

LEASE OF REAL PROPERTY FOR RECREATIONAL PURPOSES

K. Bestler, This Lease is made as of January 1, 2016 by and between 266108 Tomahawk Dr, [ADDRESS], as owner of the Premises hereinafter described (the "Landlord"), and, WHEATON PARK DISTRICT, an Illinois unit of local government (the "Tenant") (collectively, the "Parties").

WITNESSETH:

1. Landlord is the owner of certain real estate commonly known as Bestler's Pond in DuPage County, Illinois legally described on Exhibit A attached hereto and made a part hereof (the "Premises").

2. Landlord, for and in consideration of the agreements of Tenant herein contained, hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for a term beginning on the date set forth above (the "Commencement Date") and, unless terminated earlier under the terms and conditions hereunder, terminating on the 1st anniversary thereof (the "Term").

3. Tenant shall pay as rent for the Premises in advance on the first day of each and every month during the Term the sums of \$ 625⁰⁰ (the "Rent") at the offices of Landlord located at 266108 Tomahawk Dr Wheaton IL or at such other place or to such other person as Landlord may from time-to-time direct. All Rent shall be payable without any demand therefore and without any deductions or set-offs whatsoever.

4. Tenant may use and occupy the Premises as an open space area in connection with its park system and for any other proper park district purpose as permitted by the Illinois Park District Code or other applicable law. *Rules - Exhibit B are agreed to.*

5. Tenant has examined and knows the condition of the Premises, and agrees that no representations as to the condition, suitability, or repair thereto and the improvements thereon if

any, have been made by the Landlord or its agents prior to, or at the execution of this Lease.

6. Tenant agrees at its sole cost and expense to keep the Premises and any improvements now or hereafter erected thereon in good condition and repair, and specifically agrees to maintain all ponds, trees, grasses, flowers, shrubs, and other vegetation and flora and fauna on the Premises in the same manner as Tenant provides generally for its own park properties.

7. Tenant agrees to permit Landlord and its agents to enter on the Premises or any part thereof, at all reasonable times, for the purpose of examining the same, or for making repairs or alterations or performing maintenance as Landlord may deem necessary for the safety or preservation thereof, or for curing any default of Tenant under this Lease.

8. Tenant shall pay all charges for water, electricity, landscaping and any other utilities or services furnished or supplied to all or any part of the Premises, and shall pay any and all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed on the Premises and be due and owing during the Term. Tenant shall have the right, at its sole cost and expense to apply for a tax exemption, or to contest by appropriate legal proceedings, without cost or expense to Landlord, the amount or validity of any such taxes and assessments or seek an exemption from such taxes and assessments for the Premises. Tenant, however, shall not be relieved of its obligation to pay such taxes and assessments as required by this Paragraph 8 unless the Premises is allowed a tax exemption or the proceedings shall operate to prevent the collection of such imposition and the sale of the Premises, or any part thereof, to satisfy the same. Landlord agrees that it will cooperate with Tenant in any proceeding referred to in this Paragraph 8 and that any such proceedings may, with prior notice to Landlord, be brought by Tenant in the name of Landlord but Landlord shall not be subjected to any liability for the payment of any costs and expenses in connection therewith.

9. Tenant shall not make any contract for the construction, demolition, repair, or improvement on, in, of, or to

the Premises, or any part thereof, or for any work to be done or materials to be furnished on or to the Premises, or any part thereof without first obtaining the prior written consent of Landlord. In the event Landlord consents to any such work, Tenant agrees to commence and to complete such work promptly, lien free and in a first-class condition and in conformity with all applicable government rules, codes, laws, regulations and requirements. Prior to commencing any work in or about the Premises (except for routine maintenance or work not requiring a permit or approval), Tenant shall secure any necessary permits and approvals for such work and shall provide Landlord with certificates of insurance in forms and amounts satisfactory to Landlord naming Landlord, and Landlord's officers, agents and employees, as additional insured parties.

