

RESOLUTION NO. R-68-17

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT

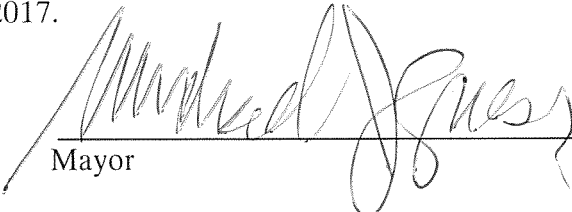
WHEREAS, the City of Wheaton has been involved in code compliance litigation with the defendant, Barbara McLaren Williams as trustee of the Barbara McLaren Williams trust dated August 10, 1988 (hereinafter the "Parties"); and

WHEREAS, the City has reached a negotiated settlement of the claims associated with that litigation which contemplates; the defendant paying the City fines, reimbursing the City for attorney's fees and reimbursing the City for protective fencing in the sum of \$23,000; and

WHEREAS, the Parties have agreed that the \$23,000 payment to the City will come from settlement proceeds paid by the Wheaton Park District to the defendant trustee, in case number DuPage Circuit Court case number 2016 ED 2002.

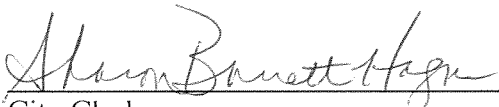
NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, that the Mayor is hereby authorized to sign and the City Clerk is hereby directed to attest, to that settlement agreement and mutual release of claims attached hereto and incorporated herein as fully set forth as Exhibit 1. The City Attorney is further authorized to undertake any and all acts reasonably necessary to complete the settlement.

ADOPTED this 17th day of July 2017.



Mayor

ATTEST:



City Clerk

Ayes: Roll Call Vote:
 Councilman Scalzo
 Councilman Barbier
 Councilwoman Fitch
 Mayor Pro Tem Sues
 Councilman Rutledge

Nays: None
Absent: Mayor Gress
 Councilman Prendiville

Motion Carried Unanimously

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DuPAGE COUNTY, WHEATON, ILLINOIS

WHEATON PARK DISTRICT, an)	
Illinois Park District,)	
Plaintiff,)	
)	
vs.)	No. 2016 ED 00002
)	
BARBARA McLAREN WILLIAMS as)	
TRUSTEE OF THE BARBARA McLAREN)	
WILLIAMS TRUST DATED AUGUST 10,)	
1988, BENEFICIARIES OF THE BARBARA)	
McLAREN WILLIAMS TRUST DATED)	
AUGUST 10, 1988, CITY OF WHEATON,)	
and UNKNOWN OWNERS,)	
Defendants.)	

SETTLEMENT AGREEMENT
AND MUTUAL RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS (the "Agreement") is entered into by and between the Plaintiff, WHEATON PARK DISTRICT, represented by its attorneys, the Law Offices of Schirott, Luetkehans & Garner, LLC, Defendant, BARBARA McLAREN WILLIAMS as TRUSTEE OF THE BARBARA McLAREN WILLIAMS TRUST DATED AUGUST 10, 1988 (the "Owner"), represented by her attorneys, Alt Law Offices LLC, and the City of Wheaton (the "City"), represented by Walsh, Knippen & Cetina. The Plaintiff, Owner and the City are hereafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties".

I. RECITALS

A. The real estate subject to this Agreement ("the Property") is an approximate 1.525 acre parcel legally described and depicted in **Exhibit A**, attached hereto.

B. On January 22, 2016, the Plaintiff filed a Complaint for Condemnation in the Circuit Court of the Eighteenth Judicial District under Case No. 2016 ED 02 in order to acquire the Property.

C. The following Defendant has appeared: Barbara McLaren Williams as Trustee of the Barbara McLaren Williams Trust dated August 10, 1988, by and through her attorneys, Alt Law Offices LLC.

D. Defendant City of Wheaton is represented by Walsh, Knippen & Cetina.

E. A default judgment was entered on April 20, 2016 against Defendant Unknown Owners; and

F. Since the filing of said Complaint, the Parties have agreed to settle and terminate this litigation with prejudice.

II. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Parties hereby adopt the foregoing Recitals and affirm that the construction of this Agreement shall be guided thereby.

2. The Parties agree and to finally settle and compromise the issues raised in this lawsuit. By entering this settlement, it is understood that neither party makes any admission, concession, or statement regarding any other party's factual contentions or legal position. This settlement is meant to finally and fully resolve the eminent domain action, transfer full ownership rights and obligations relating to the Property to the Plaintiff, and compensate Barbara McLaren Williams as Trustee of the Barbara McLaren Williams Trust dated August 10, 1988 for the Plaintiff's taking of her property.

