

Prepared by
and after recording return to:

Kenneth Florey
Robbins, Schwartz, Nicholas,
Lifton & Taylor, Ltd.
550 Warrenville Road, Suite 400
Lisle, Illinois 60532

ABOVE SPACE FOR RECORDER'S USE ONLY

LICENSE AND EASEMENT AGREEMENT

This License and Easement Agreement (“**Agreement**”) is made as of this ___ day of _____, 2022 (the “**Effective Date**”), by and between Wheaton Warrenville Community Unit School District 200 (the “**District**”), an Illinois public school district, and Wheaton Development Partners, LLC, an Illinois limited liability company, (the “**Licensee**”). The District and the Licensee are hereinafter sometimes referred to individually as a “**Party**” and together as the “**Parties.**”

RECITALS

WHEREAS, the District is the owner of the parcel of land assigned Property Identification Number (“PIN”) 05-08-200-036, commonly known as Wheaton North High School, 701 W. Thomas Road, Wheaton, Illinois 60187 and being more accurately described as “Parcel 1” in Exhibit A and depicted on Exhibit B, (the “**District Property**”); and

WHEREAS, the Licensee owns the parcel of land abutting the District Property to the north and west assigned PIN 05-08-200-026, 2031 N. Gary Avenue, Wheaton, Illinois 60187 and being more accurately described as “Parcel 2” in Exhibit A and depicted on Exhibit B (“**Licensee Property**”); and

WHEREAS, the Licensee intends to develop and make improvement upon the Licensee Property for commercial purposes benefiting the Licensee; and

WHEREAS, the Parties desire and have determined it is in their best interest to enter into this Agreement so that Licensee can have access to and from the District Property to make certain improvements thereupon for the benefit of the Parties and so that Licensee may utilize and make improvements upon the District Property as described herein and subject to the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS. The foregoing Recitals are true and accurate in all material respects and are hereby incorporated into this Agreement, and made a part hereof, as if set forth verbatim herein.

2. GRANT OF LICENSE.

A. **LICENSE:** The District hereby grants to Licensee a license to access, enter, travel upon and make certain uses of the District Property and improvements thereto for the purposes of establishing a stormwater drainage connection within the District Property, and in connection therewith to demolish, construct, install, operate, repair, maintain and otherwise perform work on stormwater and sewer system structures and related fixtures located on, above or under the District Property, and to make further improvements upon the District Property consistent with this Agreement (the “License”). The License shall be subject to all terms, covenants and conditions herein set forth.

B. **CONDITIONS ON GRANT OF LICENSE:** The District hereby grants the License in consideration of and upon the following terms, covenants and conditions:

(i) At its sole cost and expense, Licensee shall replace with new stormwater drainage structures any existing stormwater drainage structures currently installed on the District Property at the point of connection to Licensee Property or otherwise necessary to ensure the current integrity of such new structures and the stormwater drainage and sewer systems installed by Licensee as a whole and perform any maintenance on such new stormwater drainage structures as needed for the ongoing integrity of the stormwater and sewer drainage systems;

(ii) In furtherance of subsection (i) above, at its sole cost and expense, Licensee shall plug and mortar existing downspout connections to the existing storm structures away from the property line of the District Property to ensure sediment is not introduced into the existing storm line as a result of Licensee’s use of the Licensee Property or any work performed in connection with this License;

(iii) At its sole cost and expense, Licensee shall provide notice to, coordinate with and seek approval from the District prior to the performance of any work under this License, including but not limited the any demolition, construction, installation, operation, repair, maintenance and/or other work to be performed on any proposed detention basins outfall connection installed by Licensee, to ensure that such demolition, construction, installation, operation, repair, maintenance and/or other work is performed in a safe and appropriate manner consistent with the District’s use of the District Property;

(iv) At its sole cost and expense, Licensee shall construct a non-transparent fence no less than eight (8) feet in height along the entirety of the property lines running to the north and south of Licensee Property that abut the District Property;

(v) Licensee shall compensate the District for all reasonable expenses not to exceed \$ _____ incurred as result of the installation of netting or other improvements on the District Property intended to ensure the safety of Licensee and its invitees, and to safeguard against any nuisances or encroachment on the Licensee Property that result from District activities; and

(vi) At its sole cost and expense, Licensee shall restore the District Property to its state as of the effective date of this Agreement, any commercially reasonable wear and tear excepted, including the restoration of established seed and blanket, or sod;

(vii) At its sole cost and expense, comply with all other terms and conditions set forth in this Agreement.

