

**WHEATON PARK DISTRICT
ORDINANCE 2024-07**

**ORDINANCE APPROVING AND AUTHORIZING EXECUTION OF FIRST AMENDMENT TO WHEATON PARK
DISTRICT LEASE AGREEMENT WITH WHEATON-WARRENVILLE COMMUNITY UNIT SCHOOL DISTRICT
200**

WHEREAS, Wheaton Park District ("Park District") is an Illinois park district and unit of local government organized under, and operating pursuant to and in accordance with, the Park District Code (70 ILCS 1205/1-1 et seq); and

WHEREAS, the Board of Education of Wheaton-Warrenville Community Unit School District No. 200, DuPage County, Illinois (the "School District") is the owner of land and improvements commonly known as the Monroe Middle School building and surrounding campus, (the "School"), which includes a football stadium (the "Stadium"), all situated within the geographical boundaries of the Park District; and

WHEREAS, pursuant to Ordinance 2013-03 adopted by the Park District's board of Commissioners on July 17, 2013, the Park District and School District previously entered into a lease agreement whereby the Park District agreed to lease the Stadium pursuant to 70 ILCS 1205/8-16 from the School District, and construct, operate and maintain a synthetic turf sports field and related improvements at the Stadium, (the "Turf Project") in order to enhance recreational opportunities available to the residents of the Park District, as more fully described in Exhibit A (the "Agreement"); and

WHEREAS, the Park District has determined that leasing the Stadium, constructing the Turf Project and operating and maintaining the Stadium for recreational purposes, is appropriate, useful and necessary in order to provide the citizens of the community with necessary recreational facilities; and

WHEREAS, pursuant to 105 ILCS 5/10-22.11(a), the School District has determined that Park District's lease of the Stadium, construction of the Turf Project, and use and maintenance of the Stadium for recreational purposes as described in the Agreement does not interfere with the School District's delivery of curricular and extra-curricular educational services to its students and residents, that the Stadium will not be needed during the lease term, and that construction of the Turf Project will enhance the delivery of such educational services; and

WHEREAS, the constituencies of both the School District and the Park District will be more effectively and economically served by the Park District's lease of the Stadium and its construction and maintenance of the Turf Project on School District-owned property in accordance with the Agreement; and

WHEREAS, the initial term of the Agreement is set to expire by its terms on July 17, 2038, and the Park District and School District desire to extend the term of the Agreement for an additional fifteen (15) year period, and to amend the Agreement to reflect all agreed upon modifications.

NOW THEREFORE, IT IS HEREBY ORDAINED by the Board of Park Commissioners ("Park Board") of the Wheaton Park District, DuPage County, Illinois as follows:

Section 1: All the foregoing recitals are hereby incorporated in and made a part of this Ordinance.

Section 2: the proposed form, terms, and provisions of the proposed first amendment to Wheaton Park District lease agreement with Wheaton-Warrenville Community Unit School District 200 (the "Amendment") as presented to the Park District Board at this meeting are hereby in all respects approved as provided herein.

Section 3: The President or Vice President and Secretary of the Park Board are hereby authorized and directed to execute the Amendment in the name of and on behalf of, the Park District, and under its corporate seal, and to deliver a copy thereof to the School District.

Section 4: this Ordinance shall be in full force and effect immediately upon its passage and approval. All prior ordinances or parts of prior ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Passed this 18th day of September, 2024, upon roll call vote as follows:

AYES: Barrett, Frey, Mee, Pecherich, Vires, Welker, Kelly

NAYS: 0

ABSENT: 0

ABSTAIN: 0



President, Board of Park Commissioners

ATTEST:



Secretary, Board of Park Commissioners

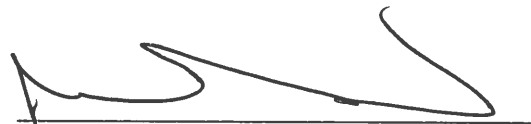
STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, the undersigned, do hereby certify that I am the duly qualified and acting Secretary of the Board of Commissioners of the Wheaton Park District, DuPage County, Illinois, and as such I am the keeper of the records and files of the Board of Park Commissioners of said Park District.

I further certify that the foregoing is a full, true and complete copy of Ordinance No. 2024-07, titled, ORDINANCE APPROVING AND AUTHORIZING EXECUTION OF FIRST AMENDMENT TO WHEATON PARK DISTRICT LEASE AGREEMENT WITH WHEATON-WARRENVILLE COMMUNITY UNIT SCHOOL DISTRICT 200, adopted at a duly called Regular Meeting of the Board of Park Commissioners of the Wheaton Park District, held in Wheaton, Illinois at 5:00 p.m. on the 18th day of September, 2024.

I do further certify that the deliberations of the Board on the adoption of said Ordinance were conducted openly, that the vote on the adoption of said Ordinance was taken openly, that said meeting was called and held at a specified time and place convenient to the public, that notice of said meeting was duly given to all of the news media requesting such notice, that said meeting was called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and with the provisions of the Park District Code of the State of Illinois, as amended, and that the Board has complied with all the provisions of said Act and said Code and with all the procedural rules of the Board.

