

## TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT

THIS AGREEMENT is entered into this 14<sup>th</sup> day of MAY, 2014 (the "Effective Date") between the Board of Education of Wheaton-Warrenville Community School District No. 200, an Illinois school district ("Grantor"), and the Wheaton Park District ("Grantee"), an Illinois park district and unit of local government. The Grantor and Grantee are hereinafter referred to individually as a "Party," and together referred to as the "Parties".

### RECITALS

**WHEREAS**, Grantor is the owner of certain real property commonly referred to as the Monroe Middle School building and surrounding campus, Wheaton, Illinois, as depicted in Exhibit A, attached to and incorporated as part of this Agreement (the "Subject Property"); and

**WHEREAS**, in accordance with an Intergovernmental Agreement dated July 17, 2013 (the "IGA"), between the Grantor and the Grantee, the Grantor leases to the Grantee a portion of the Subject Property, as depicted in Exhibit A, attached to and incorporated as part of this Agreement (the "Leased Property"); and

**WHEREAS**, in accordance with the IGA, the Grantee is authorized to make certain improvements on the Subject Property, including but not limited to the installation of synthetic turf (the "Project"); and

**WHEREAS**, in connection with the completion of the Project, Grantee requires a temporary construction access easement for the purposes of having construction access on, over, and across that portion of the Subject Property, as depicted in Exhibit A, attached to and incorporated as part of this Agreement ("Construction Access Easement Area"); and

**WHEREAS**, Grantor is willing to grant to Grantee a temporary construction access easement to construct the Project based on the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises contained herein, the Parties agree that:

1. Recitals Incorporated. The foregoing Recitals are incorporated herein by reference as though fully set forth.

2. Temporary Construction Access Easement. Grantor, as the owner of the Construction Access Easement Area, for itself and its successors in title to all or any portion of the Construction Access Easement Area, hereby grants and conveys to Grantee, its park commissioners, officers, agents, employees, officials, contractors, subcontractors, material suppliers, successors and assigns a non-exclusive and temporary easement (the "Construction Access Easement") on, over, across and through the Construction Access Easement Area for purposes of ingress and egress over the Construction Access Easement Area to access the

Leased Property in order to transport materials, supplies, equipment, machinery, vehicles and cranes to the Leased Property to construct the Project on the Leased Property.

3. Expiration. This Construction Access Easement is a temporary easement and, unless it is extended in writing by the Grantor, shall expire, without any action by either Party, on August 1, 2015.

4. Consideration. In exchange for the temporary construction easement rights granted to Grantee under Paragraph 2 of this Agreement, Grantee will pay Grantor One Dollar (\$1.00).

5. Restoration. Grantee shall, upon completion of any work authorized by this Agreement, restore the Subject Property to the condition existing immediately prior to the commencement of the work.

6. Indemnification; General. Subject to the further terms and conditions contained herein and to the extent permitted by law, Grantee hereby indemnifies and holds harmless the Grantor, Grantor's board members, officers, employees and agents ("Grantor Indemnitees"), and shall defend the Grantor Indemnitees, from and against all liabilities, claims, demands, causes of action, costs and expenses (including, without limitation, Legal Expenses) arising out of or related to any injury to or death of any person or damage to property (the "Injuries") occurring on or about the Subject Property to the extent caused by Grantee's negligent exercise of any of Grantee's rights under this Agreement or from the Grantee's negligent use of the Construction Access Easement Area. Grantee shall not be obligated or responsible to indemnify, hold harmless and defend Grantor Indemnitees, or any third party, from or against any liability, claim, demand, cause of action, cost or expense (including, without limitation, Legal Expenses) arising out of or related to any Injuries to the extent the same result from or arise out of the negligent or wrongful acts or omissions of any of the Grantor Indemnitees. Nothing herein contained shall be interpreted to waive any statutory or common law grants of privilege or immunity.

7. Insurance. Grantee shall procure and maintain and shall require its contractors and subcontractors performing any work for Grantee on the Leased Property to procure and maintain commercial general liability and property damage insurance, which insurance shall name the Grantor Indemnitees as additional insureds thereon. All such policies of insurance shall be in the amount and form as may reasonably be required by Grantor.

8. Exceptions. The easements granted herein shall be subject to all covenants, easements and restrictions of record, building and zoning ordinances, resolutions and regulations provided Grantor provides Grantee current title insurance policy showing the same.

9. Binding Effect; Easement Runs with Land. This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns during the term of this Agreement. The Construction Access Easement is intended

to be and shall be construed as an easement running with the land, but only for the specified term of this Agreement.

10. Notices. The Parties may give notice to each other at, and any notice required by the provisions of this Agreement shall be mailed to, the following addresses:

If to Grantee:

Executive Director  
Wheaton Park District  
102 E. Wesley Ave.  
Wheaton, IL 60187

If to Grantor:

Attn:  
Community School District No. 200  
130 West Park Avenue  
Wheaton, IL 60189

T:  
F:

11. Miscellaneous.

- a. This Agreement, including the Exhibits hereto, represents the entire agreement of the Parties with respect to the subject matter herein contained, and supersedes all prior or contemporaneous agreements, oral or written, with respect to said subject matter.
- b. This Agreement may be amended only by a writing executed by both of the Parties subsequent to the date hereof, and authorized by the Parties' respective governing boards.
- c. Each Party hereby warrants and represents to the other that all appropriate action of its governing board has been taken to authorize entry into and the execution of this Agreement by it, by the persons signing below, and each Party shall provide proof thereof on request of the other Party.
- d. This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a Party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express

and/or implied waiver of any common law and/or statutory immunities and/or privileges of Grantee and/or Grantor, and/or any of its respective officials, officers and/or employees.

- e. The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- f. Invalidation by judgment or court order of any one or more of the covenants or restrictions contained herein shall in no way affect any other provisions which shall remain in full force and effect.
- g. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by a duly authorized officer thereof as of the day and year first above written.

**GRANTOR**

BOARD OF EDUCATION OF WHEATON-  
WARRENVILLE COMMUNITY SCHOOL  
DISTRICT NO. 200

By: *Robert J. [Signature]*  
Its: *President*

Attest: *David [Signature]*  
Its: *Secretary*

**GRANTEE**

WHEATON PARK DISTRICT

By: *[Signature]*  
Its: *Executive Director*

Attest: *Donna R. [Signature]*  
Its: \_\_\_\_\_



GRANTOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS    )  
                                  ) SS  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Notary Public

My Commission expires: \_\_\_\_\_

**Exhibit A**  
**Subject Property Depiction**

**Leased Property Depiction**

**Construction Access Easement Area Depiction**