3. The Parties agree to jointly apply to the Circuit Court of DuPage County for entry of a Final Judgment Order, a copy of which is attached hereto as **Exhibit B**, when the terms of this Agreement have been fully satisfied, representing to the Court stipulated evidence that the just compensation for the taking of the Property, is the total amount of Eight Hundred Seventy-Five Thousand Dollars and 00 100 Cents (\$875,000.00) (the "Just Compensation Amount").

4. The City and Defendant agree that Twenty-Three Thousand Dollars and 00 100 Cents (\$23,000) of the Just Compensation Amount shall be paid to the City in exchange for any lien rights it may have on or in the Property.

5. The Plaintiff shall pay on or before fourteen (14) days after the entry of the Final Judgment Order, the amount of Eight Hundred Seventy-Five Thousand Dollars and 00 100 Cents (\$875,000.00) without interest, as just compensation for the taking of the Property. Payment shall be made and deposited with the Treasurer of DuPage County.

6. The Owner and the City may apply to the Court for withdrawal of said just compensation funds as set forth in this Settlement Agreement and Mutual Release of Claims. Prior to the withdrawal of said funds, notice of the proposed withdrawal shall be given to the Plaintiff's attorneys, the attorneys for the City and any other attorneys who have appeared on behalf of any other party to this lawsuit, and to the attorney for the DuPage County Tax Collector.

7. The Owner represents and warrants to the Plaintiff that:

A. The Defendant Owner agrees to permit the Plaintiff and or it agents to enter upon the Property for purposes of survey, soil testing and related activities. The Plaintiff shall provide 48-hour written notice to the Owner's attorney prior to entering upon the premises. Plaintiff shall defend, indemnify, and hold harmless the Defendant Owner from all claims, demands, lawsuits, liens, and causes of action of any kind arising out of Plaintiff or its agent's presence and or work at the Property.

B. There are no known encroachments into the Property.

C. There are no leases encumbering the Property.

D. In accordance with 50 ILCS 105 3.1, the Owner has provided a truthful and accurate disclosure of all parties having an interest in the Property being acquired, including a disclosure of all beneficiaries in any land trust with an interest in the Property. A copy of said disclosure is attached hereto as **Exhibit C**.

8. The Owner agrees to execute any and all conveyancing documents and related documents determined to be reasonably necessary so as to result in the Plaintiff obtaining fee simple title to the Property free and clear of any mortgages, security instruments or other encumbrances not otherwise permitted.

9. The Parties agree that the Court shall retain jurisdiction over this case to enforce the terms of this Agreement, and also to enter the Final Judgment Order, once the terms and conditions of this Agreement have been complied with in a satisfactory manner by both Parties.

10. Upon the entry of the Final Judgment Order:

A. The Owner for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound, agree to on behalf of themselves, their attorneys, employees, agents, representatives and assigns, or any persons acting on their behalf (collectively referred to as "the Owner Releasers") forever release and discharge the Plaintiff and the City and each of their commissioners, officers, directors, shareholders, successors, agents, employees, attorneys, representatives and assigns, or any person acting on their behalf (collectively referred to as "the Plaintiff and City Releasers"), from all claims, obligations, actions, demands, rights, costs, expenses, compensation or causes of action of any nature whatsoever, whether based on tort, contract, statutory or other theory of recovery, and whether for compensatory, punitive, statutory or other forms of damage or relief, whether legal or equitable, whether asserted or unasserted, that have accrued from the beginning of the world to the date hereof, including but not limited to, any and all claims for damage or loss arising out of any claims the Owner Releasers may have against any of the Plaintiff and City Releasers for any matter whatsoever related to the Property, including, but not limited to the matters which are currently the subject of litigation in this lawsuit.

B. The Plaintiff for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound, agrees to on behalf of itself, its

attorneys, its employees, agents, representatives and assigns, or any persons acting on its behalf (collectively referred to as "the Plaintiff Releasers") forever release and discharge the Owner and the City and each of their beneficiaries, successors, agents, employees, attorneys, representatives and assigns, or any person acting on their behalf (collectively referred to as "the Owner and City Releasers"), from all claims, obligations, actions, demands, rights, costs, expenses, compensation or causes of action of any nature whatsoever, whether based on tort, contract, statutory or other theory of recovery, and whether for compensatory, punitive, statutory or other forms of damage or relief, whether legal or equitable, whether asserted or unasserted, that have accrued from the beginning of the world to the date hereof, including but not limited to, any and all claims for damage or loss arising out of any claims the Plaintiff Releasers may have against any of the Owner and City Releasers for any matter whatsoever related to the Property, including, but not limited to the matters which are currently the subject of litigation in this lawsuit.

