

EXECUTIVE ORDER OF THE MAYOR OF THE CITY OF WHEATON, ILLINOIS: "EXECUTION OF LICENSE TO USE WHEATON COLLEGE FACILITIES AND DIRECTING CITY MANAGER TO IMPLEMENT AND MANAGE THE SAME"

WHEREAS, Section 2-127 "Emergency Powers and Duties" of Chapter 2 "Administration" of the Wheaton City Code grants authorization to the Mayor of the City of Wheaton to enter executive orders "upon the declaration of a local state of emergency;" and

WHEREAS, the authority to declare a state of emergency and to issue local executive orders under Section 2-127 is exclusive to the Mayor; and

WHEREAS, on March 23, 2020, I the Mayor of the City of Wheaton, Philip J. Suess, entered a declaration of local state of emergency based on the COVID-19 pandemic; and

WHEREAS, Wheaton College has proposed, in an act of good citizenship, medical and social concern, a license agreement between the City of Wheaton and itself which would allow Wheaton's first responders to temporarily reside Wheaton College dormitories, for that period and subject to the conditions set forth in the "LICENSE TO USE COLLEGE FACILITIES," (hereinafter "License" attached hereto and incorporated herein as if fully set forth as Exhibit 1; and

WHEREAS, I have concluded that an executive order agreeing to the terms and conditions of the License on behalf of the City of Wheaton and authorizing the City manager to implement and manage the City's use of the License, is consistent with my authority under the law and the declaration of emergency, because it gives Wheaton's first responders the opportunity to shelter in place away from family thereby reducing concerns regarding the spread of the COVID 19 virus to their family members and increasing the ability to contain the spread of COVID 19 to others; and

WHEREAS, I also have concluded that The City Manager should have the authority to initially implement and thereafter manage the license to the extent necessary to comply with its terms as required by Wheaton College.

NOW, THEREFORE, BASED ON THE FOREGOING RECITALS, I, Philip J. Suess, as Mayor of the City of Wheaton, hereby order instantaneously, pursuant to my executive powers granted by law and the declaration of emergency, that:

1. The foregoing recitals are incorporated herein as substantive provisions;
2. Pursuant to the terms and conditions of the authority granted to me under law I have executed, agree to and affirm that the City of Wheaton has entered into and shall fully abide by its terms, covenants and conditions of the License, Exhibit 1, until terminated in accordance with its termination provisions; and
3. The City Manager, of the City of Wheaton, is hereby directed to undertake those acts necessary from the City's standpoint to implement use of the License and manage it in accordance with its terms, covenants and conditions until terminated.

SO ORDERED this 3rd day of April 2020.


Philip J. Suess, Mayor, City of Wheaton

ATTEST:


Sean Bennett Hagan
Date: April 3, 2020
City Clerk

EXHIBIT 1

LICENSE TO USE COLLEGE FACILITIES

THIS LICENSE TO USE COLLEGE FACILITIES AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into by and between the Trustees of Wheaton College ("College") and the City of Wheaton, having an office at 303 West Wesley, Wheaton, Illinois, 60187 ("Licensee").

WHEREAS, Licensee is dealing with a nation-wide medical and social emergency ("COVID-19 Emergency") and is required to provide life-saving emergency services to members of the public; and

WHEREAS, it is expected that the COVID-19 Emergency will cause a significantly increased number of its Licensee's employees to be exposed to coronavirus; and

WHEREAS, Licensee requires locations to house its employees who may not be able to return home during this period; and

WHEREAS, College owns and operates Terrace Apartments (the "Buildings"); and

WHEREAS, Licensee wishes to operate a temporary housing facility for its employees in the Buildings (the "Program").

NOW, THEREFORE, in consideration of the promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, College agrees to grant to Licensee a license to conduct the Program in the Buildings, on the following terms and conditions:

1. License.

1.1 **Grant of License.** College hereby grants to Licensee, and Licensee hereby accepts from College, the right to use the Buildings, including the communal bathrooms and kitchens in the Buildings (the "Premises"), during the Term of this Agreement, solely for the purposes of conducting the Program, subject to the terms and conditions of this Agreement and to the rights of College hereinafter reserved. Licensee hereby acknowledges and agrees that the Premises, including but not limited to all manner of resources to which Licensee will have access in connection therewith, are being provided by College and are hereby accepted by Licensee on an "AS IS" and "AS SHOWN" basis with no warranties or representations of any kind having been made by College or its employees or agents or to be implied.