IN WITNESS WHEREOF I hereunto affix my official signature at Wheaton, Illinois, this 18th day of September, 2024



Michael J. Benard, Board Secretary
Wheaton Park District
DuPage County, Illinois

**FIRST AMENDMENT TO WHEATON PARK DISTRICT LEASE AGREEMENT WITH WHEATON-
WARRENVILLE COMMUNITY UNIT SCHOOL DISTRICT 200**

This First Amendment (“Amendment”) is made and entered into the date set forth below, by and between Wheaton Park District, an Illinois park district and unit of local government (“Park District”), and the Board of Education of Wheaton-Warrenville Community Unit School District 200, (“School District”), and amends, in certain respects, that certain agreement entitled “Intergovernmental Agreement for Lease, Construction, Recreational Use and Maintenance of Synthetic Turf Field Between Wheaton-Warrenville Community School District No 200 and the Wheaton Park District” with an Effective Date of July 17, 2013 (“Agreement”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

RECITALS

WHEREAS, Park District and the School District previously entered into an Agreement that governs, among other things, the use and maintenance of a synthetic turf field at Monroe Middle school building and surrounding campus; and

WHEREAS, the intergovernmental partnership created by the Agreement has been a success for both Parties and their respective residents, and, as a result, the Parties wish to amend certain dates and deadlines in the Agreement to extend the Term of the Lease set forth therein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree to the following:

1. **Incorporation of Recitals.** The foregoing recitals are incorporated herein by reference as though fully set forth in this Section 1.

2. **Term.** Section 1 is stricken in its entirety and hereby replaced with the following:

Term and Termination. The term of this Agreement shall be forty (40) years from the Effective Date, as defined in section VIII.O (“Term”). The School District shall not have the right to terminate this Agreement prior to the expiration of the Term except as provided in Section VIII.E. At any time, the parties may agree in writing to extend the terms of this Agreement for a specified period of time, as permitted by law.

3. **Extending Term.** All references in the Agreement of 25 years shall be changed to 40 years.

4. **Park District’s Extended Maintenance and Replacement of Turf Field.** Notwithstanding any language to the contrary, at all times during the 40 years extended Term of the Agreement, Park District shall continue to maintain the turf field including at Park District’s

sole cost replacing the turf field every 10 to 12 years from the original Effective Date of the Agreement to the end of the extended Term. All references to a one-time replacement of the turf field in the Agreement are changed to every 10 to 12 years.

5. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be an original but all of which taken together shall constitute but one and the same instrument. In the event any signature is delivered by facsimile or by e-mail delivery of a scanned .pdf file, such signature shall create a valid and binding obligation of the party with the same force and effect as if the facsimile or scanned .pdf signature page were an original thereof.

6. **Entire Agreement; Modification.** All other terms and conditions contained in the Agreement remain unchanged. The Agreement and this Amendment contain all of the terms and conditions agreed upon by the parties with respect to the subject matter hereof, and no other alleged communications or agreements between the parties, written or otherwise, shall vary the terms hereof. Any modification of the Agreement or this Amendment must be in writing and signed by all parties.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date set forth below.

**WHEATON-WARRENVILLE COMMUNITY
UNIT SCHOOL DISTRICT**

By: _____

Its: _____

Date executed: _____

WHEATON PARK DISTRICT

By:  _____

Its: Executive Director _____

Date executed: 9/18/24 _____

Complete
Scan & file

WHEATON PARK DISTRICT

ORDINANCE NO. 2013-03

**ORDINANCE APPROVING AND AUTHORIZING EXECUTION OF
INTERGOVERNMENTAL AGREEMENT FOR LEASE, CONSTRUCTION,
RECREATIONAL USE AND MAINTENANCE OF SYNTHETIC TURF FIELD BETWEEN
WHEATON PARK DISTRICT AND WHEATON-WARRENVILLE COMMUNITY UNIT
SCHOOL DISTRICT 200**

* * * *

WHEREAS, the Wheaton Park District (“Park District”) is a unit of local government operating pursuant to the Illinois Park District Code, 70 ILCS 1205/1-1 et seq.; and

WHEREAS, the Board of Education of Wheaton-Warrenville Community Unit School District No. 200, DuPage County, Illinois (the “School District”) is the owner of land and improvements commonly known as the Monroe Middle School building and surrounding campus, (the “School”), which includes a football stadium (the “Stadium”), all situated within the geographical boundaries of the Park District; and

WHEREAS, the Park District desires to lease the Stadium pursuant to 70 ILCS 1205/8-16 (2013) from the School District, and construct, operate and maintain a synthetic turf sports field and related improvements at the Stadium, (the “Turf Project”) in order to enhance recreational opportunities available to the residents of the Park District; and