9. Nothing contained in this Lease shall authorize Tenant to do any act which shall in any way encumber the Landlord's interest in the Premises, nor in any way subject such title or interest to any claims by way of lien or encumbrance. Any claim to a lien upon the Premises arising from any act or omission of Tenant shall attach only against Tenant's interest and shall in all respects be subordinate to the Landlord's interest in the Premises. If Tenant has not removed or is attempting to remove any lien or encumbrance within thirty (30) days after written notice to Tenant by Landlord, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for making any investigation as to the validity thereof, and the amount so paid shall be deemed additional rent reserved under this Lease due and payable forthwith.

10. Tenant agrees to observe and comply with all applicable ordinances, rules, regulations and laws respecting the Premises or the use thereof now in effect or which may be enacted during the continuance of this Lease by any municipal, county, state or federal authorities.

11. The Tenant shall be liable for any damage to Tenant's person, property or business or the person, property or business of any person or entity claiming through Tenant, resulting from or related to: (i) except as arises from the act or

negligence of Landlord, the happening of any accident in or about the Premises: or (ii) the action or negligence of any invitee of tenant. Except to the extent expressly prohibited by law, Tenant shall protect, defend, indemnify and save and hold harmless Landlord and its officers, agents, servants, employees, successors and assigns harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from injury to persons or damage to property on the Premises arising out of any act or negligence of Tenant, its agents, contractors, servants, employees, invitees or any permitted subleases except as arises from the act or negligence of Landlord.

12. Tenant shall, at its sole cost and expense, procure and maintain during the Term hereof, (a) commercial general liability insurance, or equivalent coverage through participation in as self-insured intergovernmental risk management pool such as the Park District Risk Management Agency (PDRMA) insuring Landlord, and its agents, and Tenant, as their interests may appear, for Bodily Injury, Property Damage and Personal Injury liability each with a limit of liability of One Million and No/100 Dollars (\$1,000,000.00) for each occurrence and in the aggregate made by or on behalf of any persons, firm or corporation, arising from, related to, or connected with this Lease or Tenant's use of the Premises (b) in like amounts, covering Tenant's contractual liability under the aforesaid hold harmless provision (c) workers' compensation insurance as required by statute, and employer's liability insurance in the amount of at least \$500,000 per occurrence. The insurance coverages in clause (a) and (b) above shall name the Landlord as additional insured. Such insurance shall protect, defend and indemnify the insured from and against any and all claims (including all costs and reasonable expenses of defending against same) for bodily injury, sickness, death, or disease and for damage or injury to or destruction of ownership, maintenance or use of the Premises, and any activity thereon. The Park District's participation in a self-insurance risk pool such as PDRMA shall constitute acceptable coverage under this

Lease. Certificates evidencing such coverage shall be delivered to Landlord prior to the Commencement Date and thereafter not less than thirty (30) days' prior to the expiration date of any such policy. No policy shall be cancelled, amended or modified except after thirty (30) days' written notice to Landlord.

13. The Parties shall not, without the prior written consent of the other party, which consent may be granted or withheld in Landlord's sole discretion: (i) assign, convey, mortgage or transfer this Lease, or any rights or interest hereunder; (ii) sublet the Premises or any portion thereof; or (iii) permit any assignment of this Lease, or any part hereof, by operation of law or otherwise

14. Tenant agrees that at the expiration of this Lease it shall give peaceable possession of the Premises to Landlord, in at least as good condition as it is as of the date of execution of this Lease.

15. In case Landlord, by reason of the failure of Tenant to perform any of the agreements or conditions herein contained, after a reasonable time to cure, shall be demanded to pay or shall pay any money, or shall be demanded to do or shall do any act which requires the payment of money, then the sum or sums so paid or required to be paid, shall be added to the installment of rent next becoming due or to any subsequent installment of rent, and shall be collectable as additional rent in the same manner and with the same remedies as if it had been originally reserved.

16. Failure by one party to insist on the strict performance of the terms, agreements and conditions herein contained, or any of them, shall not constitute or be constructed as a waiver or relinquishment of that party's right thereafter to enforce any such term, agreement or condition, but the same shall continue in full force and effect.

