funds are exhausted. After exhaustion of the Escrowed TIF Funds, the only source of funds for each "per dwelling unit" payment will be Subordinate Incremental Property Taxes less a pro-rata portion of the Subordinate Incremental Property Taxes (i.e., an amount equal to: Subordinate Incremental Property Taxes for a given tax year divided by Area-wide Incremental Property Taxes for that same tax year and then multiplied by Area-wide Incremental Taxes for that same tax year) necessary to make the Priority Payments (the "Non-Bond Revenue Source"). All of the Non-Bond Revenue Source, when collected, shall be allocated to and shall be paid to the Treasurer of the Village for deposit by the Treasurer into the 2010 Subordinate Lien Developer Tax Allocation Fund, as defined below. The Village shall not pledge, expand, or dedicate any Non-Bond Revenue Source other than for "per dwelling unit" payments after the Effective Date unless the Bank and Developer consent in writing.

- ii. The Village shall not be obligated to make any "per dwelling unit" payment until the following conditions have been satisfied in the reasonable discretion of the Village: (i) Developer has substantially completed the Project Infrastructure substantially in accordance with the Final PUD Plans and strictly in accordance with the Final Permit Plans as evidenced by: (a) issuance of a certificate of occupancy for the clubhouse by the Village; (b) receipt by the Village of an architect's certificate attesting to substantial completion for the clubhouse and an engineer's certificate of substantial completion for the ring road. Issuance of the certificate of occupancy shall be subject to the Village's customary requirements for issuing certificates of occupancy; (ii) all of the improvements set forth on EXHIBIT "9" have been completed by the Developer; (iii) the Certificate has been issued in an amount of at least the First Payment, the Initial Reimbursement Amount, any previously paid amounts on a "per dwelling unit basis" and the requested "per dwelling unit" payment amount; and (iv) sufficient Incremental Property Taxes exist to make the requested "per dwelling unit" payment.

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- C. Section XIV of the Original Agreement is stricken in its entirety.
- D. Section g of Exhibit 11 is stricken in its entirety and replaced with the following italicized language:

*The Village's failure to perform its obligation under Section V.C within 120 days of the Effective Date.*

### III. NO FURTHER CHANGES

- A. All other terms of the Original Agreement not expressly amended herein shall remain unchanged and in full force and effect.

[SIGNATURE PAGES FOLLOW]

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VILLAGE OF WHEELING, a  
municipal corporation

Judy Abruscato  
Village President

Attest:

Elaine E. Simpson



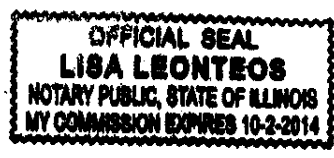
Dated: December 13, 2010

STATE OF ILLINOIS )  
                                  )       SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Judy Abruscato and Elaine E. Simpson personally known to me to be the Village President and Village Clerk of the Village of Wheeling; and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such Village President and Village Clerk, respectively, appeared before me this day in person and severally acknowledged that as such Village President and Village Clerk they signed and delivered the said instrument, pursuant to authority given by said Village, as their free and voluntary act, and as the free and voluntary act and deed of said Village, for the uses and purposes therein set forth, and that said Village Clerk as custodian of the corporate seal of said Village caused said seal to be affixed to said instrument as said Village Clerk's own free and voluntary act and as the free and voluntary act of said Village, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this 13<sup>th</sup> day of December, 2010.

Lisa Leonteos





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WHEELING PRAIRIE LLC, a Delaware  
limited liability company

By: [Signature]  
S. Mark Smith

Its: Managing member

Dated: December 20, 2010

STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Mark S. Smith, personally known to me to be the Manager of Wheeling Prairie LLC; and also known to me to be the same persons whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that as such Manager he signed and delivered the said instrument, pursuant to authority given by said Company, as their free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this 20 day of December, 2010.

[Signature]



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MB FINANCIAL BANK, N.A.

By: 

Its: Senior Vice President

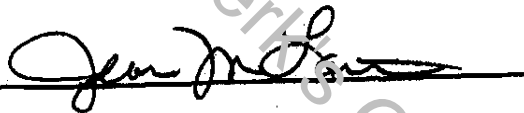
Dated: December 22, 2010

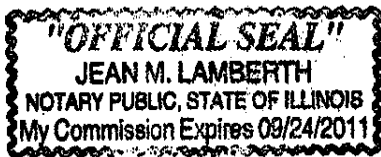
STATE OF ILLINOIS     )  
  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Robert Hanigan, personally known to me to be the S.R.V.P. of M.B. Financial Bank, N.A. and also known to me to be the same persons whose name is subscribed to the foregoing instrument as such Robert Hanigan appeared before me this day in person and acknowledged that as such S.R.V.P. he/she signed and delivered the said instrument, pursuant to authority given by said company, as his/her free and voluntary act and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this 22<sup>nd</sup> day of December, 2010.

