

RESOLUTION R-2024-55

**A RESOLUTION APPROVING AN EASEMENT AGREEMENT FOR A PUBLIC SIDEWALK
(26W171 ROOSEVELT ROAD)**

WHEREAS, the owner of the property located at 26W171 Roosevelt Road, and the City of Wheaton have generated an easement agreement for a public sidewalk, and

WHEREAS, the owner of the property located at 26W171 Roosevelt Road has signed the easement agreement for a public sidewalk and presented it to the City for approval (the property is legally described in Exhibit A, attached to this resolution) and the Wheaton City staff has recommended that the easement grant be approved.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the easement agreement for a public sidewalk, is hereby approved, and the Mayor is hereby authorized to sign, and the City Clerk is directed to attest to the easement agreement for a public sidewalk incorporated herein as Exhibit B.

ADOPTED this 17th day of June 2024.



Philip J. Suess
Mayor

ATTEST:



Andrea Rosedale
City Clerk

Roll Call Vote:

Ayes: Councilwoman Robbins
Councilman Weller
Councilwoman Bray-Parker
Mayor Pro Tem Barbier

Nays: None
Absent: Councilman Brown
Mayor Suess
Councilman Clousing

Motion Carried Unanimously

Exhibit A

Legal Description

26W171 Roosevelt Road
Wheaton, IL 60187

TRACT A

PARCEL 1:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 19; THENCE SOUTH 85 DEGREES 16 MINUTES WEST ALONG THE NORTH LINE OF SAID SECTION 19 A DISTANCE OF 830.25 FEET (SOUTH 85 DEGREES 16 MINUTES 44 SECONDS WEST 837.32 FEET MEASURED); THENCE SOUTH 0 DEGREES 07 MINUTES EAST (SOUTH 0 DEGREES 05 MINUTES 33 SECONDS EAST MEASURED) 986.92 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 27 SECONDS WEST 100 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 05 MINUTES 33 SECONDS EAST 246.76 FEET; THENCE SOUTH 50 DEGREES 48 MINUTES 23 SECONDS WEST 119.93 FEET; THENCE N 39 DEGREES 11 MINUTES 37 SECONDS WEST 415.44 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 27 SECONDS EAST 355.09 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 05-19-201-005-0000

PARCEL 2(A):

LOT 2 IN MARIAN PARK ASSESSMENT PLAT OF PART OF LOTS "B" AND "C" IN THE PARTITION PLAT OF THE ESTATE OF EDWARD N. HURLEY IN THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO SAID MARIAN PARK ASSESSMENT PLAT RECORDED SEPTEMBER 24, 1973 AS DOCUMENT NO. R73-60791 AND CERTIFICATE OF CORRECTION RECORDED JANUARY 23, 1974 AS DOCUMENT NO. R74-03738, EXCEPTING THEREFROM THAT PART TAKEN FOR HIGHWAY PURPOSES IN CASE NO. 73ED42, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2(B):

THAT PART OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION AND RUNNING THENCE SOUTH 85 DEGREES 16 MINUTES WEST, ALONG THE NORTH LINE OF SAID SECTION A DISTANCE OF 830.25 FEET FOR A PLACE OF BEGINNING; THENCE SOUTH 00 DEGREES 07 MINUTES EAST A DISTANCE OF 1460.16 FEET; THENCE SOUTH 34 DEGREES 39 MINUTES WEST A DISTANCE OF 182.54 FEET; THENCE SOUTH 86 DEGREES 08 MINUTES WEST A DISTANCE OF 1450.65 FEET; THENCE NORTH 00 DEGREES 07 MINUTES WEST A DISTANCE OF 1579.75 FEET TO THE NORTH LINE OF SECTION 19 AFORESAID; THENCE NORTH 85 DEGREES 16 MINUTES EAST ALONG SAID NORTH LINE A DISTANCE OF 1556.31 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM ANY PART THEREOF FALLING AND BEING IN LOTS 1 AND 2 OF MARIAN PARK ASSESSMENT PLAT RECORDED AS DOCUMENT NO. R73-60791;