17. If default shall be made in payment of the Rent or any other sum required to be paid by Tenant under this Lease, and such default shall continue for thirty (30) days after written notice to Tenant, or if default shall be made in the full and prompt performance of any of the other covenants or conditions which Tenant is required to observe or perform hereunder and

such default shall continue for thirty (30) days after written notice or demand of any kind (beyond that specified above), Landlord shall have any one or more of the following described remedies in addition to all other rights and remedies provided at law or in equity:

(a) Landlord may terminate this Lease and the Term created hereby, in which event Landlord may forthwith repossess the Premises. Landlord shall have the right to pursue all other rights and remedies available to Landlord at law or in equity.

(b) Landlord may terminate Tenant's right of possession and may repossess the Premises by forcible entry and detainer suit, without terminating this Lease, in which event Landlord may, but shall be under no obligation to, relet all or any part of the Premises for such rent and upon such terms as shall be satisfactory to Landlord (including the right to relet the Premises for a term greater or lesser than the remaining Term of this Lease or to relet the Premises as a part of a larger area) for the purpose of such reletting, Landlord may make such repairs, changes, alterations or additions in or to the Premises that may be necessary or convenient.

18. In every instance where it shall be necessary or desirable for Landlord or Tenant to serve any notice or demand upon the other, such notice or demand shall be sent by U.S. Postal Service, recognized courier service such as Federal Express or personal delivery at the addresses provided below. Notice may be given on behalf of either party by their attorney. Notices sent as aforesaid shall be deemed to have been served at the time the same is delivered or refused. Either party shall have the right to change the address for notices by giving written notice of such change to the other party.

Landlord: Karl Bestler

With a copy
to:

Tenant: Wheaton Park District

102 E. Wesley Street
Wheaton, IL 60187
Attn: Executive Director

With a copy

to: Tressler LLP
233 S. Wacker Drive
Suite 2200
Chicago, Illinois 60606

Attn: Steven B. Adams, Esq.

20. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public or quasi-public use or purpose, the Term, at the option of Landlord, shall end upon the date when the possession of the part so taken shall be requested for such use.

21. All the agreements, conditions and undertakings herein contained shall extend to and be binding on the successors and assigns of the respective parties hereto as if they were in all cases named.

(b.) All of the representations and obligations of the Parties are contained herein and no modification, waiver or amendment of this Lease or any of its conditions or provisions shall be binding upon the Parties unless in writing signed by a duly authorized agent of each party.

(c.) All amounts due and payable from Tenant under this Lease shall be considered as Rent. In the event any Rent or other sum due and owing by Tenant to Landlord is not paid when due, such amount shall bear interest, computed from the first day on which such payment was due, at the rate of two percent (2%) per annum.

(d.) The laws of the State of Illinois shall govern the validity, performance and enforcement of this Lease.

(e.) Upon request of the holder of any note secured by a mortgage on the Premises, Tenant shall agree in writing that no action taken by such holder to enforce said mortgage shall terminate this Lease or invalidate or constitute a breach of any of the provisions hereof and Tenant will attorn to such mortgagee, or to any purchaser of the Premises, at any

foreclosure sale or sale in lieu of foreclosure, for the balance of the Term of this Lease and on all other terms and conditions herein set forth.

(f.) Landlord and Tenant each represent and warrant to the other that neither Landlord nor Tenant nor either of their officers or agents or anyone acting on either's behalf has dealt with any real estate broker in the negotiation or making of this Lease and each Party agrees to indemnify and hold the other Party harmless from the claim of any broker who alleges that such broker interested the indemnifying Party in the Premises or caused the indemnifying Party to enter into the Lease.

22. Provided Tenant is not in default in the performance of Tenant's obligations under this Lease, Landlord warrants, covenants, and agrees that Tenant will have peaceful and quite enjoyment of the Premises, subject to the terms and conditions of this Lease.

23. Tenant agrees that Tenant shall not cause, permit, or suffer any Hazardous Materials (as hereinafter defined) to be released, discharged, handled, processed, disposed of, stored, produced or used upon, about or beneath the Premises by Tenant, or by its agents, employees, contractors or invitees. Tenant shall indemnify, defend and hold Landlord, harmless from and against any and all Environmental Damages (as hereinafter defined) which arise from the breach of this provision of this Lease.

