

Item #2:
Ordinance Vacating A Portion Of Wildlife Way

VILLAGE OF LONG GROVE

ORDINANCE NO. 2013-O-__

**AN ORDINANCE REPEALING VILLAGE ORDINANCE NO. 2008-O-10
AND VACATING A PORTION OF WILDLIFE WAY**

Adopted by the
President and Board of Trustees
of
the Village of Long Grove
this __ day of _____, 2013

Published in pamphlet form by direction
and authority of the Village of Long Grove,
Lake County, Illinois
this __ day of _____, 2013

VILLAGE OF LONG GROVE

ORDINANCE NO. 2013-O-__

**AN ORDINANCE REPEALING VILLAGE ORDINANCE NO. 2008-O-10
AND VACATING A PORTION OF WILDLIFE WAY**

WHEREAS, on March 11, 2008, the Board of Trustees of the Village (the "**Village Board**") adopted Ordinance No. 2008-O-10, being "An Ordinance Vacating Wildlife Way" (the "**2008 Vacation Ordinance**"); and

WHEREAS, under Section Two of the 2008 Vacation Ordinance, the Village Manager was directed to record with the Office of the Lake County Recorder of Deeds the 2008 Vacation Ordinance and a Plat of Vacation for Wildlife Way; and

WHEREAS, as yet, the Office of the Lake County Recorder of Deeds has declined to accept the 2008 Vacation Ordinance and the Plat of Vacation for recording; and

WHEREAS, in addition, the Division of Transportation of the County of Lake has expressed concerns with the vacation of Wildlife Way in connection with a proposed development of the property owned by MAT Holdings, Inc., which property would receive the land comprising Wildlife Way upon vacation; and

WHEREAS, MAT Holdings, Inc. has requested the Village Board to amend the 2008 Vacation Ordinance as herein set forth; and

WHEREAS, the President and Board of Trustees of the Village have determined that it is in the best interests of the Village and its residents to amend the 2008 Vacation Ordinance, subject to the terms of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Long Grove, County of Lake, State of Illinois, as follows:

SECTION ONE: **Recitals.** The foregoing recitals are by this reference incorporated into and made a part of this Ordinance as if fully set forth herein.

SECTION TWO: Repeal of 2008 Vacation Ordinance. The 2008 Vacation Ordinance, being Ordinance No. 2008-O-10 and entitled "An Ordinance Vacating Wildlife Way," is hereby repealed in their entirety.

SECTION THREE: Vacation. The southerly portion of Wildlife Way (depicted as "private" on **Exhibit A** attached to and made a part of this Ordinance) (the "***Vacated Right-of-Way***") is hereby vacated, subject to the reservation of rights and terms and conditions set forth in Sections Four, Five, and Six of this Ordinance.

SECTION FOUR: Plat of Vacation. The Village Manager is hereby directed to cause a plat of vacation accurately depicting the Vacated Right-of-Way to be prepared by a Registered Land Surveyor (the "***Vacation Plat***"). Upon completion of the Vacation Plat, and subject to satisfaction of the conditions in Section Six of this Ordinance, the Village Manager is hereby authorized and directed to record with the Office of the Lake County Recorder of Deeds the Vacation Plat and a certified copy of this Ordinance.

SECTION FIVE: Easements Reserved. The Village hereby reserves perpetual easements on, over, upon, across, under, or through the Vacated Right-of-Way for emergency public access and public and municipal utility purposes, including without limitation water, sanitary sewer, storm sewer, electric, natural gas, cable television, and telephone, and including the right to survey, construct, operate, use, maintain, own, test, inspect, repair, renew, alter, remove, replace, or abandon in place such public and municipal utilities and appurtenances thereto, whether or not existing as of the effective date of this Ordinance. In addition, nothing in this Ordinance shall in any way affect or modify any use, access, or rights of private properties on, over, upon, across, under, or through Vacated Right-of-Way.

