

RESOLUTION NO. R-72-17

A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF WHEATON AND THE WHEATON PARK DISTRICT (430 Willow Avenue)

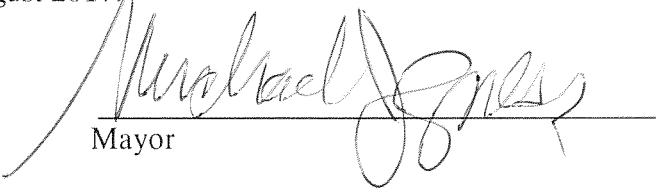
WHEREAS, the City of Wheaton owns a certain property commonly known as 430 Willow Avenue, Wheaton, Illinois; and

WHEREAS, the Wheaton Park District has leased a portion of said property from the City of Wheaton for use as a “tot lot” playground since 2001; and

WHEREAS, the Corporate Authorities of the City of Wheaton have concluded that it is in the best interests of the public health, safety, and welfare to continue leasing the property to the Wheaton Park District in conformance with the terms and conditions of a lease agreement between the City of Wheaton and the Wheaton Park District.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, that the Mayor is hereby authorized to sign and the City Clerk is hereby directed to attest, to that lease agreement attached hereto and incorporated herein as fully set forth as Exhibit 1.

ADOPTED this 7th day of August 2017.


Mayor

ATTEST:


City Clerk

Roll Call Vote:

Ayes: Councilman Suess
Councilman Barbier
Councilwoman Fitch
Councilman Prendiville
Mayor Gresk
Councilman Rutledge
Councilman Scalzo

Nays: None
Absent: None

Motion Carried Unanimously

**LEASE AGREEMENT BETWEEN THE CITY OF WHEATON
AND THE WHEATON PARK DISTRICT (430 Willow Avenue)**

THIS LEASE is made this 7th day of August 2017, by and between the City of Wheaton, an Illinois municipal corporation (hereinafter "Lessor"), and the Wheaton Park District, an Illinois park district (hereinafter "Lessee").

WHEREAS, the Lessor is the owner of the property located at 430 Willow Avenue, Wheaton, Illinois (hereinafter referred to as the "Premise"); and

WHEREAS, Lessee wishes to lease the Premise for the operation of a "Tot Lot;" and

WHEREAS, the Premise is described on Exhibit A which is attached hereto and incorporated herein as fully set forth; and

WHEREAS, the Lessor and Lessee agree that the lease of the Premise shall be governed and controlled by the terms of this agreement.

WHEREFORE, based upon the considerations recited herein, and other good and valuable considerations, and intergovernmental cooperation, Lessor hereby leases to Lessee the Premises subject to the following terms and conditions:

1. **Recitals.** The foregoing preambles are incorporated herein as representing the intent of the parties.
2. **Lease.** For consideration of \$1.00 per annum, Lessor rents the Premise to the Lessee for the term of this lease.
3. **Term.** The term of this Lease shall be for a four (4) year period commencing August 2017 and ending August 2021. The term shall automatically renew for each year thereafter for successive one-year periods unless written notice of termination at the end of an annual term is delivered by either party to the other, not later than ninety (90) days prior to the end of such annual term.
4. **Use.** Subject to compliance with the provisions of the Intergovernmental Cooperation Agreement between the Lessor and the Lessee dated July 20, 1998 ("Intergovernmental Agreement"), Lessee may install such equipment and landscape materials and construct and maintain such facilities as it deems reasonable and necessary for the operation of a "tot lot" recreation and park area intended primarily for the use of young children, their families and patrons of the Wheaton Park District (the "Tot Lot"). Lessee shall restrict use of the Premise to the installation, maintenance and operation of such equipment and landscaping and shall not use the Premise for any other purpose without the prior written consent of the Lessor.

5. Maintenance and Repair. Lessee, at its sole cost and expense, shall maintain the Premise, with the exception of the pump house currently located on the Premise. None of the Lessee's equipment or landscape materials shall interfere with the Lessor's reasonable egress and ingress to the pump house. The Lessor shall have the right to continue to possess, use, demolish, reconstruct and maintain the pump house in the manner it deems necessary at its sole cost and expense.

6. Governmental Regulations and Grant of Authority to Install Playground Equipment. Lessee, at its sole cost, shall comply with all requirements of state and federal regulatory authorities, and local regulatory authorities and as shall be consistent with the Intergovernmental Agreement with respect to its use of the Premise and shall promptly obtain and maintain at its expense and at all times any required licenses or certificates with respect to such use. Lessor acknowledges and agrees that in accordance with the applicable provisions of the Intergovernmental Agreement, Lessor has determined that the improvement of the Premise by Lessee, including the installation of playground equipment, in substantial conformity with the site plan presented to and reviewed by Lessor and captioned Willow/Hillside Proposed Tot Lot, as drawn by N. Sheehan on July 27, 1999 and last revised by M. Vince on December 15, 2000 does not require review by the City pursuant to its Zoning Ordinance. Any proposed change in equipment or layout shall be submitted to the Lessor for permitting in accordance with its standard permitting procedures.