AND EXCEPTING THEREFROM PARCEL 1 DESCRIBED ABOVE;

AND ALSO EXCEPT THAT PART OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF TRACT "C" OF THE PARTITION PLAT OF THE ESTATE OF EDWARD N. HURLEY ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 21, 1935 AS DOCUMENT NO. 355699; THENCE NORTH 86 DEGREES 15 MINUTES 03 SECONDS EAST ALONG THE SOUTH LINE OF SAID TRACT "C", 58.79 FEET TO THE EASTERLY LINE OF LOT 1 IN MARIAN PARK ASSESSMENT PLAT, RECORDED AS DOCUMENT R73-60791, FOR THE POINT OF BEGINNING; THENCE NORTH 30 DEGREES 32 MINUTES 29 SECONDS EAST ALONG SAID EASTERLY LINE, 129.94 FEET TO AN ANGLE POINT IN SAID EASTERLY LINE; THENCE SOUTH 68 DEGREES 25 MINUTES 11 SECONDS EAST, 174.36 FEET; THENCE SOUTH 59 DEGREES 33 MINUTES 15 SECONDS EAST, 32.43 FEET; THENCE NORTH 30 DEGREES 26 MINUTES 45 SECONDS EAST, 32.64 FEET; THENCE SOUTH 59 DEGREES 33 MINUTES 15 SECONDS EAST, 1.30 FEET; THENCE NORTH 30 DEGREES 19 MINUTES 51 SECONDS EAST, 37.87 FEET; THENCE NORTH 59 DEGREES 40 MINUTES 09 SECONDS WEST, 13.22 FEET; THENCE NORTH 30 DEGREES 19 MINUTES 51 SECONDS EAST, 72.60 FEET; THENCE SOUTH 59 DEGREES 22 MINUTES 07 SECONDS EAST, 123.86 FEET; THENCE NORTH 30 DEGREES 33 MINUTES 08 SECONDS EAST, 55.76 FEET; THENCE SOUTH 59 DEGREES 26 MINUTES 52 SECONDS EAST, 205.53 FEET TO THE SOUTH LINE OF TRACT "C" IN SAID PARTITION PLAT OF THE ESTATE OF EDWARD N. HURLEY; THENCE SOUTH 86 DEGREES 15 MINUTES 03 SECONDS WEST ALONG SAID SOUTH LINE, 631.43 FEET TO THE POINT OF BEGINNING;

AND ALSO EXCEPT THAT PART OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

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ALL IN DUPAGE COUNTY, ILLINOIS.

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PARCEL 4

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PERMANENT INDEX NUMBER PARCELS 2(a), 2(b), 3 AND 4: PART OF 05-19-201-004-0000

P.I.N : 05-19-201-006

EASEMENT AGREEMENT**PUBLIC SIDEWALK**

ADDRESS: 26W171 Roosevelt Road
Wheaton, IL 60187

P.I.N. 05-19-201-006

This indenture witnesseth:

Whereas, Wheaton Franciscan Sisters Corporation, an Illinois not-for-profit corporation located at 26W171 Roosevelt Road, Wheaton, DuPage County, Illinois, hereinafter referred to as "Grantor", is the sole owner of record of the real estate hereinafter described as "Tract A" and is willing to grant a perpetual non-exclusive public sidewalk easement on, over, across, upon, along, under, in and through said real estate for the purposes herein specified; and

Whereas, the City of Wheaton, an Illinois municipal corporation, hereinafter referred to as "Grantee", has agreed to construct a public sidewalk (the "Sidewalk") and accept a public sidewalk easement, with all necessary appurtenances thereto, through and across Tract A (as legally described in Exhibit 1 attached hereto).