SECTION SIX: Conditions Precedent to Recording. Prior to the recordation of the Vacation Plat and a certified copy of this Ordinance, the following conditions must be satisfied:

- A. **Maintenance Agreement.** The Village Manager shall have received a roadway maintenance agreement from MAT Holdings, Inc. in substantially the form

attached hereto as **Exhibit B** and otherwise reasonably satisfactory to the Village Attorney.

- B. PUD Amendment. MAT Holdings, Inc. must apply for, and the Village Board must approve, a minor adjustment to the Final PUD Plan and Plat (as approved pursuant to Village of Long Grove Ordinance No. 2009-O-3) to conform with the vacation of the Vacated Right-of-Way.

SECTION SEVEN: Title upon Vacation. Pursuant to 65 ILCS 5/11-91-2, upon (i) the Effective Date of this Ordinance and (ii) the recordation of the Vacation Plat and a certified copy of this Ordinance, the title to the Vacated Right-of-Way shall vest in the then-owners of the land abutting thereon, in the same proportions and to the same extent, as though the street or alley has been dedicated by a common law plat (as distinguished from a statutory plat) and as though the fee of the street or alley had been acquired by the owners as a part of the land abutting on the street or alley.

SECTION EIGHT: Effective Date. This Ordinance shall be in full force and effect from and after its passage by three-fourths of the Trustees of the Village Board then holding office, and its approval, posting, and publication in pamphlet form in the manner provided by law.

PASSED this 8th day of October, 2013.

AYES:

NAYS:

ABSENT:

APPROVED this 8th day of October, 2013.

Village President, Angela Underwood

ATTEST:

Village Clerk, Heidi Locker-Scheer

EXHIBIT B

Roadway Maintenance Agreement

This instrument prepared for
and after recording return to:

Mr. David A. Lothspeich
Village Manager
Village of Long Grove
3110 RFD
Long Grove IL 60047
847-634-9440

This space for Recorder's use only

WILDLIFE WAY MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("**Agreement**") is made and entered into as of the ___ day of _____, 20___, by and between **MAT HOLDINGS, INC.**, an Illinois corporation, and **FOUR SEASON REAL ESTATE INVESTMENTS, LLC**, an Illinois limited liability company (collectively, the "**Owner**"), and the **VILLAGE OF LONG GROVE**, an Illinois municipal corporation (the "**Village**").

RECITALS

A. The Owner is the owner of a parcel of real estate, consisting of approximately ___ acres located within the corporate limits of the Village and legally described in **Exhibit A** attached hereto and made a part hereof (the "**Owner's Property**").

B. The Owner has requested that the Village vacate the southerly portion of Wildlife Way, as legally described in **Exhibit B** (the "**Vacated R-O-W**"), to enable it to construct further improvements on the Owner's Property (the "**Improvements**").

C. The Village has agreed to the vacation of the Vacated R-O-W provided that the Owner take full responsibility for the maintenance, repair and replacement of the unvacated northerly portion of Wildlife Way, as legally described in **Exhibit C**, lying north of the Vacated R-O-W to the intersection of Gilmer Road (the "**Remaining R-O-W**").

D. The Village has determined that, subject to the terms of this Agreement, the vacation of the Vacated R-O-W is in the best interests of the Village and the health, safety, morals and welfare of its residents.

E. This Agreement has been submitted to the Corporate Authorities of the Village for consideration and review, and the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the

Village. The Owner has taken all actions necessary and have adopted the proper resolutions to make this Agreement binding upon it.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreement contained within this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village and the Owner agree as follows:

ARTICLE 1
RECITAL PART OF AGREEMENT

The foregoing Recitals are by this reference incorporated into and made a part of this Agreement.

ARTICLE 2
VILLAGE OBLIGATIONS

A. Vacation of the Vacated R-O-W. The Village shall adopt an ordinance vacating the Vacated R-O-W (the "***Ordinance***"), cause to be prepared a plat of vacation relating to the Vacated R-O-W (the "***Plat***"), and take all other actions necessary to effect the vacation of the Vacated R-O-W.