1.2 **Term.** The term of this Agreement shall be as follows:

- (i) Until June 15, 2020; and
- (ii) thereafter, on a week by week basis until July 22, 2020 (the "Term"), unless either Party terminates this Agreement by providing written notice one week in advance or this Agreement is otherwise terminated as set forth herein.

1.3 Appurtenant Rights. Licensee shall have, as determined solely by College, as appurtenant to the Premises, rights to use, subject to any College safety policies and procedures in effect during the Term and generally applicable to other users of the Buildings, those restrooms, common walkways, lobbies, hallways and stairways necessary and appropriate, for access to that portion of the Buildings occupied by the Licensee. Notwithstanding the foregoing, the Licensee shall instruct all those Approved Employees (as defined below) to enter through the main door of the Buildings.

1.4. Exclusions and Reservations. All the perimeter walls of the Premises except the inner surfaces thereof, and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, wires and appurtenant fixtures, ducts, electric or other utilities, or other Building facilities, and the use thereof, as well as the right of access through the Premises for the purpose of operation, maintenance, decoration and repair, are expressly reserved to College.

1.5 License Agreement. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE RIGHT TO ACCESS AND USE THE PREMISES UNDER THIS AGREEMENT SHALL BE DEEMED TO BE A LICENSE ONLY AND SHALL NOT BE CONSTRUED TO BE A LEASE, JOINT VENTURE, OR PARTNERSHIP, OR AS EVIDENCING ANY RELATIONSHIP BETWEEN COLLEGE AND LICENSEE OTHER THAN AS LICENSOR AND LICENSEES RESPECTIVELY. NO INTEREST IN THE REAL ESTATE INCLUDING BUT NOT LIMITED TO ANY AND ALL ASSOCIATED FIXTURES IS CONVEYED BY COLLEGE TO LICENSEE.

1.6 No Obligation to Improve the Premises. College shall have no obligation for any modification or improvement of the Premises or the Buildings to accommodate Licensee's use.

2. License Fee.

The fee per person per night is \$50 for non-governmental entities. The fee per person per night is \$0 for governmental entities. The fee in Fischer Hall is for a three-room suite consisting of two bedrooms and one washroom. The fee in apartments is for a single apartment consisting of a living room, kitchen and one or two bedrooms.

3. Services Provided by College or by the Licensee.

3.1. General Services to the Premises. College agrees to provide to the Premises, at no additional cost to Licensee, electricity, heat, air conditioning, gas, and

domestic water in the same manner and amounts as such services and utilities are provided to other occupants of the Buildings, to the extent that those services are generally available for the Buildings. College reserves the right to interrupt, curtail, stop or suspend the furnishing of services provided for in this Section 3 and the operation of the Buildings' systems, when necessary by reason of accident or emergency, or of repairs, alterations, replacements or improvements in the reasonable judgment of College desirable or necessary to be made, or of difficulty or inability in securing supplies or labor, or of strikes, government orders, epidemic/pandemic or of any other cause beyond the reasonable control of College, until said cause has been removed. College shall have no responsibility or liability for any such interruption, curtailment, stoppage, or suspension of services or systems. Except as otherwise set forth herein, College shall be responsible for general maintenance of the Buildings and adjacent property, excluding Licensee's equipment and personal property, in accordance with its standard procedures to the extent that it is reasonably possible for College to do so.

3.2. Cleaning and Trash Removal. Licensee shall be responsible for cleaning the Premises, including the bathroom and any kitchen areas and all the fixtures (including prior to occupying the Premises) and shall be responsible for making sure that the Premises are adequate and are safe for the Program on a daily basis and during the period while in usage for the Program. Licensee will be responsible for emptying all trash containers into the outside dumpster. Following the period of Program use, the College will engage the services of a third party for environmental cleanup, including the disinfection of all spaces used by the Program. The College will coordinate and pay for this expense.

3.3. Furniture; Fixtures. During the Term, College shall provide all the bedroom furniture that it generally provides in its dorms. College will provide on an "AS IS" and "AS SHOWN" basis such furniture and the fixtures in the communal kitchen and the bathroom areas of the Premises.