Now therefore, the Grantor, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, does hereby and in accordance with the terms and provisions hereof grant, give, convey, and warrant to the Grantee, its successors, and assigns, a perpetual non-exclusive easement (as legally described and depicted as Tract B in Exhibit 2 attached hereto), and the right, privilege and authority on, over, across, upon, along, under, in and through Tract A with full and free entry for the purpose of constructing, designing, surveying, reconstructing, repairing, maintaining, traversing, and observing said sidewalk improvement, including any appurtenances as may be deemed necessary by the Grantee, including the right to cut, trim, or remove trees, bushes and roots, as well as for the right of the public to use the sidewalk, and hereby releases and waives all rights under and by virtue of the homestead exemption laws of the State of Illinois in and to said Tract B.

It is covenanted and agreed between the Grantor and Grantee as follows:

1. **Recitals.** The Recitals set forth above and the exhibits attached hereto are incorporated into this Agreement by this reference as if they were fully set forth herein.

2. **Grantor's Use of Sidewalk.** The Grantor shall have and retain all rights to the use and occupation of Tract A, except as herein expressly granted and provided. Such use and occupation by the Grantor shall not unnecessarily interfere with any work deemed necessary by the Grantee.

3. **Non-Interference.** The Grantor covenants and agrees that the Grantor will not in any manner disturb, damage, destroy, injure or obstruct the Sidewalk or any part of the appurtenances thereto and will not interfere with the Grantee, its contractors or subcontractors or

with the agents or employees, in the exercise of any of the rights, privileges, or authorities hereby given and granted.

4. Repairs and Maintenance. The Grantee shall keep and maintain the Sidewalk in a safe, secure and lawful condition. The Grantee shall be responsible for all repairs, replacement and maintenance of the Sidewalk. The City will be responsible for the removal of ice and snow from the Sidewalk in accordance with the Wheaton City Code.

5. Construction of Sidewalk. All work performed by Grantee in connection with construction of the Sidewalk ("Sidewalk Work") shall be done in a good and workmanlike manner and any and all costs associated with the construction of the Sidewalk shall be at the sole cost and expense of Grantee. Grantee hereby indemnifies and holds Grantor harmless from and against any and all loss, claim and/or damage done to all or any portion of Tract A proximately caused by or from its entry or activities on Tract A following the Effective Date, including but not limited to indemnification with respect to mechanics liens which may arise as a result of the construction of the Sidewalk. Grantee shall carry liability insurance of not less than two million dollars (\$2,000,000.00) and shall obtain a liability insurance certificate naming Grantor as an additional insured party.

6. Responsibility related to Sidewalk Construction. Grantee and Grantee's contractors, subcontractors, employees, agents, licensees, successors and assigns (collectively, and together with Grantee, "Grantee Responsible Parties") shall enter onto Tract A and perform the Sidewalk Work at their own risk and they further assume all risks related to the same. Grantor shall have no liability to Grantee's Responsible Parties for any cost, loss or damage related to or arising from entry onto Tract A to perform the Sidewalk Work.

7. Condition of Adjacent Areas. Upon completion of any construction, maintenance, repair or replacement of the Sidewalk, the Grantee shall remove all debris and rubbish, fill all ditches and other excavations resulting from such work, and restore the ground as nearly as possible to the condition immediately preceding the work including (i) resodding any area destroyed or disturbed as a result of the construction, maintenance, repair or replacement of the Sidewalk, or (ii) replacing any trees, sod or shrubbery damaged due to the Sidewalk Work located on the property owned by Grantor adjacent to the Sidewalk.

8. Indemnification. The Grantee shall indemnify Grantor from and against any losses, causes of action, damages, claims for injuries to persons using the sidewalk, due to the failure of the City to properly construct, maintain, repair and replace the Sidewalk. This does not preclude the Grantee, however, from availing itself of any and all immunities and limitations of the Illinois Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*, and any amendments thereto.

9. Pedestrian Signal. As part of other improvements related to the Sidewalk Work that will be made by Grantee along Roosevelt Road, within three (3) months of completion of the Sidewalk, Grantee shall install an accessible pedestrian signal on the existing traffic signals for pedestrians to cross Community Drive at Roosevelt Road.