3. EASEMENTS. In furtherance of such License, the District grants to Licensee the following easements allowing for (i) a non-exclusive temporary access easement over the District Property for ingress and egress to last for the term of this Agreement, including emergency vehicle access; (ii) a non-exclusive temporary access and construction easement as necessary for Licensee's use of its property; and (iii) a non-exclusive perpetual utility easement across the District Property (such utility easement being in the location shown on Exhibit B attached hereto) for the limited purposes of providing all requested maintenance services relating to the stormwater connections and other structures described herein, if required.

4. TERM. The License and easements granted hereunder shall be perpetual and non-exclusive and shall constitute covenants running with the land for the benefit of the Licensee Property and the Licensee and its successors and assigns and shall burden and be binding upon the District Property and the District and its successors, and assigns including any future owner of any portion of the District Property, unless terminated by mutual agreement of the Parties, which agreement shall be reduced to writing and recorded at Licensee's sole expense in the Office of the Recorder of Deeds for DuPage County, Illinois as provided in paragraph 22 below (the "**Term**"). All improvements to the District Property shall be maintained by the Licensee solely at Licensee's cost and in compliance with all applicable ordinances while this Agreement remains in effect or, after expiration of its term, to perform any maintenance on new stormwater drainage structures installed as result of this Agreement as is necessary to ensure the ongoing integrity of the stormwater drainage system.

5. LICENSE FEE. In lieu of a License Fee, and in consideration for the License, the Licensee shall perform the foregoing activities at the sole cost and expense of the Licensee.

6. RESERVED RIGHTS BY DISTRICT. The District reserves the right to use, or permit unrelated third parties to use, the District Property so long as such use does not unreasonably interfere with the Licensee's use of the Property in accordance with this Agreement. All rights to the District Property not specifically granted to Licensee under this Agreement are reserved to District.

7. NO REPRESENTATIONS AND WARRANTIES. Except as expressly set forth herein, the District makes no representations, guarantees, or warranties, expressed or implied, as to the content, characteristics and suitability of the District Property for any purpose.

8. CONDITION OF THE LICENSED SPACE; DUTY OF CARE.

A. The Licensee (i) has examined the District Property prior to execution of this Agreement and is satisfied with its condition; (ii) acknowledges that no representation as to the condition or

repair thereof has been made by the District other than as expressly contained in this Agreement; (iii) acknowledges that no agreement or promise to alter, repair or improve the District Property, other than as expressly contained in this Agreement, has been made by the District; and (iv) agrees to return the District Property to the District, in a condition as good or better then when first used by the Licensee, reasonable wear and tear excepted, and as otherwise required by this Agreement.

B. In consideration of the perpetual nature and assignability of the easements granted hereunder, alterations, improvements and fixtures repaired, constructed, made or installed by the Licensee on the District Property shall become the property of the District at the end of the License, unless the District requires the Licensee to remove the same because such removal is necessary to the efficient operation of the stormwater drainage and sewer systems. The Licensee shall be responsible for and shall pay to the District promptly upon demand, the full cost of any restoration or repair to the District Property which results from the removal of such alterations, improvements and/or fixtures.

C. The Licensee shall be responsible for all damage caused by the Licensee and its employees, agents, contractors, members, volunteers or invitees to any of the District's improvements, furniture, fixtures, equipment, and personal property located in or about the District Property. The Licensee shall also be responsible for any and all damage done to the District Property by the Licensee and its employees, agents, contractors, members, volunteers and invitees, or the failure of the Licensee and its employees, agents, contractors, members, volunteers and invitees to perform any work required under this Agreement, and Licensee shall promptly reimburse District for the full cost or repair of all such damages or replacement should Licensee fail to commence cure within ten (10) days of notice from the District of said failure.

D. The District Property is provided on an "as is, where is" basis and with all faults. The District shall not provide the Licensee with any equipment, materials, labor or supplies of any nature whatsoever in connection with the License. Licensee shall supply all necessary equipment, materials, labor and supplies.

