

**WHEATON PARK DISTRICT
RESOLUTION NO. 2020-08**

**A RESOLUTION APPROVING THE TERMS AND AUTHORIZING THE EXECUTION OF
THE FIRST AMENDMENT TO LEASE BETWEEN CITY OF WHEATON AND WHEATON PARK DISTRICT -
PRESIDENTS PARK**

WHEREAS, the City of Wheaton ("City") and the Wheaton Park District ("Park District") are parties to a lease agreement, entered into on May 1, 1978, regarding the lease of certain portions of City's property commonly referred to as Presidents Park ("Agreement"); and

WHEREAS, City and Park District wish to amend the Agreement to modify certain aspects in address the Park District's installation of a new playground and related appurtenances; and

WHEREAS, City and Park District have negotiated an amendment to the Agreement that reflects the agreed upon changes, a copy of which is attached hereto as Exhibit A ("First Amendment"); and

WHEREAS, the Park District's Board of Park Commissioners ("Park Board") has determined that it is in the best interests of the Park District and its residents to enter into the First Amendment, subject to the terms and conditions set forth therein.


NOW THEREFORE, IT IS HEREBY RESOLVED by the Board of Park Commissioners of the Wheaton Park District, DuPage County, Illinois, as follows:

1. The foregoing recitals to this Resolution are hereby determined to be true and correct and are hereby incorporated in and made part of this Resolution.
2. The form, terms and provisions of the proposed First Amendment attached hereto as Exhibit A are hereby in all respects approved, and the President and Secretary of the Park Board are hereby authorized and directed to execute the First Amendment in the name and on behalf of the Park District, substantially in the form as presented to this Park Board, with such modifications thereto, if any, as the President of the Park Board in consultation with the Park District's legal counsel shall approve, which approval shall be conclusively evidenced by his or her execution thereof.
3. The President and Secretary of the Park Board, the Park District's Executive Director and the Park District's attorneys are hereby authorized, empowered and directed to take all action and execute any and all documents necessary or appropriate in order to carry out the intent and effectuate the provisions and purposes of this Resolution and the First Amendment.
4. This Resolution shall be in full force and effect from and after its adoption as provided by law.

Adopted this 16th day of December 2020 by roll call vote as follows:


AYES: *Fahey, Frey, Hodgkinson, Kelly, Morrill, Vires, Mee*
NAYS: *Ø*

ABSENT: 

ABSTAIN: 



President
Board of Park Commissioners
Wheaton Park District

ATTEST:


Secretary
Board of Park Commissioners
Wheaton Park District

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)

SECRETARY'S CERTIFICATE

I, Michael J. Benard, do hereby certify that I am the Secretary of the Board of Park Commissioners of the Wheaton Park District, DuPage County, Illinois and as such, I am keeper of the records, ordinances, files and seal of said Park District; and

I HERBY CERTIFY that the foregoing instrument is a true and correct copy of:

**A RESOLUTION APPROVING THE TERMS AND AUTHORIZING THE EXECUTION OF
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PRESIDENTS PARK**

adopted at a duly called regular Meeting of the Board of Park Commissioners of the Wheaton Park District held in, Wheaton, Illinois at said District at 5:00 p.m. on the 16th day of December 2020.

I do further certify that the deliberations of the Board on the adoption of said resolution were conducted openly, that the vote on the adoption of said resolution was taken openly, that said meeting was called and held at a specified time and place convenient to the public, that notice of said meeting was duly given to all of the news media requesting such notice, that an agenda for said meeting was posted as required by the Open Meetings Act and that said meeting was otherwise called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and with the provisions of the Park District Code of the State of Illinois, as amended, and that the Board has complied with all of the provisions of said Act and said Code and with all of the procedural rules of the Board.

IN WITNESS WHEREOF, I hereto affix my official signature and the seal of said Wheaton Park District in Wheaton, Illinois, this 16th day of December 2020.



Michael J. Benard
Secretary

[SEAL]

EXHIBIT A

FIRST AMENDMENT

**FIRST AMENDMENT TO LEASE BETWEEN CITY OF WHEATON AND WHEATON PARK DISTRICT -
PRESIDENTS PARK**

This First Amendment (“Amendment”) is made and entered into this 16th day of December 2020, by and between the City of Wheaton, an Illinois municipal corporation (“Lessor”) and the Wheaton Park District, an Illinois park district and unit of local government (“Lessee”), and amends, in certain respects, that certain Lease Between City of Wheaton and Wheaton Park District entered into on May 1, 1978 (“Agreement”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

RECITALS

WHEREAS, Lessor and Lessee are parties to an Agreement regarding the lease of certain portions of Lessor’s property commonly referred to as Presidents Park (Leased Premises”); and