7. Hold Harmless and Indemnification. Lessor shall have no responsibility or liability based on any cause for damage to or destruction or loss of theft of the Lessee's property or improvements on the Premise. Lessee hereby agrees to defend, indemnify and hold harmless the Lessor, its elected and appointed officials, employees, agents and assigns (each, individually, "an Indemnity") from any and all claims, demands, actions, causes of action, damages, injuries, including death, administrative actions, or any other casualty to persons or third person's property from any cause relating to the Lessee's activities on and about the Premise, except to the extent that such arise from the exclusive wrongful acts or omissions of the indemnitee. Neither the Lessor or Lessee by reason of this hold harmless or indemnification, or any insurance provision of this lease, waive, release, or otherwise compromise their statutory and common law privileges and immunities, all of which are specifically reserved by the Lessor and the Lessee to the greatest extent permitted under the law. There are no third-party beneficiaries of this agreement.

8. Insurance. Lessee shall provide and maintain insurance through an insurance company, or in a governmental self-insurance pool or agency, approved by the Lessor at the Lessee's sole cost and expense, public liability insurance insuring the Lessee against all claims, demands, actions, causes of action, damages, injuries, deaths, or other casualties, as follows:

a) Public liability insurance with minimum limits of Three Million Dollars (\$3,000,000) per occurrence (combined single limit) including bodily injury

and property damage in an amount not less than Three Million Dollars (\$3,000,000) annual aggregate for each personal injury and products and completed operations; and

b) Worker's Compensation Insurance meeting applicable statutory requirements and employers' liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident; and

c) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Lessee, its employees and agents on or about the Premise with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence for bodily injury and property damage; and

d) At the start of and during any period of any construction, customary builders' all-risk insurance. Upon completion of construction, builders' insurance shall be replaced with property insurance coverage for vandalism and malicious mischief. The amount of insurance at all times shall be representative of the insurable values installed or constructed as determined by Lessee; and

e) All policies shall be written on an occurrence and not on a claims made basis; and

f) The coverage amounts and terms of coverage set forth above may be met by blanket policies and by a combination of underlying and umbrella policies so long as, in combination, the coverage and limits equal or exceed those stated; and

g) All insurance policies, excluding Workmen Compensation policies, shall name the City of Wheaton as an additional insured. All insurance shall provide that it will not be canceled or materially altered to reduce the policy limits until Lessor has received at least thirty (30) days written notice of such cancellation or change. The policy shall provide customary contractual liability insurance, and shall include coverage for products and completed operations liability, independent contractor's liability, and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCV coverage; and

h.) After the first five (5) years of the lease term and for every five (5) years of the lease term thereafter, Lessor shall have the right to require such coverages and limits as are comparable to those specified above, taking into account inflation, or to require such other coverages and limits as shall be reasonably necessary to carry out the intent of this paragraph. Lessor shall use reasonable best efforts to advise Lessee of changed insurance requirements at least one hundred twenty (120) days prior to the effective date of such change and Lessee shall have the right to terminate this lease in accordance with paragraph 13 below.

9. Evidence of Insurance. Lessee shall provide the Lessor with evidence of such coverage upon the Lessor's request. The Certificate of insurance shall include the following:

- a) The policy number; name of: Insurance Company; name and address of the agent or authorized representative; name, address, and telephone number of the insured; project name and address; policy expiration date; and specific coverage amounts; and
- b) That Lessor shall receive thirty (30) days written notice prior to the cancellation or alterations reducing the policy limits; and
- c) That the Lessee's insurance is primary as respects its Facility, the Premise and any other valid or collectable insurance that Lessor may possess, including any self-assured retention that the Lessor may have; and
- d) That any insurance that Lessor possesses shall be considered excess only and shall not be required to contribute with Lessee's insurance. Any certificates of insurance required by this Lease shall be filed and maintained with the Lessor annually during the term of the Agreement.

10. Policing. Lessee authorizes Lessor, through its duly constituted municipal police department, to enforce all state, county, municipal and park district statutes, codes, and ordinances on all portions of the Premise. This provision shall not be interpreted to establish any "special duty" between the Lessor and the Lessee, or between the Lessor and any person using the park, this section only establishing authority of the Lessor's police department to provide those services on the leasehold pursuant to its general police powers within the City of Wheaton.

11. Care of the Premise. Lessee shall exercise due care in its use of the Premise, and shall return the Premise to Lessor upon termination of this lease or any extension thereof, in as good a condition as it existed upon commencement of this lease, normal wear and tear excepted.

12. Discretionary Termination. Lessee shall have the right to terminate this lease at any time upon ninety (90) days' prior written notice to the Lessor.