C. The City for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound, agrees to on behalf of itself, its attorneys, its employees, agents, representatives and assigns, or any persons acting on its behalf (collectively referred to as "the City Releasers") forever release and discharge the Owner and the Plaintiff, each of their beneficiaries, successors, agents, employees, attorneys, representatives and assigns, or any person acting on their behalf (collectively referred to as "the Owner and Plaintiff Releasers"), from all claims, obligations, actions, demands, rights, costs, expenses, compensation or causes of action of any nature whatsoever, whether based on tort, contract, statutory or other theory of recovery, and whether for compensatory, punitive, statutory or other forms of damage or relief, whether legal or equitable, whether asserted or unasserted, that have accrued from the beginning of the world to the date hereof, including but not limited to, any and all claims for damage or loss arising out of any claims the City Releasers may have against any of the Owner and Plaintiff Releasers for any matter whatsoever related to the Property, including, but not limited to the matters which are currently the subject of litigation in this lawsuit.

11. Each Party represents and warrants to the other, and agrees with the other, as follows:

A. It has received independent legal advice from attorneys of its own choice with respect to the advisability of making the settlement provided for herein, and with respect to the advisability of executing this Agreement prior to the execution of this Agreement by the Parties;

B. It is not relying on any statement, representation, or promise of any other Party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement;

C. It has made such investigation of the facts pertaining to case settlement and this Agreement, and of all the matters pertaining hereto, as it deemed necessary;

D. The terms of this Agreement are contractual and not a mere recital, and this Agreement is the result of negotiations between the Parties;

E. It has carefully read the contents contained herein and affirms that the Agreement is entered into in good faith and freely signed by it;

F. The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions unenforceable or invalid; and

G. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

12. To the extent permitted by law, this Agreement shall inure to the benefit of, and shall be binding upon its present, former and subsequent affiliated subsidiary and parent companies, corporations, partnerships and wholly owned divisions, if any, and all of their present, former and subsequent trustees, agents, attorneys, directors, employees, heirs, officers, partners, representatives, shareholders, assignors and assignees, if any, except as expressly provided herein.

13. This Agreement constitutes the entire Agreement between the Parties pertaining to the subject matter hereof and of the final, complete and exclusive expressions of the terms and conditions hereof. All prior agreements, representations, negotiations and understandings of the Parties whether oral, written, expressed or implied are superseded and merged herein.

14. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing and signed by all Parties.

15. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

16. In any action to enforce this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs of litigation.

17. This Agreement is subject to and contingent upon, and must be approved by, the Plaintiff's Board of Commissioners.

18. This Agreement may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement and Mutual Release of Claims by setting forth the authorized signatures appearing below:

OWNER:

BARBARA McLAREN WILLIAMS as
TRUSTEE OF THE BARBARA McLAREN
WILLIAMS TRUST DATED AUGUST
8, 1988

By:

Date:

PLAINTIFF:

WHEATON PARK DISTRICT,
an Illinois Park District

By:

Its:

Attested By:

Date:

CITY

CITY OF WHEATON,
an Illinois Municipal Corporation

By:

Its:

Attested By:

Sharon Burnett Hagen

Date: 7-18-17

SCHIROTT, LUETKEHANS & GARNER, LLC
105 E. Irving Park Rd.
Itasca, Illinois 60143
(630) 773-8500
Attorney No. 8500

EXHIBIT A

LEGAL DESCRIPTION

LOT 1 IN WILLIAMS RESUBDIVISION, BEING A RESUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 28, 1989, AS DOCUMENT R89-120886, IN DU PAGE COUNTY, ILLINOIS

AND

LOTS 2, 3 AND 4 OF WILLIAMS RE-SUBDIVISION OF LOT 8 IN THOMPSON'S SUBDIVISION, BEING A SUBDIVISION IN THE SOUTH EAST 1/2 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 19, 1978 AS DOCUMENT R78- 89345 IN DUPAGE COUNTY, ILLINOIS.

Permanent Index Number(s): 05-08-408-032; 05-08-408-033; 05-08-408-034; 05-08-408-035

Address of Real Estate: 1313 Gary Avenue, Wheaton, Illinois

EXHIBIT B
FINAL JUDGMENT ORDER

EXHIBIT C
PROPERTY DISCLOSURE