WHEREAS, the Agreement automatically renews for successive one year periods on May 1st of each calendar year unless either party provides the other party with written notice of its intent to terminate not less than ninety days prior to the end of any such annual term; and

WHEREAS, the Leased Premises is currently improved with an existing playground that Lessee intends to replace at an estimated cost of \$300,000; and

WHEREAS, the new playground has a an estimated lifespan of approximately twenty years; and

WHEREAS, in order to entice Lessee to proceed with the new playground installation and to protect Lessee’s investment of public funds related to said installation, Lessor and Lessee wish to amend the Agreement to provide for the reimbursement to the Lessee of the then current (depreciated value) of the playground equipment and appurtenances within its useful lifespan up to a maximum amount of Three Hundred Thousand dollars (\$300,000.00) based on the circumstances described herein; and

WHEREAS, Lessor and Lessee have determined that it is in their respective best interests to amend the Agreement on the terms and subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree to the following:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein by reference as though fully set forth in this Section 1 as substantive provisions and as representing the intent of the parties.

2. Reimbursement in the Event of Termination or Interference. Lessor, during the first 20 years after the approval of this Amendment, will reimburse the Lessee for the depreciated value of the new playground and appurtenances described herein which is damaged, destroyed, or rendered unusable as a result of:

(a) The Lessor's unilateral termination of the Agreement and this Amendment; or

(b) The Lessor undertaking any action, including but not limited to stormwater management, on or adjacent to the Leased Premises, as described further herein.

The Lessor's reimbursement to the Lessee for the depreciated value of the new playground and appurtenances installed because of this Amendment shall not be applied to any playground or appurtenances installed after the initial installation contemplated by this Amendment.

Upon completion of the installation of the new playground and appurtenances, the Lessee shall promptly supply the Lessor with an accurate inventory and costs of the playground and appurtenances, including complete photographic documentation. The inventory will include "as built plans" and paid invoices for the improvements.

During the first twenty (20) years of this Amendment if the new playground and appurtenances is damaged, destroyed, or rendered unusable in contravention of this Section 2, the Lessee shall provide the Lessor with tables used by the Lessee's insurance carrier to determine depreciated value of the playground and appurtenances in property casualty events. If the Lessor agrees with the depreciated value set forth in the Lessee's insurers tables the Lessor agrees to pay the depreciated value, such values shall be determinative, and the Lessor will reimburse the Lessee within 30 days of invoice for that sum.

If the Lessor does not agree to the depreciated value of the damaged, destroyed, or rendered unusable playground and appurtenances as set forth in the Lessee's insurers depreciation table the parties shall hire an independent third-party consultant to provide an opinion as to the depreciated value, which shall be considered conclusive and binding on the parties. Cost for the third-party consultant shall be shared equally by the parties.

Twenty (20) years after the adoption of this Amendment by the Lessor its obligation to reimburse the Lessee for depreciated value of the playground and appurtenances shall no longer be applicable.

3. No Reimbursement. Reimbursement for damaged, destroyed, or rendered unusable playground and appurtenances shall not be paid by the Lessor to the Lessee for:

(a) Damaged, destroyed, or rendered unusable by the current existing stormwater system on the Leased Premises; or

(b) Routine maintenance and repairs to the Leased Premises; or

(c) Repairs or maintenance not caused by the errors and omissions of the Lessor but instead resulting from acts of God. For purposes of this Amendment, "Acts of God" shall mean:

An "Act of God" which includes, but is not limited to, natural phenomenon whose effect could not be prevented by the exercise of foresight and reasonable care, such as strike, war, earthquake, tornado, wind damage, third-person torts, strike, criminal acts of others, tortious acts of others, tornadoes, high winds, or flooding not caused by the Lessor's activity on the leased premises after the approval of this Amendment.

4. Temporary Removal. If the Lessor requires temporary removal of the playground and appurtenances during the twenty (20) years, the Lessor shall remove and restore it at its sole costs and expense.

5. Maximum Liability. The maximum liability of the City under the Agreement and this Amendment for the damaged, destroyed, or rendered unusable playground and appurtenances shall be Three Hundred Thousand dollars (\$300,000.00) regardless of the number of claims over the twenty (20) years. Once that sum is exhausted the Lessor will have no further liability.

6. Grade Revisions. The Lessee shall not alter any current grades on the Leased Premises without consulting and receiving written permission of the City Engineer. All grade revisions shall be subject to the Countywide Stormwater Ordinance and City Code.


7. Counterparts. This Amendment may be executed in counterparts, each of which shall be an original but all of which taken together shall constitute but one and the same instrument. In the event any signature is delivered by facsimile or by e-mail delivery of a scanned .pdf file, such signature shall create a valid and binding obligation of the party with the same force and effect as if the facsimile or scanned .pdf signature page were an original thereof.