WHEREAS, the Park District has determined that leasing the Stadium, constructing the Turf Project and operating and maintaining the Stadium for recreational purposes, is appropriate, useful and necessary in order to provide the citizens of the community with necessary recreational facilities; and

WHEREAS, the Park District has agreed to construct and maintain the Turf Project at its cost and expense at the School in exchange for the twenty-five year leasehold interest granted hereunder and control of usage and scheduling of the Stadium as specified in the Intergovernmental Agreement for Lease, Construction, Recreational Use and Maintenance of Synthetic Turf Field

Between Wheaton Park District and Wheaton-Warrenville Community Unit School District 200 (the "Agreement"); and

WHEREAS, pursuant to 105 ILCS 5/10-22.11(a) (2013), the School District has determined that Park District's lease of the Stadium, construction of the Turf Project, and use and maintenance of the Stadium for recreational purposes as described in the Agreement does not interfere with the School District's delivery of curricular and extra-curricular educational services to its students and residents, that the Stadium will not be needed during the lease term, and that construction of the Turf Project will enhance the delivery of such educational services; and

WHEREAS, the constituencies of both the School District and the Park District will be more effectively and economically served by the Park District's lease of the Stadium and its construction of the Turf Project on School District-owned property in accordance with the Agreement.

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Board of Park Commissioners ("Park Board") of the Wheaton Park District, DuPage County, Illinois as follows:

Section 1. All of the foregoing recitals are hereby incorporated in and made a part of this Ordinance.

Section 2. The proposed form, terms, and provisions of the "Intergovernmental Agreement for Lease, Construction, Recreational Use and Maintenance of Synthetic Turf Field Between Wheaton Warrenville Community Unit School District No 200 and the Wheaton Park District" as set forth in Exhibit A, are approved as provided herein.

Section 3. The President or Vice President and Secretary of the Park Board are hereby authorized and directed to execute the Intergovernmental Agreement for Lease, Construction, Recreational Use and Maintenance of Synthetic Turf Field between Wheaton Warrenville Community Unit School District No 200 and the Wheaton Park District in the name of, and on behalf of, the Park District, and under its corporate seal, and to deliver a copy thereof to the School

District.

Section 4. This Ordinance shall be in full force and effect immediately upon its passage and approval. All prior ordinances or parts of prior ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Passed this 17 day of July, 2013.

ROLL CALL VOTE:

AYES: Hodgkinson, Mee, Morrill, Schobel, Kelly

NAYS: VanderSchaaf

ABSENT: Luetkehaus

John Kelly, [Vice] President
Board of Park Commissioners

Attested and filed this 17th day of July, 2013.

Michael Benard
Michael Benard, Secretary
Board of Park Commissioners

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT FOR LEASE,
CONSTRUCTION, RECREATIONAL USE AND MAINTENANCE
OF SYNTHETIC TURF FIELD BETWEEN WHEATON-WARRENVILLE COMMUNITY
UNIT SCHOOL DISTRICT NO 200 AND
WHEATON PARK DISTRICT**

CERTIFICATION

I, Michael Benard, the Secretary of the Board of Park Commissioners of the Wheaton Park District of the County of DuPage, State of Illinois, do hereby certify that I am keeper of its books and records and that the foregoing is a true and correct copy of an Ordinance duly adopted by its Board of Park Commissioners at a meeting duly convened and held on the 17th day of July, 2013.

SEAL


Secretary of the Board of Park Commissioners

**INTERGOVERNMENTAL AGREEMENT FOR LEASE,
CONSTRUCTION, RECREATIONAL USE AND MAINTENANCE
OF SYNTHETIC TURF FIELD BETWEEN WHEATON WARRENVILLE
COMMUNITY UNIT SCHOOL DISTRICT NO 200 AND
WHEATON PARK DISTRICT**

This Agreement is made between the Board of Education of Wheaton Warrenville Community Unit School District No. 200, DuPage County, Illinois (the "School District") and the Wheaton Park District, DuPage County, Illinois (the "Park District").

WHEREAS, Article VII, Section 10 of the Constitution of Illinois 1970, and the Intergovernmental Cooperation Act of 1973, as amended, 5 ILCS 220/1 et seq. authorize units of local government and school districts to contract among themselves and to confirm and transfer powers and functions by intergovernmental cooperation; and

WHEREAS, the School District is the owner of land and improvements commonly known as the Monroe Middle School building and surrounding campus, (the "School"), which includes a football stadium and a softball field (the "Stadium & Field"), all situated within the geographical boundaries of the Park District; and

WHEREAS, the Park District and the School District desire that the Park District construct, maintain and utilize synthetic turf sports field(s) at the Stadium & Field, as well as related improvements and equipment (the "Turf Project"). The construction of the Turf Project at the Stadium portion of the land is anticipated to be completed by August of 2014 with a second Turf Project at the Field portion of the land at time yet to be determined and mutually agreed upon; and