13. Termination. Upon termination of this Lease or any successive term for any reason, Lessee shall remove its equipment and facilities from the Premise within a reasonable period of time after such termination at its sole cost and expense and return the Premise to its condition prior to the installation of such equipment and facilities, including re-seeding of the ground disturbed by the removal of the equipment and facilities. If the Lessee does not remove the equipment and facilities within a reasonable amount of time, the Lessor may do so and dispose of the equipment and facilities in any manner whatsoever the Lessor deems appropriate without liability or monetary reimbursement obligations to the Lessee. If the Lessor removes the equipment or facility in conformance with the terms of this section, the Lessee shall reimburse the Lessor for its actual out-of-pocket costs associated with the removal.

14. Default. If default is made by Lessee in any covenant, agreement, condition or undertaking contained in this lease, Lessor shall give written notice thereof to Lessee, and if Lessee fails to cure or otherwise eliminate the cause of such default within thirty (30) days of such notice, or fails to commence and diligently pursue cure of such default within thirty (30) days of such notice, then Lessor may declare this lease, or any extension thereof, terminated and may thereafter re-enter the Premise and take possession thereof pursuant to law in such case made and provided.

15. Waiver of Default. It is further agreed that any specific written waiver by Lessor of a breach of any covenant, agreement, condition or undertaking contained in this lease shall extend only to the particular breach so waived, and shall in no manner impair or effect the existence of such covenant, agreement, condition or undertaking or the right of Lessor to thereafter avail to itself of the same or any subsequent breach thereof. To be effective, waivers shall be in writing and no other action or inaction by the Lessor shall be considered, interpreted or enforced as a waiver of the Lessor's rights hereunder.

16. Assignment and Successors. The benefits and obligations of this lease shall extend to and bind successors in interest of the parties hereto, but no interest in this lease shall be assigned by either party, nor shall the Premise, or any part thereof, be used or occupied by any party other than the Lessor or the Lessee, nor shall Lessor or Lessee allow or permit any lien of any kind to be imposed upon or attached to the Premise, without the express written consent of the Lessor.

17. Notices. All notices required by this lease shall be in writing and delivered to the receiving party at that party's administrative office address as set forth below, with a copy or same to the receiving party's attorney, or to such other address as such receiving party shall hereafter indicate in writing by notice given to the other party as herein provided.

If to Lessor:

City of Wheaton
303 W. Wesley Street
Wheaton, IL 60187
Attn: City Manager
mdzugan@wheaton.il.us

With a copy to Lessor's attorney:

WALSH, KNIPPEN & CETINA, Chartered
2150 Manchester Road, Suite 200
Wheaton, IL 60187
Attn: James Knippen, Esq.

If to Lessee:

Wheaton Park District
102 E. Wesley Street
Wheaton, IL 60187
Attn: Executive Director
mbenard@wheatonparks.org

With a copy to Lessee's attorney:

Tressler, LLP
233 S. Wacker Drive, 22nd Floor
Chicago, IL 60606
Attn: Andrew S. Paine

Delivery of all notices shall be either by: (a) personal delivery during regular business hours; (b) facsimile transmission during regular business hours; or (c) registered or certified mail, return receipt requested, properly addressed with postage prepaid and deposited in the United States mail or (d) e-mail. Notices served personally or by facsimile transmission or e-mail to the City Manager or Park District shall be effective upon receipt and notices served by mail shall be effective upon receipt as verified by the United States Postal Service.

IN WITNESS WHEREOF, Lessor has caused this lease 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 Lessee has caused this lease 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, an as of the day and year first above written.

CITY OF WHEATON

By:

Mayor



ATTEST:

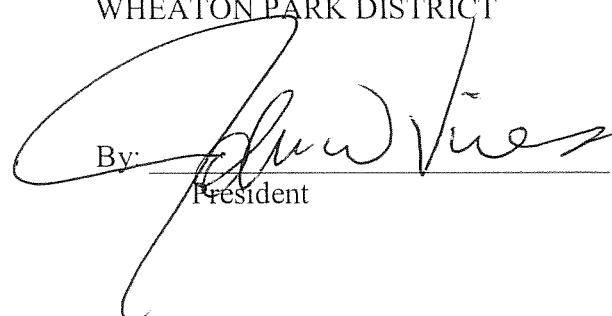


Sean Bennett, Hign
City Clerk

WHEATON PARK DISTRICT

By:

President



ATTEST:



Secretary

EXHIBIT A – DESCRIPTION OF PREMISE

The East one hundred thirty-two (132) feet of the North one hundred sixty-five (165) feet of the West four hundred thirty-eight (438) feet of Block (or Lot) Seven (7) of the Plat of the County Clerk's Assessment Division of all unsub divided lands in the South half of Section Sixteen (16), Township Thirty-Nine (39) North, Range Ten (10) East of the third Principal Meridian.

Commonly known as: 430 Willow Avenue, Wheaton, Illinois 60187

PIN: 05-16-411-008-0000