8. Entire Agreement; Modification. All other terms and conditions contained in the Agreement remain unchanged. The Agreement and this Amendment contain all of the terms and conditions agreed on by the parties with respect to the subject matter hereof, and no other alleged communications or agreements between the parties, written or otherwise, shall vary the terms hereof. Any modification of the Agreement or this Amendment must be in writing and signed by all parties.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth below.

CITY OF WHEATON

By: _____



WHEATON PARK DISTRICT

By: _____



Its: Mayor

Attest: Sharon Bennett Stagn

Its: City Clerk

Date: 1-5-21

Its: President

Attest: H. Bernard

Its: Secretary

Date: 1/5/2021

RESOLUTION R-2021-02

A RESOLUTION APPROVING FIRST AMENDMENT TO LEASE BETWEEN CITY OF WHEATON AND WHEATON PARK DISTRICT – PRESIDENTS PARK

WHEREAS, THE City of Wheaton, DuPage County, Illinois ("City") is an Illinois Home Rule municipality pursuant to provisions of Article VII, Section 6 of the Illinois Constitution, 1970, and as such, the City may exercise any lawful power and perform any function pertaining to its government and affairs; and

WHEREAS, on May 1, 1978 the City and Wheaton Park District ("District") entered into a lease agreement ("Lease") for certain portions of the City's property commonly referred to as Presidents Park; and

WHEREAS, the District intends to replace the existing playground at Presidents Park at an estimated cost of \$300,000; and

WHEREAS, the City and District have determined it is in their respective best interests to amend the Lease to provide for the reimbursement to the District of the then current (depreciated value) of the playground equipment and appurtenances within its useful lifespan of twenty years up to a maximum amount of \$300,000 should said playground equipment be removed or the lease terminated by the City.

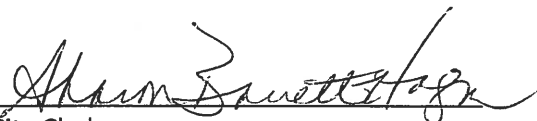
NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, DuPage County, Illinois that the Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest, to the First Amendment to Lease Between City of Wheaton and Wheaton Park District – Presidents Park which is attached hereto and incorporated herein as fully set forth as Exhibit 1.

ADOPTED this 4th day of January 2021.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

- Councilman Barbier
- Councilwoman Bray-Parker
- Councilwoman Fitch
- Mayor Suess
- Councilwoman Robbins
- Councilman Rutledge
- Councilman Zaruba

Nays:

None

Absent:

None

Motion Carried Unanimously

LEASE

THIS INDENTURE, made this 1st day of May, 1978, between the CITY OF WHEATON, an Illinois municipal corporation, LESSOR, and the WHEATON PARK DISTRICT, a duly constituted Illinois Park District, LESSEE,

WITNESSETH:

That the said Lessor, for and in consideration of the covenants and agreements hereinafter set forth to be kept and performed by the Lessee, has demised and leased to the Lessee the property described in Exhibit A attached hereto and made a part hereof by reference, which property is commonly referred to as Lake A.

Lessee covenants and agrees to pay the Lessor as rent for said demised premises, at the Office of the City Clerk of the City of Wheaton, Illinois, the sum of One Dollar (\$1.00) per annum.

The term of such lease shall be for a one (1) year period, commencing May 1, 1978 and ending April 30, 1979, but shall be deemed automatically renewed each year for successive one year periods thereafter unless written notice to terminate shall be delivered by either party hereto to the other, any such notice to be delivered not later than ninety (90) days prior to the end of any such annual term.

Upon termination of the lease for any reason, Lessee reserves the right to remove any playground equipment or facilities constructed by Lessee upon the leased premises within a reasonable period after such termination, and in so doing to return any land area to its condition prior to the installation of any such equipment or facilities, including the re-seeding of the ground disturbed by the removal of the same.

This lease is made upon the following express covenants and agreements, each of which is made a condition hereof:

1. The leased premises shall be maintained by the Wheaton Park District as a recreational and park facility for the benefit of the citizens of the City of Wheaton.

2. It is hereby acknowledged that the primary purpose of the leased facility is as a dry bottom storm water retention facility and is a critical link in the storm water retention capabilities of the City of Wheaton, and in consideration thereof Lessee hereby agrees to perform the following maintenance functions to preserve the integrity of that system:

- a. All catch basins and storm water inlet or outlet grading shall be kept free of debris.
- b. The skimming of lawn areas for any athletic fields shall be kept to a minimum so as to prevent soil erosion.
- c. Care shall be taken in the excavating for plantings or any other purpose to insure that the underdrain and slope drain systems are not damaged. No plantings shall be installed in the area of the underdrains or slope drains.
- d. Prior to establishing a landscape plan, developing structures, fencing, equipment, or any other improvement on the leased premises, the Park District shall submit its plans to the City Engineer of the City of Wheaton and obtain said City Engineer's approval to insure that the basic function of the facility for storm water retention will not be diminished. The City Engineer shall respond within thirty (30) days to the Wheaton Park District.
- e. Any change in the existing topography below U.S.G.S. elevation of 751.00 above mean sea level shall be approved by the Wheaton City Engineer and shall meet the requirements of Chapter 12½ of the Wheaton City Code.