3.4. Supplies and Laundry. Licensee shall be solely responsible for providing all of the linen, pillows, and other supplies and consumables that it requires for use in the Premises consistent with the Program. The College may facilitate a bedding service, but cannot guarantee that such service will be available. Licensee is not permitted to use Laundry Machines within the Premises.

3.5. Healthcare Provisions. Licensee agrees that self-quarantined Approved Employees (as determined by Licensee) shall be housed in Terrace Apartments and self-isolated Approved Employees (as determined by Licensee) shall be housed in Terrace Apartments. Licensee is fully responsible and liable for making sure that any Approved Employee showing symptoms of COVID-19 or otherwise isolated for COVID-19 is adequately supervised and given adequate medical coverage. College shall not be responsible for supervising or otherwise rendering medical care to the Approved Employees.

3.6. Meals. Approved Employees may cook meals in the communal kitchens in the Premises. College shall not be responsible providing any ingredients or food or for any illness or allergic reactions resulting from such meals. The Licensee and Bon Appetit may jointly agree to a food service arrangement, but College cannot guarantee that such service will be available.

3.7. Approved Employees. Only those who are on the list given by the Licensee to Director of Event Services Fred Gizzo at College shall be allowed to stay overnight in the Premises ("Approved Employees"). All Approved Employees must be current employees of Licensee. Other than Approved Employees or others specifically approved in writing by College, Licensee may not allow and shall instruct its Approved Employees and other employees that they may not allow, any other person to enter the Buildings, including, Approved Employees' family members or invitees. Approved Employees may not enter other buildings located on College campus or access other resources that College makes available to its employees or students unless explicitly agreed to in advance by College.

3.8. Security; Assistance. Each Building is a swipe card access building, the Buildings will not have any in-person security at the front entrance. Except in an emergency, Licensee and Approved Employees shall not allow anyone into the Buildings who does have a swipe card for the appropriate Building. Other than as stated herein or in an emergency, College employees shall not be requested to provide any assistance to the Program or to Approved Employees. College makes no guarantee that such assistance will be available or be given.

3.9. Internet Connection. Licensee's Approved Employees shall be provided with a guest Internet connection for standard office use while staying in the Premises subject to College's Acceptable Use Policy ("AUP"). Any use of such internet connection in violation of the AUP shall result in such Internet connection being suspended or terminated during the Term.

3.10. Program Description. Licensee hereby agrees that it shall run the Program in compliance with requirements of all applicable laws and regulations. Any failure to comply with any applicable laws and regulations may result in this Agreement being terminated by College immediately. Licensee shall be liable for failure to comply applicable laws and regulations. This clause shall survive the termination of this Agreement.

3.11. Repair and Compensation for Supplies or Damages. Licensee agrees that it shall promptly replace or reimburse for any items or supplies of College that Licensee or Approved Employee may use or damage during the Term. Licensee shall be responsible for promptly replacing or repairing any damage incurred by College occasioned by any use of the Buildings, Premises, equipment or fixtures in the Buildings or in the surrounding

areas by Licensee or any of the Approved Employees or by Licensee's other employees or invitees.

3.12. Pets. No pets shall be allowed in the Buildings. Only service animals that assist people with disabilities allowed in the Buildings. In the event that any such service animals are to be accommodated in the Buildings, the Licensee shall be responsible for making sure that such services animals are adequately taken care of in the Buildings during the Term.

3.13. Alcohol, Smoking, and Use of Cannabis. Possession and consumption of alcohol; smoking and use of e-cigarettes; and use, ingestion or possession of cannabis (even for medical uses) or of any illegal substances are not allowed on College property.

4. Conditions to Commencement of Program.

Licensee's use of the Premises may not commence until College has received a certificate of insurance, naming College as an additional insured, in the form reasonably satisfactory to College. In addition, Licensee shall submit necessary forms and documents for each Approved Employees as described in Section 3.7 prior to occupancy.

5. Terms of Use.

5.1 Permitted Uses. Licensee shall be entitled to occupy and use the Premises solely for the Program.

5.2 Program Employees; Approved Employees. The total number of Approved Employees allowed in the Premises shall not exceed 58.