WHEREAS, the Park District and School District have mutually determined that it is in the best interests of the citizens of the community for the Park District to lease the real property described in Exhibit Aa (the "Stadium & Field") in order to construct, maintain and utilize the

synthetic turf field(s) during certain hours for community recreation activities sponsored or authorized by the Park District; and

WHEREAS, the Park District has determined that leasing the Stadium & Field, constructing synthetic turf field(s) thereon and maintaining and utilizing the synthetic turf field(s) for recreational purposes, is appropriate, useful and necessary in order to provide the citizens of the community with necessary recreational facilities; and

WHEREAS, the Park District has agreed to construct and maintain the Turf Project at its cost and expense at the School in exchange for the twenty five (25) year leasehold interest granted hereunder and control of usage and scheduling of the Stadium as specified herein; and

WHEREAS, the School District has determined that the Park District's lease of the Stadium & Field to construct the Turf Project and to use the Stadium for recreational activities as described herein will not interfere with the School District's delivery of curricular and extra-curricular educational services to its students and residents, and has further determined that construction of the Turf Project will enhance the delivery of such educational services; and

WHEREAS, the constituencies of both the School District and the Park District will be more effectively and economically served by the Park District constructing the Turf Project on School District-owned property leased to the Park District.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the School District and the Park District agree as follows:

I. Term and Termination. The term of this Agreement shall be twenty five (25) years from the Effective Date, as defined in Section VIII.O ("Term"). The School District shall not have the right to terminate this Agreement prior to the expiration of the Term except as provided in Section VIII.E. At any time, the parties may agree in writing to extend the terms of this Agreement for a specified period of time, as permitted by law.

II. Rent. Unless otherwise expressly provided, no payments in the nature of rent or payment for services rendered shall be due either party. The Park District's construction of the Turf Project and the mutual covenants contained in this Agreement are sufficient consideration for the Park District's interest granted under this Agreement.

III. Construction Costs and Management.

A. The Park District has agreed to construct, maintain and replace, as may be necessary, the Turf Project at its sole cost and expense at the School in exchange for the twenty five (25) year leasehold interest granted hereunder and control of usage and scheduling of the Stadium as specified herein

B. Review of Plans. Upon receipt of initial plans and specifications for the Project, including any drafts of such plans and specifications, the Park District shall promptly deliver such documents to the School District for its review. If the School District believes that the plans and specifications are not consistent with the scope of the Project and/or this Agreement, the School District shall provide written notice to the Park District of that concern within seven days after the School District's receipt of the plans and specifications. Promptly after the Park District's receipt of the School District's written notice, representatives of the Park District and School District shall meet and confer to address and resolve the concern set forth in the School District's written notice. If the Park District and School District are unable to resolve the concern set forth in the School District's written notice. The Park District shall notify in writing the School District within seven days after receipt of the School District's written notice of its decision to terminate the Agreement. In the event the Agreement is so terminated, the School District shall reimburse the Park District for one half of the Park District's actual design costs reasonably incurred through the date of pre-construction termination or ten thousand dollars (\$10,000.00), whichever amount is less.

C. Contract Administration. The Park District shall administer the contracts in good faith and in accordance with the contract documents for the Turf Project. Before commencement of any work or delivery of any materials onto the School site, the Park District shall furnish the School District with final plans and specifications, names and addresses of contractors, copies of

contracts, necessary permits and indemnification in form and amounts satisfactory to the School District and waivers of lien against any and all claims, costs, damages, liabilities and expenses which may arise in connection with the additions, alterations, changes and improvements.

Before commencing any work by an outside contractor, the Park District shall furnish the School District with general comprehensive liability insurance. The coverage and limits under the policies of insurance shall name the School District, its agents, officers and employees, their successors and assigns, as additional insureds. Additionally, the Park District shall cause its contractors and subcontractors to furnish the School District with certificates of insurance from all outside contractors performing labor or furnishing materials that insure the School District against any and all liabilities which may arise out of or be connected in any way with said additions, alterations, changes and improvements and the potential damage to the School site and site improvements and landscaping. Contractor insurance coverage language is attached hereto as Exhibit D.

The construction schedule(s) will be subject to mutual agreement by the Park District and the School District. The School District's approval of the construction schedule(s) shall not be unreasonably withheld.

D. Change Orders. During the course of construction of the Turf Project, certain alterations, modifications and resulting change orders from the final plans and specifications may be required. The Park District in consultation with the School District shall have sole discretion related to the approval or denial of change orders, not exceeding five (5) percent of the aggregate Turf Project cost. Any change order which increases or reduces the Turf Project cost beyond this five (5) percent figure must be mutually agreed to by the Park District and School District. The School District's approval of any such change order shall not be withheld.

IV. Additional Costs.

A. Operational Costs. The Park District shall be solely responsible for the Turf Project's operational costs, which include costs for turf maintenance of the Turf Project and the initial replacement of the turf field, if required.