9. EMERGENCY; LICENSEE DEFAULT. In the event of an emergency, safety issue, or the Licensee's failure to maintain insurance, or Licensee's failure to perform any other condition that constitutes a substantial threat to the health or safety of, or poses an increased risk of liability to, the District, facilities, structures or other improvements to the District's property, and the District's officials, officers, employees, agents, invitees or others, as determined by the District in its sole reasonable discretion, the District may immediately suspend the License granted hereunder until such condition has been remedied to the District's reasonable satisfaction. Licensee agrees that it has no right to just compensation or any other form of reimbursement or monetary damages should the District elect, at its sole and exclusive option, to suspend the License or require the modification, demolition, or removal of any improvements made by Licensee that have contributed or are contributing to such threat to the health or safety of the District, facilities, structures or other improvements to the District's property, or and its the District's officials, officers, employees, agents, invitees or others, or that otherwise pose an increased risk of liability to the District and District Property. In the event of an emergency, safety issue, or the Licensee's failure to maintain insurance, or Licensee's failure to perform its obligations in accordance with this Paragraph 9, the District shall notify Licensee in writing (or in such other manner as is reasonably practical in the circumstances) that Licensee must suspend use of the License and/or cure said failure within ten (10) days of such notice, or, if such failure cannot reasonably be cured within such period, Licensee shall begin to undertake diligent efforts to promptly cure such failure within that time. Otherwise, Licensee shall be in default of this Agreement until Licensee cures said failure and the District will have any remedies available at law or equity until said failure is cured.

10. WAIVER, RELEASE OF LIABILITY & INDEMNIFICATION. To the maximum extent permitted by law, the Licensee shall enter, exit and use the District Property entirely at its own risk. Licensee acknowledges that the District shall not provide any supervision, security or protection in connection with the District Property. The District shall not be liable or responsible for damage caused by fire, vandalism or other casualty to, or for the destruction, loss, or theft of, any vehicle, equipment, material, supply or other personal property at any time during the Agreement. To the fullest extent permitted by the law, the Licensee hereby forever waives, defends, relinquishes, discharges indemnifies and holds harmless the District, and its officials, officers, employees and agents, from any and all claims of every nature whatsoever, which the Licensee may have at any time against the District, its officials, officers, employees and/or agents, including without limitation claims for personal injury or property damage sustained or incurred by the Licensee or any person claiming by, through or under the Licensee, relating directly or indirectly to the District Property, the condition of the District Property, or use by the District or the Licensee of the District Property (collectively, "Claims") but specifically excluding any Claims resulting from the gross negligence or willful misconduct of the District, its employees, agents and/or contractors. The Licensee shall pay all costs and expenses, including without limitation court costs and attorneys' fees, which shall be incurred by or imposed on the District either in enforcing the terms of this Agreement or in any litigation or other proceeding to which the District may be made a party relating to this Agreement or Licensee's use of the District Property unless said claim or claims are due to gross the negligence or willful misconduct of the District or any failure by the District to perform its obligations under this Agreement. Nothing herein provided is intended to waive nor shall it waive any of the immunities afforded the District under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*, and the District shall continue to have all of the protections and immunities provided by said Act as now or hereafter amended. The provisions of this Section shall survive termination of this Agreement and the License.

11. INSURANCE. Prior to any entry by Licensee, their agents, employees, contractors invitees or assigns on the District Property in connection with Licensee's performance of any work on stormwater and sewer system structures and related fixtures located on, above or under the District Property, Licensee shall, and shall require all of Licensee's contractors performing such work, deliver to the District certificates of insurance evidencing the existence of commercial general liability insurance which shall provide coverage against claims for bodily injury, sickness or death, and property damage with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) combined single limit per occurrence and Two Million and 00/100 (\$2,000,000.00) in the aggregate, and which coverage shall (i) be primary and non-contributory with respect to any insurance coverages maintained by the District and (ii) contain endorsements for cross-liability and for assumed contractual liability for liabilities assumed by Licensee under this Agreement. All certificates provided by Licensee hereunder shall name the District as an additional insured under the insurance coverage evidenced thereby and shall confirm that such coverage may not be canceled without 30 days prior written notice to the certificate holder thereof.

12. COMPLIANCE WITH LAWS. The Licensee, its employees, members, contractors, agents and invitees shall comply with all federal, state, county and local laws, statutes, ordinances, rules, regulations and codes in connection with all of its activities on the District Property. Any constructions or demolition done on the District Property will be done in compliance with the Prevailing Wage Act and the Licensee is required to maintain such records of compliance for three years after the termination of this Agreement.