B. Continued Public Access to the Remaining R-O-W. The Village will keep the Remaining R-O-W open for public roadway purposes.

C. Transfer of Title to Vacated R-O-W. The Village shall transfer title to the westerly half of the Vacated R-O-W to the Owner by warranty deed.

ARTICLE 3
OWNER OBLIGATIONS

A. Maintenance of the Remaining R-O-W. The Owner shall be responsible for, and shall perform without cost or expense to the Village, all repair, maintenance, plowing, street cleaning, and replacement work (collectively, "***Upkeep***") relating to the Remaining R-O-W and its related improvements and facilities. The Owner shall perform all Upkeep in a manner to assure that the pavement within the Remaining R-O-W remains in a safe and functional condition for all traffic and without material defects. The Upkeep requirements of this section shall in no way affect the Village's jurisdiction over the Remaining R-O-W.

B. Recapture Provision for Village's Costs. If at any time any portion of the Remaining R-O-W does not satisfy the foregoing standards for Upkeep, as defined in Subsection A of this Article, the Village shall deliver written notice to the Owner at the mailing address indicated in this Agreement of the condition requiring Upkeep. Unless the Owner performs or commences performance of such Upkeep within three business days (or within 24-hours if the Village determines that the condition of the Remaining R-O-W presents an immediate hazard and so notifies the Owner) and thereafter diligently pursues such Upkeep to completion, the Village shall have the right (but not the obligation) to do any or all of the following: (a) perform the required Upkeep and recover from Owner the cost of such Upkeep and all costs, including reasonable attorneys' fees, relating to the collection thereof; (b) close the Remaining R-O-W between the Vacated R-O-W and Gilmer Road, or any portion thereof; and (c) rescind this Agreement except in accordance with Article 4(a) of this Agreement.

C. Indemnification. The Owner agrees to indemnify, defend, and hold the Village and its officers, officials, employees, representatives, attorneys, and agents (the "**Village Parties**") harmless from and against any and all claims, actions, or liabilities arising from, related to, or connected with, either directly or indirectly, this Agreement and any act or omission relating to this Agreement and its conditions, including, without limitation, the Upkeep of the Remaining R-O-W; provided, however, that said claims, actions, or liabilities are not the result of any grossly negligent or intentional act or omission of any of the Village Parties. Nothing in this Paragraph shall be deemed to waive any statutory or other immunities that any of the Village Parties may assert.

D. Reimbursement for Village's Expenses. The Owner shall reimburse the Village for its reasonable costs and expenses relating to the preparation, negotiation, review and enforcement of:

1. the Ordinance;
2. the Plat;
3. this Agreement; and
4. any other documents relating to the above-listed documents (collectively "**Associated Documents**").

E. Release of Claims. The Owner hereby waives and releases any and all claims, losses, and damages it may have or suffer, now or in the future, against any of the Village Parties arising from, related to, or connected with, either directly or indirectly, this Agreement. Nothing in this Paragraph shall be deemed to waive any statutory or other immunities that any of the Village Parties may assert.

ARTICLE 4 **TERMINATION OF AGREEMENT**

This Agreement shall remain in full force and effect from and after its execution and:

- (a) until its revocation by the Village due to the Owner's breach of any of the terms or conditions of this Agreement, provided that the Village shall first notify the Owner in writing of such breach and the Owner has not corrected such breach within fifteen (15) days after such notice (or, if such breach cannot reasonably be cured within 15 days, the Owner has not commenced correction activities within said 15 days and thereafter diligently and continuously pursued such corrective activity to completion); or
- (b) upon the mutual agreement of the Village and the Owner to terminate this Agreement.

ARTICLE 5 **GENERAL PROVISIONS**

A. Notice. All notice required or permitted to be given under this Agreement shall be in writing and shall be (i) personally delivered, or (ii) delivered by a reputable overnight

courier, (iii) delivered by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by telecopy, or (v) by electronic internet mail ("e-mail"). E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Telecopy notices shall be deemed valid only to the extent that they are (y) actually received by the individual to whom addressed and (z) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below.