5.3 Prohibited Uses. Notwithstanding any provision of this Agreement which may indicate or suggest the contrary, Licensee agrees not to use, or suffer or permit the use of, or permit anything to be done in or around any part thereof, (i) which would violate any of the covenants, agreements, terms, provisions and conditions of this Agreement, (ii) for any unlawful purposes or in any unlawful manner, or (iii) which, in the reasonable judgment of College, shall in any way (a) impair or interfere with or tend to impair or interfere with any of the Building's services or the proper and economic heating, cleaning, air conditioning or other servicing of the Buildings, or (c) occasion discomfort, inconvenience or annoyance to any of the other tenants or occupants of the Buildings or in nearby buildings, whether through the transmission of noise or odors or otherwise.

5.4 Compliance. Licensee and its employees shall comply with all applicable federal, state and local laws (each, as amended from time to time, and the rules and regulations promulgated thereunder), including, but not limited to, the Americans with Disabilities Act ("ADA"), the Fair Labor Standards Act, the Occupational Safety and Health Act, Executive Order 11246 (relating to Equal Employment Opportunity), as well as College's applicable policies concerning such laws.

5.5. Rules and Regulations. Licensee and its respective employees, agents, visitors and contractors will faithfully observe such policies, rules and regulations (including, without limitation, standard operating and emergency procedures applicable to the Buildings) as College hereafter at any time or from time to time may make and may communicate to Licensee, and which in the reasonable judgment of College shall be necessary for the operation, maintenance, reputation, safety, or appearance of the Buildings, College's equipment therein and the land on which the Buildings are situated (together, the "Property") or the comfort or safety of tenants or others on College campus. Without limiting the foregoing, Licensee and its employees, agents, visitors and contractors must comply with College's policies, provided that these policies are not all inclusive and may change from time to time (the "College Rules"). Nothing contained in this Agreement shall be construed to impose upon College any duty or obligation to enforce such rules and regulations or the terms, covenants or conditions in any other lease, license or occupancy agreement as against any other tenant or occupant and College shall not be liable to Licensee for violation of any rules and regulations by any other tenant or occupant or its employees, agents, invitees or licensees. Consistent with this provision, College shall be entitled to require that Licensee promptly remove any of its employees, contractors and/or agents the Buildings whom College reasonably believes are in violation of any rules, regulations or policies of College in general or of the Buildings in particular. Accordingly, it shall be Licensee's responsibility to ensure that it remains current and complies with College's published rules, regulations and policies, as amended from time to time. Notwithstanding the foregoing, in the event that College believes, in its sole discretion, that the continued presence of any personnel, subcontractor or agent of Licensee on College's campus threatens the safety or security of members of the campus community, College reserves the right to (i) suspend Licensee (or such person or entity) immediately from College premises, (ii) remove Licensee (or such person or entity) from College premises, and/or (iii) terminate this Agreement.

5.6. Accidents to Sanitary and other Systems. Licensee agrees to give to College prompt notice of any fire or accident in the Premises or in the Buildings and of any damage to, or defective condition in, any part of or appurtenance to the Building's sanitary, electrical, heating and air conditioning or other systems located in, or passing through, the Premises. Licensee agrees not to suffer or permit the Premises or any fixtures, equipment or utilities therein or serving the same, to be overloaded, damaged or defaced. Licensee agrees not to permit any hole to be drilled or made in any structural part of the Premises or the Buildings, without the prior written consent of College, which consent shall be at College's sole and unfettered discretion.

5.7 Hazardous Materials.

- (i) Licensee shall not cause or permit any Hazardous Materials (as hereinafter defined) to be used, generated, stored or disposed of on, under or about, or transported to or from, the Premises or the Buildings.

- (ii) If Licensee's activities violate any federal, state, local laws or regulations, or College Rules or cause a spill, discharge, release or exposure to any persons or property in violation of applicable law, Licensee shall cease such activities immediately and immediately notify College of such violation. Licensee agrees that any and all remediation, clean-up, or repair efforts undertaken hereunder in response to a spill, discharge, release or exposure of any Hazardous Materials caused by Licensee shall be made by or at the direction of College and, unless otherwise agreed, at Licensee's sole and respective cost and expense. College and College's representatives and employees may enter the Premises at any time during the Term to inspect and if applicable, disclose to the proper governmental authorities, Licensee's compliance herewith. During the Term, Licensee shall undertake no environmental testing of the Premises or the Buildings without College's consent, which consent may be withheld in College's sole discretion.
- (iii) As used in this Section 5.7, the term "Hazardous Materials" shall include without limitation any petroleum product; oxidizing substance; gas; flammable, corrosive, explosive or radioactive material; toxic and infectious substances, recombinant DNA, biohazardous material, any select agent as defined by the federal Select Agent rule in Parts 72 and 73 of title 42, regulated medical and infectious waste material, biological waste material, or any oil, any hazardous or toxic waste, substance or material, including without limitation substances defined as "hazardous substances," "solid waste" or "toxic substances" under any applicable laws and regulations relating to any of the foregoing, including, but not limited to: the Toxic Substance Control Act; the Comprehensive Environmental Response, Compensation and Liability Act of 1986; the Hazardous Material Transportation Act, as amended; the Resource Conservation and Recovery Act, as amended; the Clean Air Act, as amended; the Emergency Right-To-Know Act, as amended; the Occupational Safety and Health Act, 1910.120 as amended; comparable state laws; and all rules and regulations promulgated pursuant to such laws and ordinances.