B. Determination of Need to Replace Turf. The parties acknowledge that the turf will likely need to be replaced approximately 10-12 years after Turf Project construction completion. In the event the turf field(s) requires replacement during the Term of this Agreement, the Park District shall bear the sole cost and obligation of such replacement one time during the term of this Agreement. If the Agreement is terminated for any reason by the Park District (excepting Park District termination for a default by the School District under this Agreement), or as a result of the Park District's refusal to undertake the one-time replacement of the initial turf field installation at its sole cost described above, the Park District agrees that it shall, at the School District's option and election, pay the cost of removing the original turf field installation and returning the field to its original condition as a grass surface in accordance with the steps outlined in Exhibit E "Restoration Scope" attached hereto and incorporated herein by reference.

C. End of Term Restoration. At the end of the 25 year term, the Park District and the School District shall share equally in all costs incurred to remove the turf field and all related structures and materials and re-seed the affected area in accordance with the steps outlined in Exhibit E "Restoration Scope" attached hereto and incorporated herein by reference.

D. Grant Funding. The Park District acknowledges and agrees that it shall not apply for or utilize the proceeds of any federal or state grant in connection with the construction of any improvements to the Stadium which may restrict the School District's future use or disposition of the School property, without the express written consent of the School District.

V. Lease Granted; Use of Stadium.

A. Lease Granted

The School District hereby finds and determines that the Stadium & Field is not needed for School District purposes during the term of this lease, except as specified in Section V.B. The School District hereby leases to the Park District and Park District hereby accepts the Stadium & Field premises as described in Exhibit Aa.

B. Stadium Use.

1. Facility Use. Park District shall have sole and exclusive occupancy and possession from the Effective Date through the term of this Agreement, except as otherwise provided herein. The Park District may allow third party use of the synthetic turf fields at such time and on such conditions as it may permit, including but not limited to the Park District's affiliates. The School District will be allowed to use the synthetic turf fields for Monroe Middle School physical education classes and after school sports associated with Monroe Middle School during the regular school year (approximately 8:30 a.m. to 6:00 p.m., Monday through Friday), excluding summer school and all school holidays and vacations, and at such other times as are set forth in a "Master Use Schedule", each year that the Agreement is in effect. The Master Use Schedule for the first year of this Agreement is attached hereto as Exhibit B. The Park District shall be entitled to modes of ingress and egress to and from the Stadium during those times for the purpose of accessing the Stadium.

2. Compliance with Law and School District Policies. The Park District agrees that it shall conduct its activities in accordance with the Illinois Park District Code. The Park District will abide by and enforce the School District's policies and regulations as approved from time to time by the School District's Board, so long as such School District policies and regulations are consistent with this Agreement and do not interfere with the Park District's use and enjoyment of the synthetic turf fields. Similarly, the Park District's use and enjoyment of the synthetic turf fields shall not unreasonably interfere with the School District's educational programs at Monroe Middle School. The School District acknowledges that customary recreational use of the synthetic turf does not constitute interference with the School District's educational programs at Monroe Middle School. Neither party's users shall wear steel cleats and shall not utilize any sharp objects at the synthetic turf fields that adversely affect the turf or the track at the Stadium.

VI. General Use Provisions.

A. Supervision. Neither party shall have any responsibility whatsoever for supervising the other's programs, use of the synthetic turf fields, or supervising the other party's employees, volunteers, participants and/or agents. Each party shall be solely responsible, at its own expense, for providing adequate adult supervision at all times in connection with its use of the synthetic turf fields. Neither party shall be responsible in any way for employment of personnel to implement or supervise the other party's programs at the synthetic turf fields. Each party acknowledges and assumes complete responsibility for its staff or volunteers used to properly and adequately supervise its activities hereunder.

B. Representation of Programs. Each party shall represent its programs as its own programs and at no time shall represent any sponsorship or other involvement by the other party.

VII. Insurance and Indemnification.

A. Insurance. Each party, at its sole cost and expense, shall keep in full force and effect at all times during the term of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with this Agreement. Each party shall provide coverage that is at least as broad as:

1. Comprehensive general public liability insurance, including contractual liability coverages, and such other types of insurance in such amounts and with such A-rated companies as are reasonably acceptable to the School District and the Park District, but, in any event, no less than \$1,000,000.00 per occurrence and \$10,000,000.00 aggregate and an umbrella policy no less than \$3,000,000.00. Such insurance shall be evidenced by annually providing to the other party copies of the policies and/or certificates of insurance, naming the other party, its board, board members, employees and agents as an additional insured and providing that the insurance may not be modified, terminated, cancelled or non-renewed without at least 30 days advanced written notice by certified mail, return receipt requested, to the other party.

2. Casualty insurance in the amount of the full replacement cost of the party's property and betterments (including alterations or additions performed by a party to its property), which insurance shall include an agreed amount endorsement waiving coinsurance limitations.

3. Each party shall keep and maintain Workers' Compensation Insurance covering all costs, statutory benefits and liabilities under State Workers' Compensation and similar laws for their respective employees. Any employee claim related to this Agreement will be the responsibility of the party employer and the other party shall have

no obligation whatsoever to provide workers' compensation for the other party's employees.