Notices and communications to the Owner shall be addressed to, and delivered at, the following address:

MAT Holdings, Inc.

_____, IL _____

Telephone: _____

E-mail: _____

With a copy to:

_____, IL _____

Telephone: _____

E-mail: _____

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Long Grove
3110 RFD
Long Grove, Illinois 60047
Attention: David A. Lothspeich, Village Manager
E-mail: dlothspeich@longgrove.net
Telephone: 847-634-9440

With a copy to:

Holland & Knight LLP
131 South Dearborn Street, 30th Floor
Chicago, Illinois 60603
Attention: Victor P. Filippini, Jr.
E-mail: victor.filippini@hklaw.com
Telephone: 312-578-6560

Email notice shall be deemed a notice "in writing" for purposes of this Section. By notice complying with the requirements of this Section, the Village and the Owner each shall have the right to change the address or addressee or both for all future notices to it, but no

notice of a change of address or addressee shall be effective until actually received, and, if by email, opened by the recipient.

B. Recording. Upon execution of this Agreement, the Village shall cause this Agreement to be recorded with the Office of the Lake County Recorder of Deeds.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

D. Non-Waiver. The Village shall not be under any obligation to exercise any of the rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village to exercise at any time any such rights shall not be deemed or construed as a waiver thereof, nor shall such failure void or affect the Village's right to enforce such rights or any other rights.

E. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

F. Severability. If any provision of this Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Agreement shall not be affected, impaired, or invalidated thereby, but shall remain in full force and effect. The unenforceability of any provision of this Agreement shall not affect the enforceability of that provision in any other situation.

G. Entire Agreement. This Agreement shall constitute the entire agreement of the parties to this Agreement; all prior agreements between the parties, whether written or oral, are merged in this Agreement and shall be of no force and effect.

H. Binding Effect. The terms of this Agreement shall be a covenant upon the Owner's Property and shall bind and inure to the benefit of the parties hereto and their agents, successors, and assigns.

I. Grammatical Usage and Construction. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

J. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

K. Headings. The headings, titles and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend or describe the scope or intent of this Agreement.

L. **Exhibits.** Exhibits A through C attached hereto are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between the exhibit and the text of this Agreement, the text of this Agreement shall control.

M. **Amendments and Modifications.** No modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective until such change is reduced to writing and executed and properly approved by the parties at the time such modification is intended to be effective, pursuant to all applicable statutory procedures.

N. **Changes in Laws.** Unless otherwise explicitly provided in this Agreement, any reference to existing law shall be deemed to include any modifications of, or amendments to existing law as may, from time to time, hereinafter occur.

O. **Calendar Days and Time.** Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or Federal holiday.

P. **No Third Party Beneficiaries** No claim as a third party beneficiary under this Agreement by any person, firm or corporation shall be made, or be valid, against the Village or the Owner.

[END OF TEXT, SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Owner and the Village have each caused this Agreement to be executed by their duly authorized corporate officers as of this date first written above.

VILLAGE OF LONG GROVE,
an Illinois municipal corporation

By: _____
Its: _____

ATTEST

By: _____
Its: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

I, _____, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____ and _____, personally known to me to be the _____ and _____ of the Village of Long Grove, an Illinois municipal corporation, are the same persons whose names are subscribed to the foregoing instrument as such representatives of the Village, appeared before me this day in person and acknowledged that as such representatives they signed and delivered the said instrument pursuant to the authority, as their free and voluntary acts, and as the free and voluntary acts and deeds of said Village, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of _____, 2013.

Notary Public

My Commission Expires

EXHIBIT A

Legal Description of Owner's Property

EXHIBIT B

Legal Description of the Vacated R-O-W

EXHIBIT C

Legal Description of the Remaining R-O-W

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