

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 4<sup>th</sup> day of January 2021.

  
\_\_\_\_\_  
Philip J. Suess  
Mayor

ATTEST:

  
\_\_\_\_\_  
Shawn Bennett Page  
City Clerk

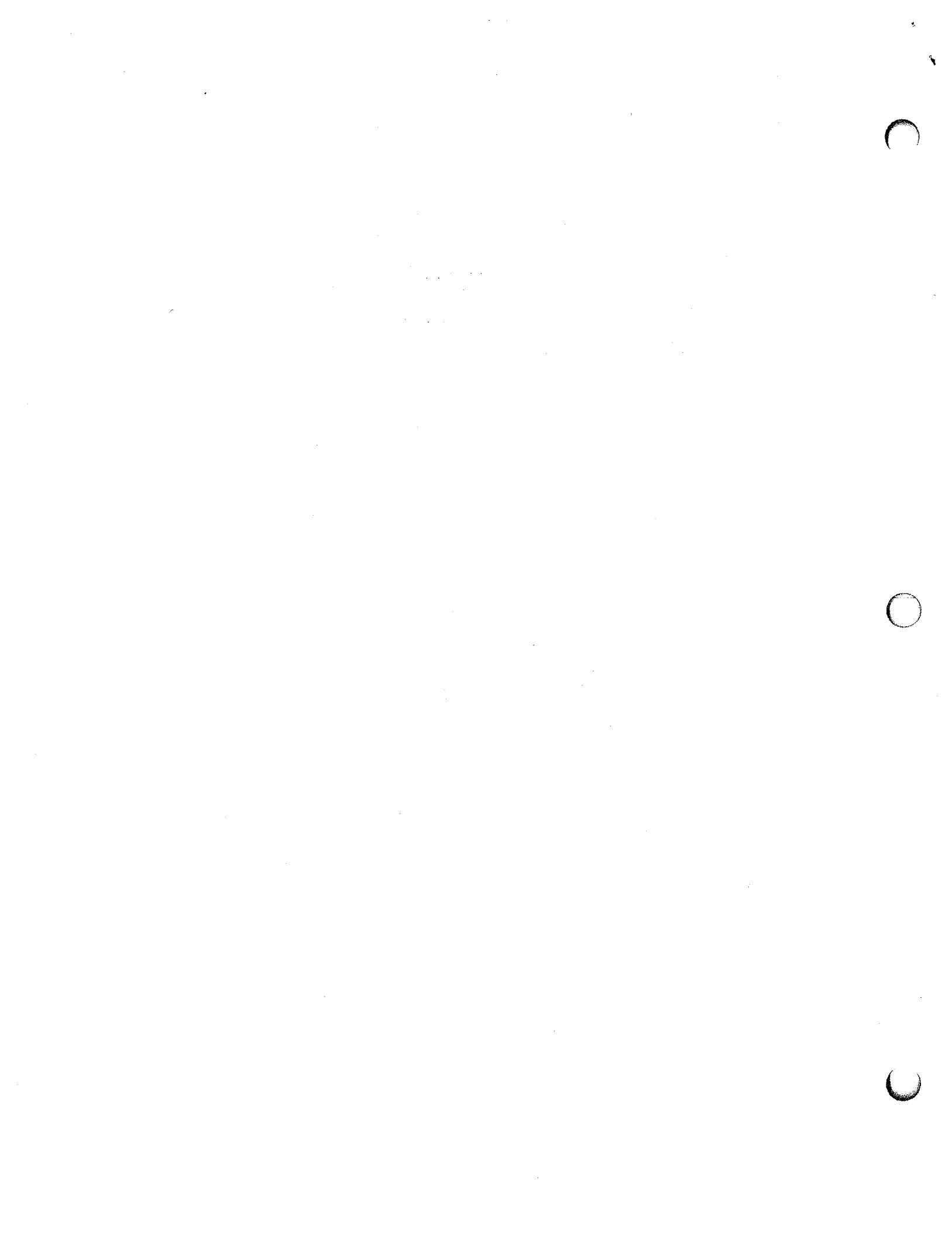
Roll Call Vote:

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

Nays: None

Absent: None

Motion Carried Unanimously



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

This First Amendment ("Amendment") is made and entered into this 16<sup>th</sup> 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 1<sup>st</sup> 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.

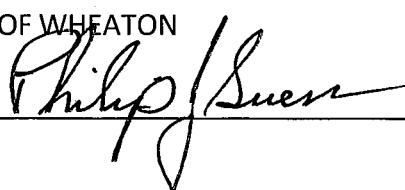
7. Counterparts. This Amendment may be executed in counterparts, each of which shall be an original but all of which taken together shall constitute but one and the same instrument. In the event any signature is delivered by facsimile or by e-mail delivery of a scanned .pdf file, such signature shall 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.

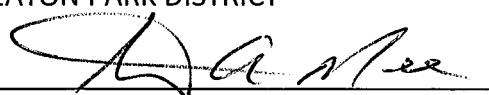
CITY OF WHEATON

By: \_\_\_\_\_



WHEATON PARK DISTRICT

By: \_\_\_\_\_



It's: Mayor

Attest: Shawn Bennett Hogan

Its: City Clerk

Date: 1-5-21

Its: \_\_\_\_\_

Attest: M. Berger

Its: Secretary

Date: 1/5/2021