10. Covenant Running With Land. This indenture and the covenants and agreements herein contained shall run with the land and shall be binding upon the owners and residents and their grantees, lessees, successors, heirs, devisees, and assigns, and any, either, or all of the same, of the parties hereto and shall be in full force and effect when accepted by the Grantee in the manner herein provided.

11. Notices. Any notice, demand, request, consent, approval, designation, or other communication made pursuant to this Agreement by one party to the other party shall be in writing and shall be given or made or communicated by certified mail, return receipt requested, personal delivery, or nationally recognized courier service, addressed as follows:

If to Grantor: Wheaton Franciscan Sisters Corporation
26W171 Roosevelt Road
Wheaton, IL 60187
Attn: President

If to Grantee: City of Wheaton
303 W. Wesley Street
Wheaton, IL 60187
Attn: City Manager

Any party may, at any time, change its address for the above purpose by mailing, as aforesaid, at least ten (10) days before the effective date thereof, a notice stating the change and setting forth the new address. Any notice, demand, request, consent, approval or designation shall be sent as above provided and be deemed to have been given, made, received and communicated, as the case may be, upon receipt by certified mail or upon proof of personal delivery.

12. Miscellaneous.

(a) No waiver by either party of any default under this Agreement shall be effective or binding upon such party unless made in writing. No waiver of any default shall be deemed a waiver of any other or subsequent default hereunder.

(b) If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion thereof shall remain in full force and effect.

(c) This Agreement shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Illinois, including, without limitation, matters affecting title to all real property described in this Agreement.

(d) In the event that any party shall institute any actions or any proceeding against the other relating to the provisions of this Agreement, or any default under this Agreement, then, and in that event, the unsuccessful party in such action or proceeding shall reimburse the successful party therein for the reasonable expenses of attorneys' fees and disbursements incurred, by the successful party, during the action or proceeding.

(e) Time is of the essence of the performance of the terms of this Agreement.

(f) This Agreement sets forth the entire understanding and agreement of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement.

(g) None of the terms or provisions of this Agreement shall be deemed to create a partnership between the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise..

(h) This Agreement may be executed in any number of counterpart originals, all of which when taken together shall constitute one fully executed original Agreement.

IN WITNESS HEREOF, the parties have executed this Agreement as of the ____ day of June, 2024.

GRANTOR:

WHEATON FRANCISCAN SISTERS
CORPORATION

By: Sr. Mary Lou Wirtz
Name: Sr. Mary Lou Wirtz
Title: President

GRANTEE:

CITY OF WHEATON

By: Philip J. Suess
Philip Suess, Mayor

Attest: Andrea Rosedale

Andrea Rosedale, City Clerk

State of Illinois) ss
County of DuPage)

I, Rosemarie Stewart, a notary public in and for said county, in the state aforesaid, do hereby certify that Sr. Mary Lou Wirtz, President of Wheaton Franciscan Sisters Corporation personally known to me to be the same person(s) whose name is upon the subscribed the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered said instrument as her free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead mentioned in said instrument.

Given under my hand and notarial seal this 12th day of June, 2024.

Rosemarie Stewart
Notary public

This document prepared by:
City of Wheaton
Legal Department
303 W. Wesley St.
Wheaton, IL 60187

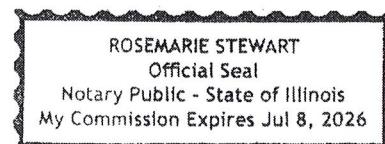


EXHIBIT 1

TRACT A

PARCEL 1:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 19; THENCE SOUTH 85 DEGREES 16 MINUTES WEST ALONG THE NORTH LINE OF SAID SECTION 19 A DISTANCE OF 830.25 FEET (SOUTH 85 DEGREES 16 MINUTES 44 SECONDS WEST 837.32 FEET MEASURED); THENCE SOUTH 0 DEGREES 07 MINUTES EAST (SOUTH 0 DEGREES 05 MINUTES 33 SECONDS EAST MEASURED) 966.92 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 27 SECONDS WEST 100 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 05 MINUTES 33 SECONDS EAST 246.76 FEET; THENCE SOUTH 50 DEGREES 48 MINUTES 23 SECONDS WEST 119.93 FEET; THENCE N 39 DEGREES 11 MINUTES 37 SECONDS WEST 415.44 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 27 SECONDS EAST 355.09 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 05-19-201-005-0000