5.8. Requirements of Law, Fines and Penalties. Licensee, at its sole expense, shall comply with all laws, rules, orders and regulations of federal, state, county and municipal authorities, including but not limited to any direction of any public officer or officers (collectively, "Laws" or "Regulations"), which shall impose any duty upon College or Licensee with respect to and arising out of Licensee's use or occupancy of the Premises, provided however that Licensee may contest any such law, rule, order or regulation in good faith so long as College is not adversely affected thereby. Licensee shall reimburse and compensate College for all expenditures made by, or damages or fines sustained or incurred by, College due to nonperformance or noncompliance with or breach or failure to observe any term, covenant or condition of this Agreement upon Licensee's part to be kept, observed, performed or complied with. If Licensee receives notices of any violation

of law, ordinance, order or regulation applicable to the Premises, it shall give prompt notice thereof to College.

5.9 Licensee's Acts, Effects on Insurance. Licensee agrees not to do or permit to be done any act or thing upon the Premises or elsewhere in the Buildings or on College campus which will invalidate or be in conflict with any customary insurance policies covering the Buildings and the fixtures and property therein and shall not do, or permit to be done, any act or thing upon the Premises which shall subject College to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried out on said Premises or for any other reason. Licensee shall not (i) do, or permit anything to be done, in or upon the Premises, or bring or keep anything therein, except as will not increase the rate for any insurance applicable to the Buildings, or (ii) use the Premises in a manner which shall increase such insurance rates on the Buildings or on property located therein, over that applicable when Licensee first took occupancy of the Premises hereunder. If by reason of failure of Licensee to comply with the provisions hereof the insurance rate applicable to any policy of insurance shall at any time thereafter be higher than it otherwise would be, then Licensee shall reimburse College for that part of any increased insurance premiums thereafter paid by College, which shall have been charged because of such failure by Licensee.

5.10 No Liens. Licensee shall not permit any liens to attach to the Premises or the Buildings as a result of its use of the Premises and shall discharge any such lien which is filed, promptly upon notice from College.

5.11 End of Term. Upon the expiration or other termination of the Term with respect to Licensee,

(i) Licensee shall peaceably quit and surrender to College the Premises and all alterations and additions thereto which Licensee is not entitled or required to remove under the provisions of this Agreement, cleaned, in good order, repair and condition excepting only reasonable use and wear.

(ii) Licensee Contact and College Contact shall jointly inspect the Buildings and record any damage or changed conditions in the Buildings and Licensee shall promptly reimburse College of any expenses incurred in connection with any necessary repairs.

(iii) College shall be allowed to engage the services of a third-party environmental cleaning company to clean and disinfect the interior of the Premises. The College will coordinate and pay for this expense.

5.12. Abandoned Property. Any personal property in which Licensee has an interest which shall remain in the Buildings or on the Premises after the expiration or termination of the Term shall be conclusively deemed to have been abandoned and may be disposed of in such manner as College may see fit.

5.13. Contacts. Director of Event Services Fred Gizzo (630/542-2452) shall be the primary contact for College and Fire Chief Bill Schultz (Fire Department – 630/768-6623)

/Police Chief Bill Murphy (Police Department – 630/768-6647) shall be the primary contact for the Licensee. Any changes to primary contacts must be delivered in writing.

5.14. Survival. The provisions set forth in this Section 5 shall survive the termination or expiration of this Agreement.