13. NO PROPERTY INTEREST. This Agreement and the License and easements granted hereunder do not create for the Licensee any property interest in the District Property except those property interests expressly granted hereunder; it is hereby acknowledged by the Parties that this Agreement only grants (i) a

limited exclusive license in part, (ii) a limited non-exclusive license in part, (iii) temporary non-exclusive access and construction easements and (iv) a perpetual non-exclusive easement and the foregoing License and easements shall in no circumstance constitute or be construed as a lease or as any other property interests other than those interests specified above.

14. WRITTEN NOTICES. All notices, requests, demands, payments, or other communications with respect to this Agreement shall be in writing and shall be deemed to have been duly given upon personal delivery or, if mailed, seventy-two (72) hours after deposit in the United States mail, certified mail, return receipt requested, with proper postage prepaid and addressed as follows:

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| To the Licensee: | Wheaton Development Partners, LLC c/o GMX Real Estate Group Acquisitions, LLC 3000 Dundee Road, Suite 408 Northbrook, Illinois 60062 Attention: Andrew Goodman Email: asg@gmxre.com |
| With a copy to: | Taft Stettinius & Hollister LLP 111 East Wacker Drive, Suite 2800 Chicago, Illinois 60601 Attention: Kenneth Klassman Email: KKlassman@taftlaw.com |
| And to: | Thorntons LLC Attn: Chief Development Officer – Legal Notice Enclosed 2600 James Thornton Way Louisville, KY 40245 Email: real.estate@mythorntons.com |
| To the Licensor:: | Wheaton Warrenville CUSD 200 Assistant Superintendent of Business Operations 130 West Park Avenue Wheaton, IL 60189 Attention: Brian K. O'Keeffe, Ed.D., SFO Assistant Superintendent of Business Operations Email: brian.okeeffe@cusd200.org |
| With a copy to: | Robbins Schwartz 55 W. Monroe Ave, Suite 800 Chicago, IL 60603 Attention: Kenneth Florey kflorey@robbins-schwartz.com |

15. NO ASSIGNMENT. Notwithstanding anything here to the contrary, this Agreement may not be assigned by the Licensee without first obtaining the written approval of the District, which approval shall not be unreasonably withheld.

16. SUCCESSORS AND ASSIGNS. It is intended that the License and each of the easements, conditions, rights and obligations set forth herein shall: (i) run with the District and Licensee Properties and create equitable servitudes in favor of the real property benefited thereby for the periods stated herein; (ii) bind every person or entity having any fee, leasehold or other interest in such Properties; and (iii) inure to the benefit of the respective Parties and their successors, assigns, contractors, and tenants.

17. NOLIENS. Licensee shall not allow any lien caused by or arising out of this Agreement to be filed against the District Property other than those identified in paragraph 3 of this Agreement. If any such lien is filed, then the Licensee shall take immediate and diligent action to remove the lien. If the District determines, in the District's sole discretion, that the Licensee has not taken immediate or diligent action to remove the lien or bond over the lien then the District may take all action it deems necessary to remove the lien and the Licensee shall reimburse the District for such expenses, including attorneys' fees and court costs, within thirty (30) days of notice of the same.

18. REMEDIES CUMULATIVE. All rights and remedies of the District shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

19. VENUE. The exclusive venue for any litigation arising out of this Agreement shall be the state circuit court for the county in which the District Property is located and both Parties hereby agree to submit to the personal and subject matter jurisdiction of such court.

20. INVALIDITY OF ANY PROVISION. If any of the provisions of this Agreement shall be deemed invalid or unenforceable then the remainder of this Agreement shall not be affected thereby, and every other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21. SECTION HEADINGS. The section headings in this Agreement are for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement.

22. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without giving effect to its principles of conflicts of law.

23. ENTIRE AGREEMENT; RECORDING. This Agreement embodies the entire understanding of the Parties hereto, and there are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof and the Parties agree that a fully executed original copy of the same shall be recorded in the Office of the Recorder of Deeds for DuPage County, Illinois at the sole cost of Licensee. This Agreement may be amended, modified or terminated only by a written document executed by both Parties, a fully executed original copy of which shall be recorded in the in the Office of the Recorder of Deeds for DuPage County, Illinois at the sole cost of Licensee.

24. NO WAIVER. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of such provision or affect the right of the Party to subsequently enforce the same provision.

25. COUNTERPARTS AND THIRD PARTIES. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument. Further, this Agreement is by and between the Parties hereto and no other party may rely upon its terms and conditions hereof nor does this Agreement grant any rights or privileges to any third party.