PARCEL 2(A):

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PARCEL 2(B):

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THAT PART OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF TRACT "C" OF THE PARTITION PLAT OF THE ESTATE OF EDWARD N. HURLEY ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 21, 1935 AS DOCUMENT NO. 355699; THENCE NORTH 86 DEGREES 15 MINUTES 03 SECONDS EAST ALONG THE SOUTH LINE OF SAID TRACT "C", 690.22 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 86 DEGREES 15 MINUTES 03 SECONDS EAST ALONG SAID SOUTH LINE, 68.95 FEET; THENCE SOUTH 59 DEGREES 30 MINUTES 54 SECONDS EAST, 51.05 FEET; THENCE SOUTH 30 DEGREES 33 MINUTES 11 SECONDS WEST, 38.92 FEET; THENCE NORTH 59 DEGREES 26 MINUTES 52 SECONDS WEST, 108.00 FEET TO THE POINT OF BEGINNING; IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER PARCELS 2(a), 2(b), 3 AND 4: PART OF 05-19-201-004-0000

**EXHIBIT #2
FOR
SIDEWALK IMPROVEMENT
26W171 ROOSEVELT RD, ILLINOIS**

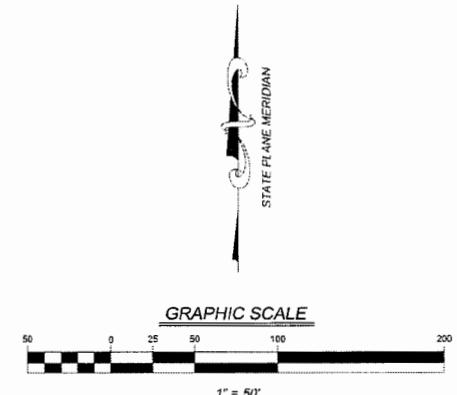
PIN: 15-19-201-006



VICINITY MAP
NOT TO SCALE

PART OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH,
RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

TRACT B LEGAL DESCRIPTION
THAT PART OF LOT 1 IN WFCS-MARIANJOY REHABILITATION HOSPITAL PLAT OF ASSESSMENT, IN THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NO. R2016-067191, DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE SOUTH RIGHT-OF-WAY LINE OF ROOSEVELT ROAD PER DOC. NO. R1999-110752 AND AS SHOWN ON SAID DOC. NO. R2016-067191: 1) NORTH 85 DEGREES 01 MINUTES 55 SECONDS EAST, 309.04 FEET; 2) NORTH 21 DEGREES 21 MINUTES 00 SECONDS EAST, 11.16 FEET; 3) NORTH 85 DEGREES 01 MINUTES 55 SECONDS EAST, 497.84 FEET TO THE EASTERLY LINE OF SAID LOT 1; THENCE SOUTH 00 DEGREES 07 MINUTES 47 SECONDS EAST ALONG SAID EASTERLY LINE, 25.09 FEET; THENCE SOUTH 85 DEGREES 01 MINUTES 55 SECONDS WEST, 815.78 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 17 DEGREES 02 MINUTES 49 SECONDS EAST ALONG SAID WEST LINE, 16.18 FEET TO SAID PLACE OF BEGINNING, IN DUPAGE COUNTY ILLINOIS.



26 50 100

BASIS OF BEARINGS

THE BASIS OF BEARINGS IS THE STATE PLANE COORDINATE SYSTEM (SPCS) NAD 83 (2011) ZONE 1201 (ILLINOIS EAST).