6. **Insurance.**

Licensee shall carry the following insurance in connection with Licensee's use of the Premises and Buildings and agrees to the following provisions with respect to such insurance:

- 6.1 Liability Insurance. Commercial General Liability including but not limited to Property Damage, Bodily Injury, Products and Completed Operations, and Contractual coverage for this Agreement. This coverage shall provide for a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. This coverage may be in the form of one or more policies of primary coverage and umbrella coverage. Licensee shall promptly notify College in the event that one or more claims are made against its commercial general liability policy and the aggregate value of all pending claims against such policy exceeds one-half of the limit of such policy. The Commercial General Liability Policy shall include Wheaton College as an "additional insured" on a primary and non-contributory basis.
- 6.2 Damage to Premises (Fire Legal Liability). Damages to Premises (Fire Legal Liability) Insurance with a minimum coverage of \$250,000.
- 6.3 Professional Liability. ~~Professional Liability Policy with a minimum limit of \$1,000,000 each claim (including Defense Costs) and \$1,000,000 in the aggregate.~~ Not required.
- 6.4 Workers' Compensation and Occupational Disease and Employers Liability Insurance. Workers' Compensation insurance as required by Illinois statutory limits, and Employer's Liability with a minimum limit of \$500,000 Each Accident, \$500,000 Disease – Policy Limit, and \$500,000 Disease – Each Employee covering all employees of Licensee.
- 6.5 Umbrella Policy. Umbrella Policy in excess of the Professional Liability Policy and the General Commercial Liability Policy if needed in order to reach the required insurance limits due to lower primary policy limits.
- 6.6 Business Auto Liability. Business Auto Liability policy including owned, non-owned and hired vehicles coverage with a \$500,000 Combined Single Limit.

- 6.7 Licensee shall furnish to College a Certificate of Insurance completed by a duly authorized representative of their insurer, certifying that at least the minimum coverages required by this section are in effect and naming the Trustees of Wheaton College aka Wheaton College and its trustees, officers and employees as additional insureds (such Additional Insured request does not extend to Professional Liability coverage). The insured shall provide Wheaton College with 30 days' advance written notice if any of the liability coverages are non-renewed or materially changed by endorsement, or through issuance of other insurance.
- 6.8 If any of Licensee's insurance policies are on a "claims-made" form, Licensee is required to maintain such coverage for a minimum of three (3) years following the termination of this Agreement.

7. Liability; Indemnification.

Licensee hereby agrees to be fully liable and responsible for and to indemnify, defend, and hold College and its trustees, officers, employees, students and agents harmless from any and all liability, loss, damages, including consequential damages, costs, or expenses, including reasonable attorneys' fees, arising from operating the Program, any use of the Premises, the Buildings by any of Licensee's agents, employees, or invitees, any other act, omission, negligence or intentional misconduct of Licensee, its agents, its employees, or its invitees, or by any person in or upon the Buildings or the Premises with Licensee's consent (other than College and its agents and employees) or from any violation of the provisions of this Agreement or applicable law by any such person, including, without limitation, any illness, death or injury suffered by Approved Employees or any other agent, employee or invitee of Licensee. Licensee further agrees to pay any taxes, fees or fines which are imposed on College in connection with any use of the Premises by Licensee and its employees and agents. This provision shall survive the termination of this Agreement.

8. Americans with Disabilities Act ("ADA").

Licensee shall be solely responsible for the design, installation, and maintenance hereunder of any temporary improvements in the Premises to meet the requirements of the Americans with Disabilities Act ("ADA") for its Approved Employees, other employees, agents, contractors and visitors and recognizes and agrees that its services must be provided in a manner consistent with the ADA.

9. Parking.

Licensee's Approved Employees will be issued temporary parking passes permits to park in assigned spaces, subject to College parking regulations. Approved Employees may also park on the street as permitted by local law.

10. Default.

In the event that Licensee shall fail to comply with any term or condition of this Agreement, College shall provide Licensee with written notice, as provided by herein, of such default. Except as otherwise set forth herein, Licensee shall have five (5) days within which to cure such default, except that such cure period (I) may be extended by College, in its discretion; and (ii) may be shortened if persons or property may be placed at risk, or College's damages are likely to be more severe, if termination and surrender of the Premises is not immediately enforced. If Licensee fails to effect such a cure within such period, Licensee shall be in breach of the terms and conditions of this Agreement. In the event of such default, College shall have the right, at its election to terminate this Agreement immediately or an any later date specified in such note, in which case Licensee's right to possession of the Premises will cease and this Agreement will be terminated, except as otherwise set forth herein.

