



99482764

99482764

5141/0070 30 001 Page 1 of 12
1999-05-19 12:01:06
Cook County Recorder 43.50

RETAINING WALL AND SHARED DRIVEWAY EASEMENT AGREEMENT

This **RETAINING WALL AND SHARED DRIVEWAY EASEMENT AGREEMENT** is made as of May 5th, 1999 between McWILLIAMS ELECTRIC CO., INC., an Illinois corporation ("McWilliams") and WILLIAM C. GALT, a widower, of the City of Chicago, County of Cook, State of Illinois ("Galt", and together with McWilliams hereinafter sometimes collectively referred to as the "Owners" and each individually as an "Owner").

The following recitals of fact are a material part of this Agreement:

A. McWilliams is the holder of fee title to a certain parcel of land in the City of Schaumburg, County of Cook and State of Illinois, which is legally described on Exhibit A hereto (the "**McWilliams Parcel**") and has a common street address of 1129 West Lunt Avenue, Schaumburg, Illinois.

B. Galt is the holder of fee title to a certain parcel of land in the City of Schaumburg, County of Cook and State of Illinois, which lies east of and adjacent to the McWilliams Parcel and is legally described on Exhibit B hereto and has a common street address of 1119 West Lunt Avenue, Schaumburg, Illinois (the "**Galt Parcel**," and together with the McWilliams Parcel hereinafter sometimes collectively referred to as the "**Parcels**" and each individually as a "**Parcel**").

C. Several years ago a predecessor-in-title to the McWilliams Parcel constructed along the southerly portion of the property line dividing the McWilliams Parcel and the Galt Parcel a retaining wall ("**Original Retaining Wall**") approximately 82 feet in length for the purpose of shoring up and supporting the southwestern portion of the Galt Parcel, which support was necessitated by reason of excavation work performed by McWilliams' predecessor-in-title along the southeasterly portion of the McWilliams Parcel.

This Instrument Prepared by and
After Recording Return to:

Gerald M. Offutt, P.C.
McDermott, Will & Emery
227 West Monroe Street
Chicago, Illinois 60608



The Original Retaining Wall has deteriorated over the years and is in need of replacement. The location of the Original Retaining Wall is shown on Exhibit C attached hereto.

D. As of the date of this Agreement there exist a driveway approximately 11-1/2 feet in width, beginning at the north line of the McWilliams Parcel running south along the east line of the McWilliams Parcel a distance of approximately 102 feet as shown on Exhibit C (the "**McWilliams Driveway Parcel**"). As of the date of this Agreement there exists a driveway approximately 11-1/2 feet in width, beginning at the north line of the Galt Parcel running south along the west line of the Galt Parcel a distance of approximately 102 feet as shown on Exhibit C (the "**Galt Driveway Parcel**"). The McWilliams Driveway Parcel and the Galt Driveway Parcel are adjacent to each other without any type of divider separating the driveway parcels. The McWilliams Driveway Parcel and the Galt Driveway Parcel are hereinafter sometimes collectively referred to as the "**Driveway Parcels**" and each individually as a "**Driveway Parcel**".

E. McWilliams and Galt now desire for McWilliams to replace the Original Retaining Wall with a reinforced concrete retaining wall (the "**New Retaining Wall**"). McWilliams further wishes to grant, and Galt wishes to receive, an easement for ingress and egress over, upon and across the McWilliams Driveway Parcel for the benefit of the Galt Parcel, all as more fully set forth herein.

F. Galt wishes to grant, and McWilliams wishes to receive, an easement for ingress and egress over, upon and across the Galt Driveway Parcel for the benefit of the McWilliams Parcel, all as more fully set forth herein.

G. The Owners desire to make certain agreements regarding the New Retaining Wall and such easements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners hereby make the following grants, agreements, covenants and restrictions:

1. Retaining Wall. McWilliams agrees that, at its sole cost and expense, it will remove the Old Retaining Wall and construct the New Retaining Wall in the same location as the Old Retaining Wall for the purpose of shoring up and providing support for the southwestern portion of the Galt Parcel lying adjacent to the location of the Old Retaining Wall. McWilliams' construction of the New Retaining Wall shall comply with the provisions of this Agreement, including Sections 5 and 6 hereof. McWilliams agrees to complete the construction of the New Retaining Wall no later than May 31, 1999, subject to reasonable extensions of that date if such construction is delayed due to causes beyond McWilliams' reasonable control.