The Park District's participation in a risk management pool that provides coverage in the amounts specified in this Section VII shall constitute an acceptable substitute for the insurance coverages required herein, provided that the Park District furnishes the School District written evidence of its participation.

B. Indemnification. To the extent permitted by law, the School District and the Park District each agree to mutually indemnify, defend and hold harmless the other party and their respective board members, officers, employees, agents and successors from all claims, causes of action, liability, damages, whether to person (including death) or property, costs (including reasonable attorneys' fees) and losses (collectively "Loss") where and to the extent the Loss arises out of the acts or omissions of the indemnifying party.

C. No Waiver of Tort Immunity Defenses. Nothing contained in this Section VII or in any other provision of this Agreement, is intended to constitute nor shall constitute a waiver of the defenses available to the parties under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, with respect to claims by third parties.

VIII. Miscellaneous Provisions.

A. No Assignment. No party may assign any rights or duties under this Agreement without the prior express written consent of the other party.

B. Successors. This Agreement shall be binding upon the successors of the parties' respective governing boards.

C. Relationship of the Parties; No Third Party Beneficiaries. Nothing in this Agreement shall be construed to consider any party or its respective employees, volunteers or agents as the agents or employees of any other party. Nothing contained in or done pursuant to

this Agreement shall be construed as creating a partnership, agency, joint employer or joint venture relationship between the School District and the Park District. Notwithstanding any provision herein to the contrary, 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 or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the School District and/or Park District.

D. Entire Agreement. This Agreement shall constitute the entire agreement of the parties with respect to the matters contained in this Agreement and this Agreement supersedes any and all prior agreements and understandings, whether written or oral, formal or informal.

E. Default and Termination. In the event that one party believes the other to be in material default under this Agreement, the non-defaulting party, acting through its chief administrator, shall notify the defaulting party in writing and allow the defaulting party 30 days from the date of receipt of notice to cure the default. If the default is not then cured, the non-defaulting party may terminate the Agreement by serving written notice on the defaulting party and termination of the Agreement shall take effect 30 days after receipt of the notice by the party in default. In the event of termination, the School District may be required to reimburse the Park District for its contribution to the project as follows:

1. For a termination of this Agreement not resulting from a material default by the Park District, the School District shall pay to the Park District a sum equal to the total cost of design and construction reduced on the basis of a 12 year straight line depreciation of said amount from the construction completion date until the date of termination as its contribution to the cost of the remaining life of the Turf field.

2. For a termination of this Agreement resulting from a material default by the Park District, the School District shall not owe the Park District any termination payment.

3. For a termination of this Agreement resulting from a voluntary decision by the Park District to so terminate, or the Park District's refusal to undertake a replacement of the initial turf field installation at its sole cost during the term of this Agreement pursuant to Section IV B above, the School District shall not owe the Park District any termination payment; however, the Park District agrees that it shall, at the School District's option and election, pay the cost of removing the original turf field installation and returning the field to its original condition as a grass surface, as noted in Section IV.B. above. In addition, the School District specifically reserves the right to terminate this Agreement upon not less than one calendar year prior written notice to the Park District, if the School District determines in its sole discretion, that the School is no longer required for school purposes and should be sold, provided the School District pays to the Park District a sum equal to the amount set forth in subparagraph 1 above, as may be applicable. Prior to exercising its right to terminate under this subsection, the School District's Board of Education shall adopt a resolution or ordinance setting forth its determination that the School is no longer required for school purposes and should be sold. Termination shall not occur unless and until closing on the School District's sale of the School.

F. Notices. Any notice or communication permitted or required under this Agreement shall be in writing and shall become effective on the day of mailing thereof by first class mail, registered or certified mail, postage prepaid or by a national overnight courier, addressed:

If to the School District, to:

130 West Park Avenue
Wheaton, Illinois 60189
Phone: (630) 682-2000
Fax: (630) 682-2227
Attn: Superintendent

If to the Park District, to:

Wheaton Park District
102 E. Wesley Street
Wheaton, Illinois 60187
Attn: Executive Director

G. Amendments. This Agreement may not be amended except by means of a written document signed by authorized representatives of both of the parties.

H. Compliance with Law. The parties shall comply with all applicable local, county, State and federal laws and regulations, including without limitation those regarding the provision of education services and facilities and student confidentiality.

I. Taxes. If the Stadium & Field, or any part thereof, is determined to be used for non-exempt purposes and becomes subject to taxation as a result of the Park District's permitted use thereof, the Park District shall be responsible for the payment of any real estate or leasehold taxes assessed as a result of such permitted use, and said taxes shall constitute an additional obligation due hereunder and shall be payable by the Park District at the time said taxes are due. The School District and the Park District shall each have the right to challenge, at their own expense, any loss of tax exempt status of the Stadium & Field.

J. Authority to Execute. The parties warrant and represent that the persons executing this Agreement on their behalf have been properly authorized to do so.