3. The Lessee agrees to indemnify and hold harmless the Lessor against loss, damage, or injury from any act or omission of Lessee, its agents or employees, to the person or property of any person while on or about the premises covered by this lease.

The Lessee further agrees that if in any case the release and indemnity herein provided for shall not be valid, the Lessor shall, in such case, have

the full benefit of any insurance effected by the Lessee upon the property and against the hazard involved; and the Lessee agrees that any and all such insurance shall be so written that the insurer shall have no claim or recourse of any kind whatsoever against the Lessor in connection therewith, and the Lessor shall be made an additional insured on said policies of insurance.

4. The Lessee hereby authorizes the Lessor through its duly constituted municipal Police Department to enforce all State, County and Municipal Statutes and Ordinances in all portions of the leased territory.

5. It is further agreed between the parties hereto that if Lessee shall breach or make default in any conditions, covenants or agreements of this lease, it shall be lawful for the Lessor, at any time thereafter to declare this Lease ended and to reenter said premises and take possession thereof, with or without process of law, and to use reasonable or necessary force for regaining possession.

6. It is further agreed and provided that any waiver at any time of a breach of any condition, covenant or agreement of this lease shall extend only to the particular breach so waived, and shall in no manner impair or effect the existence of such condition, covenant, or agreement or the right of the Lessor to thereafter avail itself of the same or any subsequent breach thereof. Upon breach or default of any condition, covenant or agreement of this lease, this agreement may be terminated by either party hereto upon ninety (90) days notice in writing to the other party, said time period being computed from but not including the date said notice is placed in the United States Mail.

7. The benefits and obligations of this lease shall extend to and bind the executors or assigns of the parties hereto; but no interest in this lease shall be assigned; nor said premises, or any part thereof, sublet, used, or occupied by any party other than the Lessee, nor shall Lessee allow or permit any lien of any kind to be imposed upon said premises without the written consent of Lessor first obtained.

8. All notices hereunder shall be in writing, such notice to be delivered to the receiving party hereto at such party's respective administrative offices address. Personal delivery of any such notice may be delivered to the Mayor of

the City of Wheaton (for Lessor) or to the President of the Park Board (for Lessee). Such mail notice shall be deemed delivered on the day after such notice is deposited in a U.S. mail receptacle in a properly addressed and stamped envelope.

IN WITNESS WHEREOF, the Lessor has caused these presents to be executed in its corporate name and on its behalf by its Mayor and its corporate seal to be affixed and attested to by its City Clerk pursuant to resolution of its City Council, and the Lessee has caused these presents to be executed in its Corporate name and on its behalf by its President and its corporate seal to be affixed and attested to by its Secretary, pursuant to resolution of the Wheaton Park District, all of this the day and year first above written.

(SEAL)

WHEATON PARK DISTRICT

By:  President

ATTEST:

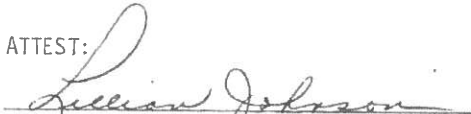

Secretary

(SEAL)

CITY OF WHEATON

By:  Mayor

ATTEST:


City Clerk

Lake A (D-147)

EXHIBIT "A"

A parcel of land within Wheaton Estates Subdivision in the Northwest 1/4 of Section 22, Township 39 North, Range 10 East of the Third Principal Meridian in DuPage County, Illinois. Commencing at a point 283' west of the southeast corner and along the south line of said quarter section for a place of beginning, said point being the southeast corner of Lot 6, Block 18 of said Subdivision; thence westerly 355' along the south line of said quarter section to the east right-of-way of Prospect Street; thence northerly along said right-of-way line 221.25' to the north right-of-way of Lowden Avenue; thence westerly 66' along the north right-of-way of Lowden Avenue to the west right-of-way of Prospect Street; thence northerly along the west right-of-way of Prospect Street 300' to the south right-of-way of Dawes Avenue; thence easterly along said south right-of-way 66' to the east right-of-way line of Prospect Avenue; thence northerly along said east right-of-way line 366' to the south right-of-way of Coolidge Avenue; thence easterly along the south right-of-way of Coolidge 355' to the northeast corner of Lot 6, Block 23 of said Subdivision and then southerly 882' to the place of beginning.