2. Access Easements Over McWilliams Driveway Parcel. McWilliams hereby grants, gives and conveys to Galt and his successors and assigns, as an easement appurtenant to the Galt Parcel, a non-exclusive, irrevocable and perpetual easement for ingress and egress over, upon and across the McWilliams Driveway Parcel to provide access for pedestrian and vehicular traffic to and from the Galt Parcel to the public street

known as West Lunt Avenue lying north of and adjacent to the north boundary line of the Parcels.

3. Access Easement Over Galt Driveway Parcel. Galt hereby grants, gives and conveys to McWilliams and its successors and assigns, as an easement appurtenant to the McWilliams Parcel, a non-exclusive, irrevocable and perpetual easement for ingress and egress over, upon and across the Galt Driveway Parcel, to provide access for pedestrian and vehicular traffic to and from the McWilliams Parcel to the public street known as West Lunt Avenue lying north of and adjacent to the Parcels.

4. Maintenance of Retaining Wall and Driveway Parcels. Following construction of the New Retaining Wall, McWilliams shall, at its sole cost and expense, maintain the New Retaining Wall, including (but without limitation) making all necessary repairs and replacements to the New Retaining Wall. Each Owner shall, at its own cost and expense, maintain the Driveway Parcel located on the Parcel to which it holds title, including (but without limitation) maintaining, repairing, repaving and replacing when necessary the Driveway Parcel, and shall provide snow and ice removal from the same when necessary and maintain and repair the same in order to keep the same in a clean, slightly safe, unobstructed, good and useable condition. With regard to the foregoing, each Owner shall comply with any and all applicable federal, state and local zoning and other ordinances, statutes, guidelines, requirements, rules and regulations.

5. Approval of Plans and Specifications. Plans and specifications, or such other information, as may be appropriate in light of the nature of the work to be done, for any maintenance or repair of the New Retaining Wall and each Driveway Parcel which will materially alter any feature of the design or structure thereof shall be submitted by the Owner desiring to conduct the work ("Submitting Owner") to the other Owner ("Receiving Owner"), and be approved by the Receiving Owner as hereinafter provided, prior to commencement of the work. All such work shall be done in accordance with the plans and specifications or other information which have been submitted to and so approved by the Receiving Owner with such revisions therein as may be so approved by both Owners. Notwithstanding the foregoing, emergency maintenance and repair and maintenance or repair which will not materially alter any design and/or structural feature may be performed by either Owner without such Owner first making any submission to the other Owner or obtaining the other Owner's prior approval.

A Receiving Owner to whom plans and specifications or other information, including revisions thereof or changes therein, are submitted pursuant to the foregoing provisions and provided the Receiving Owner has been properly notified and has accepted notification in writing shall review the same and give notice to the Submitting Owner of its approval thereof, or its disapproval of specific portions thereof and the reasons therefor, within the period of time specified by the Submitting Owner, which shall not be less than five (5) business days from the date on which such plans and specifications or other information are submitted to the Receiving Owner. If, however, no such period is specified, then such notice by the Receiving Owner shall be given within thirty (30) calendar days from the date on which such plans and specifications or other information

are submitted to the Receiving Owner. If the Receiving Owner fails to give such notice to the Submitting Owner within the time required with respect to any plans and specifications or other information by the two (2) preceding sentences, the Receiving Owner shall be deemed to have approved such plans and specifications or other information for all purposes of this Agreement. Approval of plans and specifications or other information shall not be unreasonably withheld, delayed or denied by a Receiving Owner.

Approval by either Owner of plans, specifications and other information shall not be deemed to be an assumption of responsibility for the accuracy, sufficiency or propriety of any such plans, specifications or other information or a representation that such plans, specifications or other information comply with applicable laws, ordinances, rules or regulations.

6. Conduct and Coordination of Maintenance, Repair and Replacement. All maintenance and repair of New Retaining Wall and each Driveway Parcel shall be made so as to interfere as little as practical with the rights granted to the other Owner pursuant to this Agreement and with the operations on each Parcel of any of the Owner's thereof or their employees, agents, tenants, invitees or licensees. Each Owner shall use every effort to coordinate maintenance, repairs and replacements so that both Driveway Parcels shall not be obstructed at the same time. The parties shall conduct resurfacing of the Driveway Parcels so as to provide a smooth surface between the Driveway Parcels.

7. Performance of Other Owner's Obligations. In the event of an emergency requiring maintenance or repair of the Retaining Wall or either Driveway Parcel, if the Owner who is responsible for such maintenance or repair does not undertake the same within a period of time which is reasonable under the circumstances or it does not appear that such Owner, who is responsible, will, or will be able to, undertake such maintenance or repairs, the other Owner may, at its option, perform such maintenance or repair and pay any and all costs and charges associated therewith.