K. Calendar Days and Time. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation,

under this Agreement falls on a Saturday, Sunday, federal, State or School District holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, federal, State or School District holiday.

L. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.

M. Provisions Severable. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

N. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but altogether shall constitute one and the same Agreement.

O. Effective Date. This Agreement shall be deemed dated and become effective on the date the last of the parties' signs as set forth below the signature of their duly authorized representatives.

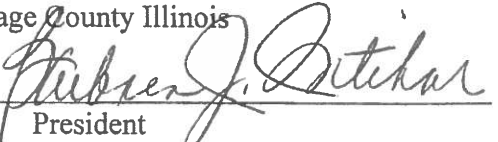
**BOARD OF COMMISSIONERS
WHEATON PARK DISTRICT**
DuPage County, Illinois

By: 
President

Attest: 

Dated: July 17, 2013

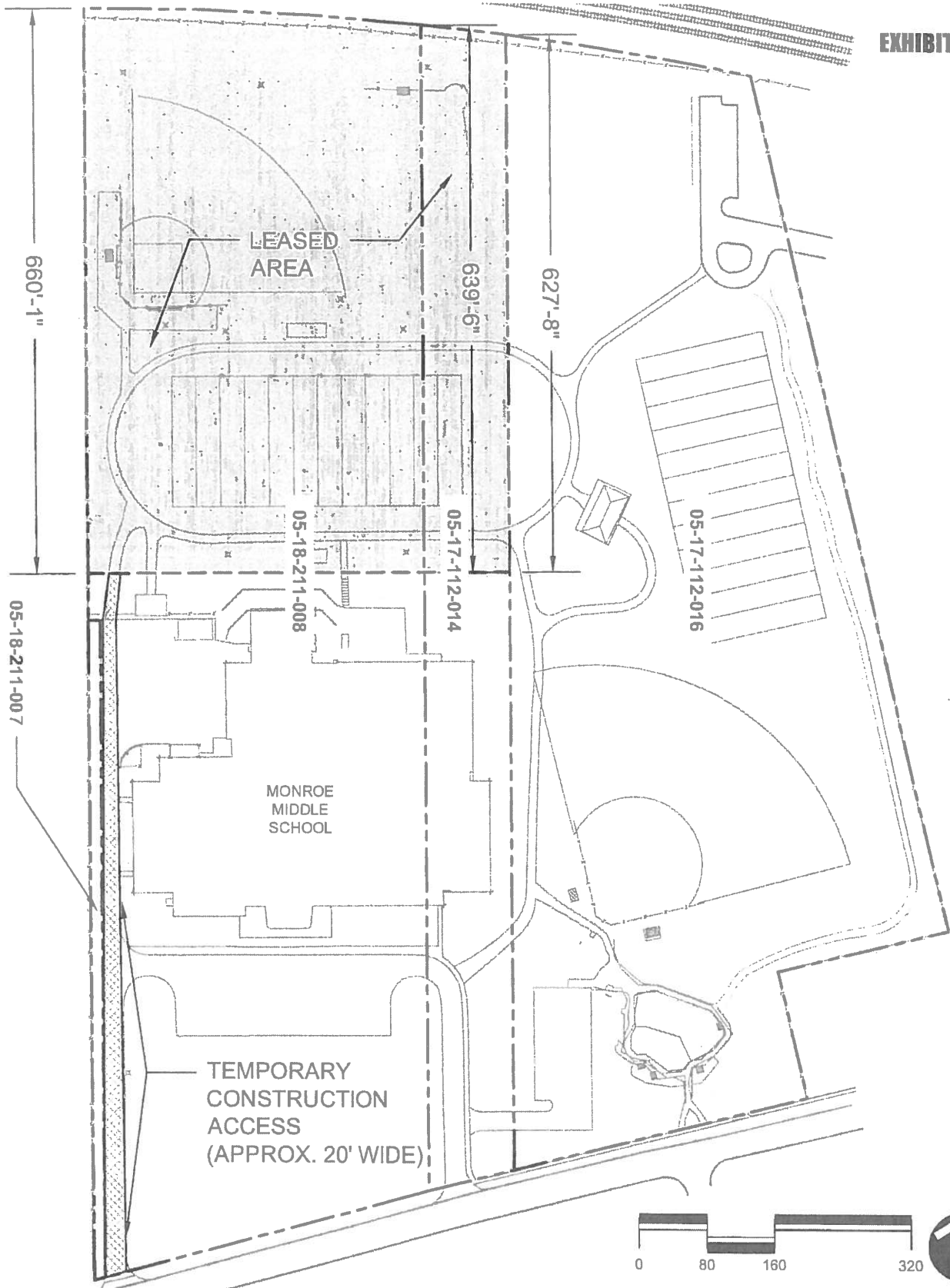
**WHEATON WARRENVILLE
COMMUNITY UNIT SCHOOL
DISTRICT NO 200**
DuPage County Illinois

By: 
President

Attest: 