26. FURTHER ASSURANCE AND COOPERATION. Each Party shall execute and deliver such further documents and instruments and take such further action as may be reasonably requested by another Party and as is consistent with the provisions of this Agreement in order to accomplish the purpose and intent of this Agreement.

27. NO IMPLIED EASEMENTS OR DEDICATION. Nothing contained in this Agreement shall be deemed to create any implied easements not otherwise expressly provided for herein. This Agreement is not intended, and shall not be construed, to dedicate all or any portion of the Properties to any governmental authority or grant any rights to the public in general.

28. NO PARTNERSHIP OR JOINT VENTURE. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or the federal government. Any correspondence or other references to “partners” or other similar terms will not be deemed to alter, amend or change the relationship between the Parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the Parties as to a new, specifically defined legal relationship.

29. FORCE MAJEURE. In the event that Licensee shall be delayed or hindered or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, inadequate power, restrictive governmental laws or regulations, severe weather conditions, disaster, riots, insurrection, war or other reason of a like nature not the fault of Licensee in performing work or doing acts required under the terms of this Agreement, the performance of such acts shall be excused for the period of the delay until return to the status quo.

30. AUTHORITY OF PARTIES. Each Party represents to the other that it is duly authorized with full power and authority to execute, deliver and perform this Agreement, and that all necessary approvals and authorization have been obtained prior to execution of this Agreement in accordance with the governing laws and documents of the Parties. The undersigned duly authorized representatives represent and warrant that no additional consents, approvals or authorizations are necessary or required to effectuate this Agreement.

31. REAL ESTATE TAXES. Licensee shall pay any and all real estate, sales, use or other taxes which may be legally due and owing to any governmental entity as a result of this Agreement and/or the License and easements granted hereunder (if any)

[Remainder of Page Left Intentionally Blank. Signatures to Follow.]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized officer thereof, as of the Effective Date.

**WHEATON WARRENVILLE
CUSD 200**

By: _____

Its: _____

**WHEATON DEVELOPMENT PARTNERS,
LLC**

By: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTIES

DISTRICT PROPERTY:

Parcel 1: 05-08-200-036

Commonly known address: 701 West Thomas Road, Wheaton, IL 60187

THE NORTH 50 FEET OF THAT PART OF THE NORTHEAST ¼ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF THE WEST 339.75 FEET AND WEST OF THE EAST 1,656 FEET OF SAID SECTION EXCEPT THAT PART PREVIOUSLY DEDICATED FOR ROADWAY PURPOSES, IN DUPAGE COUNTY, ILLINOIS. SITUATED IN THE COUNTY OF DUPAGE AND STATE OF ILLINOIS.

CONTAINING APPROXIMATELY 6,520 SQUARE FEET, MORE OR LESS.

LICENSEE PROPERTY:

Parcel 2: 05-08-200-026

Commonly known address: 2031 N. Gary Avenue, Wheaton IL 60187

THAT PART OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER AND RUNNING THENCE SOUTH, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, 665.7 FEET; THENCE NORTH 89 DEGREES 03 MINUTES EAST, PARALLEL WITH THE SOUTH LINE OF A TRACT OF LAND CONVEYED BY DOCUMENT 315804, 339.75 FEET; THENCE NORTH, PARALLEL WITH THE WEST LINE OF SAID NORTHEAST QUARTER 664.4 FEET TO THE NORTH LINE OF SAID NORTH LINE, 339.75 FEET TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

EXCEPTING THEREFROM: THAT PART OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER AND RUNNING THENCE ON A DEED BEARING NORTH 89 DEGREES 17 MINUTES EAST ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER 74.37 FEET; THENCE SOUTH 00 DEGREES 43 MINUTES EAST, AT RIGHT ANGLES TO SAID NORTH LINE 50.0 FEET, MEASURED PERPENDICULAR, EAST OF THE WEST LINE OF SAID NORTHEAST QUARTER OF SECTION 8, FROM A POINT 74.37 FEET SOUTH OF THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 59 MINUTES 12 SECONDS WEST 50.00 FEET TO A POINT ON THE WEST LINE OF SAID NORTHEAST QUARTER 74.37 FEET SOUTH OF THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 00 MINUTES 48 SECONDS EAST 74.37 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

**GENERAL DEPICTION OF THE PROPERTIES
AND PERPETUAL UTILITY EASEMENT**