In the event that either Owner fails to maintain and repair the Driveway Parcel located on the Parcel to which it holds title (or, in the case of the New Retaining Wall, McWilliams fails to maintain and repair it) as such Owner is required to do pursuant to this Agreement, and such failure results in a material interference with the rights granted to the other Owner by this Agreement or with the use and the operation of the other Owner's Parcel or the improvements located thereon from time to time, but does not result in an emergency, the other Owner may notify the Owner in default in writing of such failure. If the Owner in default fails to remedy such default within ten (10) days after receipt of such notice or, if such default cannot be cured within ten (10) days, if the Owner in default fails to commence the cure of such default within such ten (10) day period and diligently pursues such cure to completion, the other Owner may, at its option, perform the obligation which the Owner in default has failed to properly perform hereunder and pay any and all costs and charges associated therewith.

In any event described in this Section 7 the performing Owner shall be entitled to recover from the other Owner the charges, fees, costs and expenses incurred by the performing Owner (including if the other Owner is in default, reasonable attorney's fees) in connection therewith, together with interest therein at the Default Rate (as hereinafter defined) from the date of payment. Such charges, fees, costs, expenses and interest shall be paid by the other Owner within ten (10) days after receipt of a statement thereof from the performing Owner. As used herein, the term "**Default Rate**" shall mean the prime commercial lending rate announced from time to time by Harris Trust and Savings Bank in Chicago, Illinois as its prime, base or reference lending rate; provided, however, if such institution ceases to publish such prime, base or reference lending rate, the Owners shall reasonably cooperate to mutually select another banking institution with principal offices in Chicago, Illinois, whose prime, base or reference lending rate shall be the basis for determining the Default Rate.

Each Owner, which performs any maintenance or repair on the Parcel to which the other Owner holds title, shall restore the area affected by such maintenance or repair to the condition existing prior thereto or prior to any damage or disrepair necessitating such maintenance or repair, and any failure to do so shall give the Owner, which holds title to such area, the rights of a non-defaulting party pursuant to this Section 7.

8. Additions to the Parcels.

A. The easements herein granted to McWilliams are also appurtenant to any land that may now or hereafter come into common ownership with the McWilliams Parcel, which is contiguous to the McWilliams Parcel.

B. The easements herein granted to Galt are also appurtenant to any land that may now or hereafter come into common ownership with the Galt Parcel, which is contiguous to the Galt Parcel.

9. Separation of Parcels.

A. If the Galt Parcel is hereinafter divided into two (2) or more parts by separation of ownership, each party owning a part thereof shall enjoy the benefit of the easements granted to Galt herein.

B. If the McWilliams Parcel is hereinafter divided into two (2) or more parts by separation of ownership, each party owning a part thereof shall enjoy the benefit of the easements granted to McWilliams herein.

10. Covenants Running with the Land. All provisions of this Agreement, including the benefits and burdens set forth herein, shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

UNOFFICIAL COPY

11. Transfer of Ownership. Whenever a transfer of ownership of either Parcel occurs, the liability of the transferor for any breach of covenant occurring thereafter shall automatically terminate with respect to such transferor. Any transferee shall automatically assume and be bound by the burdens and obligations hereunder running with land to the Owner of the Parcel or portion thereof being transferred.

12. Interpretation. The rule of strict construction does not apply to the grants herein. The grants herein shall be given a reasonable construction to carry out the intention of the Owners to confer a commercially useable right of enjoyment on each grantee.

13. Indemnification and Insurance.

A. Galt shall indemnify and hold harmless McWilliams, and its agents from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from Galt's negligent use of the McWilliams Driveway Parcel, except for any such liability, loss, damage, costs and expenses arising in whole or in part from the acts of McWilliams or its agents or the acts of other parties who have been granted any easement by McWilliams upon, over and across the McWilliams Driveway Parcel.

B. McWilliams shall indemnify and hold harmless Galt and his agents from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from McWilliams' negligent use of the Galt Driveway Parcel, except for any such liability, loss, damage, costs and expenses arising in whole or in part from the acts of Galt or his agents or the acts of other parties who have been granted any easement by Galt upon, over and across the Galt Driveway Parcel.

C. Each Owner shall carry at all times, with respect to the Parcel owned by it, commercial general public liability insurance, including contractual liability, in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence or such higher limit as a prudent owner of comparable property located in the vicinity of the Parcels may reasonably carry. Such insurance shall name the other Owner as additional insured.

14. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed or upon receipt after deposit in the U.S. mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

(a) If to McWilliams

McWilliams Electric Co., Inc.
1281 Jarvis Avenue
Elk Grove Village, Illinois 60007

(b) If to Galt

William C. Galt
c/o LaSalle National Trust
135 South LaSalle Street
Suite 1725
Chicago, Illinois 60674-9135
Attention: Andrew Drindel

Either Owner may change the name of the person or address to which notices and other communications are to be given by so notifying the other Owner. Notices or demands from either Owner may be given by said Owner or any of its agents.

15. Notice to Future Owners. Galt has informed McWilliams, and by this Section gives notice to all future Owners of the McWilliams Parcel, that Illinois law requires independent of this Agreement that there is a duty to provide shoring and support for the Galt Parcel in the areas where the Old Retaining Wall is located and following construction of the New Retaining Wall. Galt acknowledges that performance of the obligations herein by the Owners of the McWilliams parcel will constitute compliance with such duty.

16. Miscellaneous.

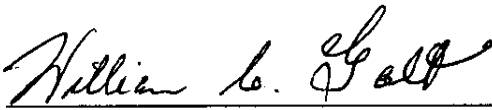
A. Time is of the essence of this Agreement.

B. This Agreement shall be governed by the laws of the State of Illinois.

* * * *

IN WITNESS, WHEREOF, the Owners have executed this Agreement as of the day and year first above written.

GALT:

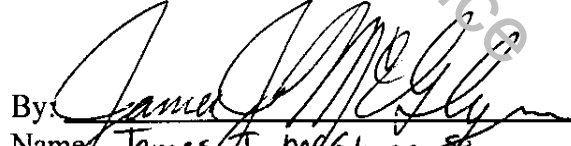


WILLIAM C. GALT

McWILLIAMS:

McGlynn Enterprises, L.L.C.
McWILLIAMS ELECTRIC CO., INC. and
McGlynn Enterprises, L.L.C.

*H.B. Jr.
JME*

By: 
Name: James J. McGlynn Jr.
Title: President

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that WILLIAM C. GALT, a widower, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered said instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5th day of May, 1999

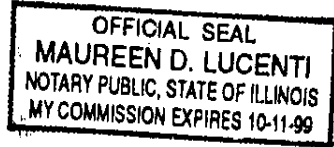


Maureen P. Lucenti
Notary Public
(STAMP)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James J. McGinn, Sr., personally known to me to be the President of McWILLIAMS ELECTRIC CO., INC., an Illinois corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____, he signed and delivered said instrument on behalf of said corporation pursuant to authority, given by the Board of Directors of said corporation as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 5th day of May, 1999.



Maureen P. Lucenti
Notary Public
(STAMP)

EXHIBIT A

LEGAL DESCRIPTION OF McWILLIAMS PARCEL

- Parcel I: Lot 37 in Block 7 in Centex-Schaumburg Industrial Park Unit 122, being a Subdivision in the North Half of Section 33, Township 41 North, Range 10, East of the Third Principal Meridian, in Cook County, Illinois.
- Parcel II Lot 15 in Block 7 in Centex-Schaumburg Industrial Park Unit No. 46, being a Subdivision of part of the North ½ of Section 33, Township 41 North, Range 10, East of the Third Principal Meridian, in Cook County, Illinois.
- Parcel III Lot 36 in Block 7 in Centex-Schaumburg Industrial Park Unit 117 being a Subdivision of that part of the North 200.00 feet of the South 1524.96 feet as measured at right angles to the South line thereof, of the North ½ of Section 33, Township 41 North, Range 10, East of the Third Principal Meridian, (said North line of the South 1524.96 feet also being the South line of Lunt Avenue, as dedicated in Centex-Schaumburg Industrial Park Unit No. 1, being a Subdivision in the North ½ of the said Section 33) lying West of line drawn at right angles to the North line of the said South 1524.96 feet to a point 5038.78 feet West of the East line of the said North ½ as measured on the said North line and lying East of a line drawn at right angles to the North line of the said South 1524.96 feet at a point 51.08 feet West of the East line of the said North ½, as measured on the said North line, all in Cook County, Illinois.

PIN:

EXHIBIT B

LEGAL DESCRIPTION OF GALT PARCEL

Lot 28 in Block 7 in Centex-Schaumburg Industrial Park Unit 4, being a Subdivision of part of the North Half of Section 33, Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 07-33-102-040-0000

Property of Cook County Clerk's Office

EXHIBIT C

SITE PLAN OF OLD (NEW) RETAINING WALL AND
DRIVEWAY PARCELS

[See attached]

Property of Cook County Clerk's Office