Dated: July 17, 2013

EXHIBIT Aa
STADIUM AND FIELD DESCRIPTION AND PIN NUMBERS



**WHEATON
PARK DISTRICT**
182 E. WEXLEY WHEATON IL 60187
(630) 805-4710

**GRAF PARK & MONROE MIDDLE SCHOOL
SYNTHETIC TURF LEASED AREA**

1 Sheet 1 of 1

drawn by: SMH	revised by: SMH
date: 3/13	date: 5/5/14
checked by:	revised by:
date:	date:
file name: graf_turf_2013.dwg	revised by:
file path: g:\projects\2013\graf_turf\2013.dwg	date:

EXHIBIT B
PROJECT RENDERING

EXHIBIT C
MASTER USE SCHEDULE

1. The Wheaton Park District shall have control of use and scheduling of the Turf Field(s) and ancillary Stadium elements.

2. The School District shall not have the use of the Turf Field(s) for non-Monroe Middle School extra-curricular games and practices except upon the prior approval of the Park District's athletic director.

EXHIBIT D
CONTRACTOR INSURANCE REQUIREMENTS

Exhibit D

CONTRACTOR'S INSURANCE REQUIREMENTS. Contractor shall procure and maintain for the duration of the contract, insurance against claims for death, injuries, sickness to persons, or damages to property which may arise from or in connection with the performance of work hereunder by the Contractor, his agents, representatives, employees or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, of the types and in the amounts listed below.

§11.1.1 Commercial General and Umbrella Liability Insurance. Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Owner and Architect shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Owner and Architect. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

§11.1.2 Continuing Completed Operations Liability Insurance. Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence for at least three years following substantial completion of the work. Continuing CGL insurance shall be written on ISO occurrence form CG 00 01, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract. Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

§11.1.3 Business Auto and Umbrella Liability Insurance. Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos. Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

§11.1.4 Workers Compensation Insurance. Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractors work.

§11.1.5 Contractor's Obligation to Insure for Bodily Injury Claims. In addition to the above, the Owner will require all Contractor's to purchase insurance to cover claims and expenses asserted against Architect, its employees and consultants for bodily injury, sickness, disease, or death cause by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable.

§11.1.6 General Insurance Provisions

.1 Evidence of Insurance Prior to beginning work, Contractor shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for 30 days written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. Owner shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. Failure to maintain the required insurance may result in termination of this Contract at Owner's option. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner whenever requested. Contractor shall provide certified copies of all insurance policies required above within 10 days of Owner's written request for said copies.

.2 Acceptability of Insurers. For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

.3 Cross-Liability Coverage. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to the Owner. At the option of the Owner, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

.5 Subcontractors. Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Owner, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

§11.2 PERFORMANCE AND PAYMENT BONDS

§ 11.2.1 The Contractor shall deposit with the Owner before commencing any Work an *AIA A312-2010 Performance Bond and Payment Bond* for 110% of the Contract Sum, guaranteeing the faithful performance of the work in accordance with the Contract, the payment of all indebtedness incurred for labor and materials, payment of the prevailing wage in accordance with paragraph 13.8.1, and guarantee correction of work for a period of one (1) year after final payment. The Surety must be approved by the Owner, and be licensed to conduct business in the State of Illinois and be named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury.

§ 11.2.2 The Contractor and all subcontractors shall name the Owner as an obligee on all bonds.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is

earlier. This insurance shall include the respective interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

§ 11.3.1.1 Property insurance shall be on a course of construction policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false work, windstorm, testing and start-up, temporary buildings and debris removal, including demolition, and shall cover reasonable compensation for the Architect's, any of the Owner's Consultant's services and expenses required as a result of such insured loss. Owner shall not be required to provide coverage for other perils unless otherwise provided in the Contract Documents. Property insurance provided by the Owner shall not cover Contractor's, Subcontractor's or Sub-subcontractor's liability or any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring or other similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The Contractor shall make his own arrangements for any insurance he may require on such construction equipment.

§ 11.3.1. The Contractor shall effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work.

§ 11.3.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

§ 11.3.1.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site and paid for by Owner after written approval of the Owner at the value established in the approval, and also portions of the Work in transit and paid for by Owner.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor Subcontractors and Sub-subcontractors in the Work, and the Owner and the Contractor shall be named insureds.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§11.3.11 Notwithstanding any provision contained in Section 11.3 including paragraphs 11.3.1 through and including 11.3.11, the Owner's obligation to purchase insurance shall herein be deemed satisfied by the Owner's membership in a self-insured risk management agency or pool. The Contractor agrees that any obligation the Owner has to purchase property insurance shall be satisfied by the Owner's membership in a self-insured risk management agency or pool. The Contractor further agrees that it will only have rights allowable to it under any coverage provided through the Owner's membership in a self-insured risk management agency or pool.

EXHIBIT E
RESTORATION SCOPE

- Removal of Turf/rubber piles, stone (top 4" of material only)
- Haul-off & Disposal
- Topsoil import
- Topsoil re-spread and seed