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**UNOFFICIAL COPY****EXHIBIT A****LEGAL DESCRIPTION PRAIRIE PARK****PARCEL 1:**

THE SOUTH 137.2 FEET OF THAT PART OF LOT 3 LYING WEST OF WOLF ROAD IN G. HECHINGER'S FARM IN SECTION 2, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

**PARCEL 2**

THE EAST 812.0 FEET OF LOT 2, AS MEASURED ON THE SOUTH LINE THEREOF, IN SUBDIVISION OF G. HECHINGER'S FARM, IN SECTIONS 1, 2 AND 3, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

**PARCEL 3A:**

THAT PART LYING WESTERLY OF THE CENTER LINE OF WOLF ROAD OF THE FOLLOWING DESCRIBED PROPERTY TAKEN AS A TRACT, THAT PART OF LOT 3 IN THE SUBDIVISION OF G. HECHINGER'S FARM IN THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN AS PER PLAT THEREOF RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS, IN BOOK 17 OF PLATS, PAGE 13, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 15.18 CHAINS SOUTH OF NORTHWEST CORNER OF SAID NORTHEAST 1/4 OF SAID SECTION 2, RUNNING THENCE SOUTH ON THE HALF OF SECTION LINE 6.51 CHAINS THENCE EAST 17 CHAINS MORE OR LESS TO THE CENTER OF MILWAUKEE AVENUE; THENCE NORTHWESTERLY ALONG THE CENTER LINE OF SAID MILWAUKEE AVENUE 6.90 CHAINS MORE OR LESS TO A POINT DUE OF PLACE OF BEGINNING; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID TRACT 14.05 CHAINS TO THE PLACE OF BEGINNING; EXCEPTING THEREFROM THAT PART THEREOF FALLING WITHIN MILWAUKEE AVENUE AND ALSO THE FOLLOWING DESCRIBED TRACTS: 1, BEGINNING AT A POINT WHICH IS 307 FEET EAST OF THE WEST LINE AND 82.45 FEET NORTH OF THE SOUTH LINE THEREOF RUNNING; THENCE NORTH 125 FEET; THENCE EAST 50 FEET; THENCE SOUTH 125 FEET; THENCE WEST 50 FEET TO THE PLACE OF BEGINNING; 2 BEGINNING AT A POINT WHICH IS 355.65 FEET EAST OF THE WEST LINE AND 82.45 FEET NORTH OF THE SOUTH LINE THEREOF, RUNNING THENCE NORTH 136.66 FEET; THENCE EAST 150 FEET, THENCE SOUTH 136.66 FEET AND THENCE WEST 150 FEET TO THE PLACE OF BEGINNING; 3, BEGINNING AT A POINT WHICH IS 580.65 FEET EAST OF THE WEST LINE AND 82.45 FEET NORTH OF THE SOUTH LINE THEREOF RUNNING THENCE NORTH 136.66 FEET THENCE EAST 25 FEET; THENCE SOUTH 136.66 FEET AND THENCE WEST 25 FEET TO THE PLACE OF BEGINNING.

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LOT 4 AND PART OF LOT 3 LYING WESTERLY OF CENTER LINE OF WOLF ROAD IN OWNER'S SUBDIVISION OF PART OF LOTS 2 AND 3 IN SUBDIVISION OF ECHINGER'S FARMS, IN SECTION 2, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, PLAT OF WHICH OWNER'S SUBDIVISION WAS RECORDED JUNE 14, 1915 IN COOK 132 OF PLAS, PAGE 22, AS OWNER'S SUBDIVISION WAS RECORDED JUNE 14, 1915 IN BOOK 132 OF PALS, PAGES 22, AS DOCUMENT 5652753 IN COOK COUNTY, ILLINOIS.

**PARCEL 4:**

THAT PART OF LOT LYING WEST OF THE CENTER OF WOLF ROAD OF THE OWNERS SUBDIVISION OF PARTS OF LOTS 2 AND 3 OF THE SUBDIVISION OF GEORGE HECHINGER'S FARM IN SECTION 2, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.L.N 03-02-100-013-0000	03-02-100-015-0000	03-02-100-016-0000
03-02-100-029-0000	03-02-00005-0000	03-02-200-005-0000
03-02-200-053-0000	03-02-200-068-0000	

COMMONLY KNOWN AS 40 PRAIRIE PARK DR., WHEELING, IL 60090