11. Waiver of Performance.

The failure of College to insist upon the strict performance of any agreement, term, covenant, or condition hereof or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach of such agreement, term, covenant or condition hereof to be performed or complied with by Licensee, and no breach hereof shall be waived, altered or modified, except by written instrument executed by College.

12. Complete Agreement.

This Agreement supersedes any and all prior written or oral agreements and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved by the authorized representatives of the parties.

13. Limitation of Liability.

In no event shall College have liability to the Licensee or to its employees, agents, contractors or invitees under this Agreement, for any reason, with respect to

special, indirect, incidental, consequential, punitive or exemplary damages incurred by Licensee, including, but not limited to, lost profits or data, even if College has knowledge of the possibility of such damages.

14. Independent Contractor.

In all matters relating to this Agreement, the status of Licensee shall be that of an independent contractor and not that of an employee, co-venturer, agent, or partner of College. Licensee's directors, officers, employees and agents shall not be treated as employees of College and shall not be entitled to any of the benefits provided to College employees. Licensee shall take all actions reasonably necessary to support such determination. Licensee shall pay any and all taxes on its income, governmental charges and other legal obligations, including, but not limited to, withholding and reporting of income and social security taxes, contributions to social security and unemployment taxes, and obtaining of statutorily required levels of worker's compensation insurance. With respect to any employees directly or indirectly hired, engaged or used by Licensee, Licensee agrees to be liable for payment of their compensation, and Licensee shall pay any and all taxes, governmental charges and other legal obligations, including, but not limited to, withholding and reporting of income and social security taxes, contributions to social security and unemployment taxes, and the obtaining of statutorily required levels of worker's compensation insurance. Licensee shall have no power or authority to act on behalf of College or in its name or to bind College, directly or indirectly, in any manner

15. Controlling Law.

This Agreement and the performance of the parties hereunder shall be controlled and governed by the laws of the State of Illinois. The parties agree that the state and federal courts located in DuPage County, Illinois shall have jurisdiction over any dispute that is litigated and any dispute that is arbitrated shall be settled by binding arbitration with hearings in Du Page County, IL, pursuant to the rules of the American Arbitration Association, using expedited procedures to the extent available.

16. Waiver of Jury Trial.

Each party waives the right to a jury trial in connection with any dispute arising out of the Agreement.

17. Notices.

All notices and communications made under this Agreement shall be in writing and delivered by first-class mail or overnight courier service and email, addressed as follows:

If to Wheaton College:
Attn: General Counsel

If to Licensee:
Attn: City Clerk

Wheaton College
501 College Avenue
Wheaton, IL 60187
legal.and.risk@wheaton.edu

City of Wheaton
303 West Wesley
Wheaton, Illinois 60187
Sbarrett-hagen@wheaton.il.us

18. No Assignment.

Licensee's rights under this Agreement may not be assigned or transferred, whether by operation of law or otherwise, to any other party without College's prior written consent, in its sole discretion.

19. Name Use; Media.

- 19.1 Except as previously approved, Licensee shall not use the names "Wheaton" or "Wheaton College", or the name of any school or division thereof, or any logo or insignia of Wheaton or of any school or division thereof, or otherwise identify Wheaton or any school or division thereof, in any form of publicity or disclosure without the prior written consent of College, which consent may be withheld or granted by College in its complete and uncontrolled discretion at any time or times. Any request for any such name use shall be directed to College's Marketing Communications Department.
- 19.2 Neither party shall (i) communicate with members of the media or otherwise make any public announcement regarding the license granted hereunder pursuant to this Agreement, or (ii) the terms of this Agreement, without the prior written consent of College's Director of Marketing Communications. Any inquiries from the media shall be referred to College's Director of Marketing Communications.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties represent and warrant that the person executing this Agreement on its behalf has full authority to execute this Agreement and to bind it as a Party to this Agreement. This Agreement may be executed in counterparts and will be enforceable upon the exchange of facsimile or electronically scanned signatures. This Agreement will be effective on the date of the last signature below.

<p>TRUSTEES OF WHEATON COLLEGE</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>City of Wheaton ("LICENSEE")</p> <p>By:  Name: Philip J. Suess</p> <p>Title: Mayor</p> <p>Date: April 3, 2020</p>
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