"Hazardous Material" shall mean any substance, material, chemical, water, soil or waste which is or may in the future be listed, identified, classified, characterized, described, defined, or referred to as hazardous, toxic, contaminative, infectious, ignitable, explosive or radioactive by or under any federal, state, or local statute, law, ordinance, code, rule, regulation, order, permit, requirement or decree (collectively known, for this section of the Lease, as "Law" or "Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.; the Federal Resource Conservation and Recovery Act (42 U.S. C. Section 6901 et seq.); the Emergency Planning and

Community Right-to-Know Act, 2 U.S.C. Section 11001 et seq.; the Solid Waste Disposal Act, 42 U.S.C. Section 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; and all other Laws pertaining to hazardous substances, hazardous materials and pollutants, air resources and air pollution, and water quality and water pollution. "Hazardous Materials" shall also include any material, the presence of which requires investigation or remediation under any Law or which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Law and any hazardous substance, material or waste which causes a nuisance upon or waste to the Premises.

"Hazardous Material" specifically includes, without limitation, (1) petroleum and petroleum constituents, (2) asbestos, and (3) polychlorinated biphenyls.

"Environmental Damages" shall mean, with respect to any environmental contamination: (i) all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in the value of the Premises, damages for the loss of or restriction on use of the Premises or of any amenity of the Premises); (ii) all sums paid for settlement of claims, attorney's fees, consultant's fees and expert's fees; and (iii) all costs incurred by Landlord in connection with investigation of Hazardous Material upon, about or beneath the Premises, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision necessary for Landlord to make full economic use of the Premises, or otherwise required under this Lease.

27. Termination: Tenant may elect to terminate this Lease by written notice given to Landlord, which shall be effective on a date set forth in the notice but no earlier than thirty (30) days after the date of Landlord's receipt of the notice from Tenant. In the event of such termination pursuant to the

terms of this Section 27, Tenant shall pay, at the time the notice is given, all Rent (including Landlord's Costs, as defined in Section 3 hereof, incurred through the date of termination)

28. No Third Party Beneficiary. This Lease is entered into solely for the benefit of the Parties, and nothing in this Lease is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Lease, or to acknowledge, establish or impose any legal duty to any third party; provided, however, Tenant acknowledges that this Lease may be assigned as security to Landlord's lender and, in such case, this Lease shall inure to the benefit of the lender.

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Signatures Follow.

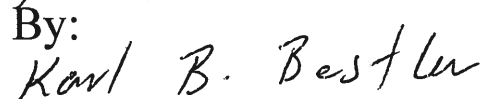
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IN WITNESS WHEREOF, the Parties hereto have set their hands and seals as of the day and year first above written.

LANDLORD:

 _____

By:


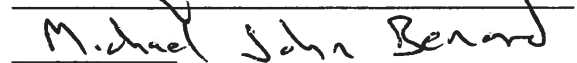
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Name:

TENANT:

WHEATON PARK
DISTRICT, an Illinois unit of
local government

By:

 _____


Name:

 Executive Director

Exhibit B

Addendum to Recreational Lease for 26 W. 108 Tomahawk Drive, Wheaton, IL.

- Landlord and acquaintances has unlimited access and use to the leased premises at all times for personal and recreational use.
- Landlord and Tenant may terminate this lease agreement with (30) thirty days written notice at any time during the term of this lease.
- No "special events" will be allowed on the leased premises without the Landlords written consent.
- Tenant agrees that any fishing will be permitted only on the south shore of the pond and no other area without Landlords written approval.
- The purpose of this lease agreement is for the Wheaton Park District to provide fishing and ice skating to the local residents and for no other purpose.
- Tenant will provide signage prohibiting visitors from wading, boating, swimming and alcohol consumption.
- Tenant will provide and maintain a portable toilet during the term of this lease agreement.
- Tenant will indemnify Landlord from any and all legal actions pertaining to the public's use of this property.

X 

M. David J. Bennett
Executive Director, Wheaton Park Dist

12/30/15



Landlord

Karl B. Bestler

